

1 ASSEMBLY TRANSPORTATION COMMITTEE

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4 In re: :
5 E-ZPass : TRANSCRIPT OF
6 : PROCEEDINGS

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10 MAY 2, 2002

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13 B E F O R E:

14 Chairman John S. Wisniewski

15 Vice-Chairman Reed Gusciora

16 Assemblyman John J. Burzichelli

17 Assemblyman Anthony Impreveduto

18 Assemblyman Gordon M. Johnson

19 Assemblywoman Linda Stender

20 Assemblyman Francis L. Bodine

21 Assemblyman Paul D'Amato

22

23

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1 TRANSCRIPT of proceedings as taken by
2 and before SEVA FLICSTEIN, a Certified
3 Shorthand Reporter and Notary Public of the
4 State of New Jersey, at the State House Annex,
5 Trenton, New Jersey, on Thursday, May 2, 2002,
6 commencing at 10:10 in the forenoon.

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1 ASSEMBLY TRANSPORTATION COMMITTEE

2 THURSDAY, MAY 2, 2002

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4 CHAIRMAN WISNIEWSKI: Good
5 morning everyone. Welcome to the Assembly
6 Transportation Committee.

7 The Committee today will be
8 continuing to hear testimony on the issue of
9 E-ZPass. Just a couple of housekeeping
10 comments before we begin.

11 Our proceedings today are being
12 broadcast on the Internet. And the microphones
13 that broadcast our proceedings on the Internet
14 are very sensitive, so just be mindful to the
15 Committee members and to those people in the
16 first and second rows that oftentimes
17 everything you say is broadcast whether you
18 intended or not.

19 Secondly, we have a transcript
20 being made of today's proceedings, and we have
21 a reporter doing the transcription. And she
22 has made just one request, that we speak
23 clearly and one at a time so that she is able
24 to accurately transcribe what we say. So if we
25 would all just extend each other the courtesy

1 to complete our sentences before we cut in,
2 that would make the proceedings go much more
3 smoothly.

4 To begin with, I would like to
5 have our aide, Nancy, call roll.

6 MS. LIPPER: Assemblyman Bodine.

7 ASSEMBLYMAN BODINE: Here.

8 MS. LIPPER: Assemblyman
9 D'Amato, substituting for Assemblyman DeCroce.

10 ASSEMBLYMAN D'AMATO: Here.

11 MS. LIPPER: Assemblyman
12 Johnson.

13 ASSEMBLYMAN JOHNSON: Here.

14 MS. LIPPER: Assemblyman

15 Burzichelli.

16 Assemblywoman Stender.

17 ASSEMBLYWOMAN STENDER: Here.

18 MS. LIPPER: Assemblyman

19 Impreveduto.

20 ASSEMBLYMAN GUSCIORA.

21 ASSEMBLYMAN GUSCIORA: Here.

22 MS. LIPPER: Chairman

23 Wisniewski.

24 CHAIRMAN WISNIEWSKI: Here.

25 Thank you.

1 As stated on our Committee
2 agenda, today we've invited Mr. Edward Gross,
3 who had been the Executive Director of the
4 New Jersey Turnpike Authority, to come before
5 us and provide testimony on the E-ZPass system.

6 Mr. Gross was kind enough to
7 voluntarily come this morning, and he is here
8 with us. At this time I would like to ask
9 Mr. Gross to come forward. I know he has an
10 opening statement he would like to read to the
11 Committee.

12 MR. GROSS: Can everyone hear
13 me?

14 CHAIRMAN WISNIEWSKI: Yes.

15 MR. GROSS: Mr. Chairman and
16 distinguished members of the Assembly
17 Transportation Committee, my name is Edward
18 Gross. I was the Acting Executive Director of
19 the New Jersey Turnpike from October 1995 to
20 February of 1997. At that time, I was
21 appointed the Executive Director by the Board
22 of Commissioners, which position I held until
23 January 2002.

24 In the fall of 1995 Governor
25 Whitman announced the formation of a consortium

1 of toll roads for the purpose of providing
2 electronic toll collection for the New Jersey
3 toll facilities; that is, the New Jersey
4 Turnpike, the New Jersey Highway Authority,
5 also known as the Garden State Parkway, and the
6 South Jersey Transportation Authority, also
7 known as the Atlantic City Expressway.

8 The initial members of the
9 consortium were the three New Jersey toll
10 facilities and the Port Authority of New York
11 and New Jersey. The Delaware Department of
12 Transportation, responsible for toll collection
13 in that state, joined the consortium shortly
14 thereafter.

15 The consortium functioned
16 through an Executive Council, chaired by the
17 Commissioner of Transportation, with
18 representatives at the executive director level
19 from each member agency as council members.
20 The Commissioner of Transportation, then Frank
21 Wilson, designated the New Jersey Turnpike as
22 the lead agency for the procurement,
23 construction, and operation of the electronic
24 toll collection system.

25 The Executive Council directed

1 the formation of a Review Committee in order to
2 proceed with the procurement. The chair of the
3 Review Committee was Tom Margo, then Chief
4 Engineer of the New Jersey Turnpike.

5 Each member agency designated a
6 Review Committee member at the chief engineer
7 level or equivalent senior manager.

8 In early 1996 the New Jersey
9 Turnpike, with the unanimous approval of all
10 members, released a Request for Qualifications.

11 Proposals were submitted to the
12 Review Committee, and four companies were
13 qualified through this process as prime
14 contractor candidates. They were: Lockheed
15 Martin, MFS Network Technologies -- which
16 hereinafter I will just refer to as "MFS" --
17 Chase Manhattan Bank, and Valley National Bank.

18 In April 1996 a Request for
19 Proposals was released by the New Jersey
20 Turnpike, again, with the unanimous approval of
21 all members.

22 In July of 1996 two prime
23 contractor candidates submitted proposals. The
24 two proposals were received from Lockheed
25 Martin and MFS. Chase Manhattan Bank elected

1 to join with MFS as its principal
2 subcontractor, and Valley National Bank
3 withdrew from the process.

4 The Review Committee thereupon
5 proceeded to review the proposals. The
6 committee was supported by a substantial number
7 of employees from all member agencies with
8 expertise in finance, engineering, and toll
9 collection. Phoenix Consulting, an outside
10 firm, provided further committee support.

11 The review process was extensive
12 and lengthy, and included meetings with
13 competitors, written questions and answers, and
14 finally, a consortium request for a best and
15 final offer.

16 In October 1996, during the
17 latter part of the review process, Lockheed
18 Martin filed a protest with the New Jersey
19 Turnpike. The protest commenced a lengthy
20 litigation period that ended in early 1998 with
21 a Denial of Certification by the Supreme Court
22 of New Jersey.

23 All litigation resulted in the
24 dismissal of the Lockheed objections. However,
25 the litigation period caused a significant

1 delay in executing the contract with MFS. The
2 contract signed with MFS occurred in March
3 1998.

4 A great deal has been written in
5 the media regarding delays in construction and
6 the deferred opening of electronic toll
7 collection, which we commonly refer to as
8 E-ZPass, on the New Jersey Turnpike and the
9 New Jersey Highway Authority, the Garden State
10 Parkway.

11 The media focused attention on
12 MFS as the cause of the delays. However, the
13 principal, but not exclusive, cause of the
14 delay was the Lockheed litigation.

15 The consortium's request for a
16 best and final offer indicated a preference for
17 a financial arrangement which would not require
18 the members to either initially, or during the
19 10-year contract term, advance capital funds.
20 Lockheed Martin did not propose such a
21 financial arrangement, although I believe they
22 did project violation revenue similar to that
23 projected by MFS.

24 MFS agreed to arrange private
25 financing to meet the consortium's preference.

1 The MFS proposal led to the development of a
2 base case financial model prepared by MFS. The
3 principal revenue forecasts in the model
4 consisted of violation revenue and fiber
5 revenue, both of which were proposed by MFS.

6 The violation revenue relied
7 upon assessment and collection of a \$25 fee
8 from motorists who traveled through a toll
9 booth without E-ZPass and did not pay their
10 toll. The projection of violation revenue
11 collected over eight operating years was
12 prepared by MFS.

13 In summary, the model estimated
14 that the average violation rate over eight
15 operating years would be 8/10ths of 1 percent,
16 or slightly less than ten million motorists
17 annually out of one billion motorists using the
18 five toll facilities.

19 The model discarded 50 percent
20 of the violators based upon nonreadable plate
21 images, equipment failures, and public error.
22 Finally, the model projected that 50 percent of
23 the remaining 4.5 million violators would pay
24 the \$25 fee as a result of letter
25 notifications, collection agency pursuit, and

1 municipal court action.

2 Thus, the 2.25 million
3 violations at \$25 per violation would generate
4 about 50 million dollars annually.

5 The model actually projected a
6 higher violation rate in the earlier years of
7 operation, and a gradually lower rate as
8 motorists recognized that the collection
9 process would result in more serious
10 consequences and began paying tolls.

11 The fiber revenue was based on
12 the capacity of the fiber network to be
13 constructed on the right-of-ways of the member
14 agencies, with the exception of the Port
15 Authority, and MFS's assessment of market
16 demand. MFS projected 210 million dollars of
17 fiber revenue collected over 20 years.

18 All member agencies finance
19 personnel reviewed the projected revenue, and
20 adjustments were made based upon dialogue
21 between the member agencies and MFS.

22 I believe MFS's projected
23 violation revenue was based in part on the
24 violation rate on the Garden State Parkway
25 pre-E-ZPass and the experience of other toll

1 facilities operating with and without
2 electronic toll collection.

3 The group of private lenders,
4 headed by Newcourt Capital Corporation, hired
5 Coopers & Lybrand to review the projected
6 revenues set forth in the model. Newcourt
7 Capital advised me that Coopers & Lybrand was
8 satisfied with the fiber revenue projection and
9 considered the violation revenue forecast
10 conservative.

11 The contract for the design,
12 construction, operation, and maintenance of the
13 electronic toll system and fiber network was an
14 enormous undertaking. In fact, it was at the
15 time the largest contract of its kind in the
16 United States.

17 The project cost for
18 construction was approximately 210 million
19 dollars to outfit more than 700 toll lanes.
20 The estimated operating cost for eight years
21 was approximately 300 million dollars based
22 upon an estimated E-ZPass user rate -- and we
23 commonly refer to that and you will hear it
24 referred to as a penetration rate -- of 35
25 percent of all motorists.

1 These costs were, and continue
2 to be, the obligation of the member agencies.
3 It is no different than a toll agency paying
4 for the cost of a new bridge or an additional
5 highway lane.

6 Thus, the projected use of
7 revenue from toll cheats and users of the fiber
8 network were, and remain, in my opinion, a
9 creative approach to reduce the burden on toll
10 revenue collected from the 99 percent of
11 motorists who regularly pay their toll.

12 All projections are subject to
13 adjustments and modifications with the passage
14 of time and the gathering of actual data. It
15 was clearly contemplated in the contract
16 documentation with the private lenders and MFS
17 that if projected revenue were not adequate to
18 pay all costs, then the member agencies would
19 pay the difference at the end of eight
20 operating years. That is, March 2008.

21 Furthermore, the contract
22 documents required the member agencies, with
23 the assistance of a financial advisor, to
24 revise the base case model on an annual basis.
25 And if a balance due were projected in 2008,

1 each agency was obligated to reserve their
2 share annually.

3 As set forth in the revised
4 model of November 2001, it was clear that the
5 violation and fiber revenue was not meeting the
6 original model's projection.

7 The fiber revenue collected or
8 under lease was approximately 100 million
9 dollars. This revenue stream was and is still
10 directly affected by the historic downturn in
11 the telecommunications industry.

12 The collected violation revenue
13 represents a very small portion of the original
14 model's projection.

15 There are many reasons for the
16 poor violation revenue results. They range
17 from the performance of the violation
18 processing center to lane equipment failures,
19 as well as a lack of implementation of
20 collection techniques, such as contracting with
21 a collection agency, instituting suit in
22 municipal court, and seeking suspension of
23 motor vehicle registration for the most
24 egregious violators.

25 The operation of the violation

1 processing center and lane equipment failures
2 has caused many critics to conclude the system,
3 and its projected revenue generation, a
4 failure. I disagree.

5 All startup businesses, of which
6 this is one, initially experience some
7 management and equipment setbacks. Through
8 dedicated and diligent effort it is
9 correctable.

10 Furthermore, without proper
11 enforcement tools, such as a collection agency
12 and municipal court action, it is premature to
13 conclude that violation revenue is not
14 collectible.

15 It is unfortunate, but true,
16 that a small percentage of motorists will
17 attempt to cheat the system. If these
18 motorists are confronted with serious
19 consequences for not paying the violation fee
20 of \$25, many will pay, and the violation rate
21 will diminish, but will not be eliminated.

22 In my opinion, it remains too
23 early in the operation of E-ZPass to reject
24 violation revenue as a means of paying for a
25 portion of the project.

1 In November 2001 the base case
2 model was revised, and it was projected that in
3 2008 a balance of 161 million dollars would be
4 outstanding and due from the member agencies.
5 The revised model was approved by all member
6 agencies. Some earlier drafts of the revised
7 model showed both a lower and a higher balance
8 due in 2008.

9 Through discussion with all
10 member agencies and the financial advisor, the
11 model showing a balance due of 161 million
12 dollars in 2008 was deemed the best projection
13 as of that date, and, therefore, released.

14 The principal reason for the
15 projected balance due of 161 million dollars
16 was not the current poor showing for collected
17 fiber and violation revenue.

18 The 2001 model contemplated that
19 with the passage of time resulting in the
20 improved performance of the violation
21 processing center and lane equipment, along
22 with support from a collection agency and
23 municipal court activity, the violation revenue
24 would materially improve. The 2001 model also
25 assumed the rebound in the telecommunication

1 industry in 2003 with new fiber leases
2 generating revenue.

3 The 2001 model projected a
4 material increase in operating expenses since
5 E-ZPass had grown from an originally projected
6 35 percent penetration rate to 55 percent of
7 all motorists.

8 Accordingly, projected
9 transactional costs, bank credit card fees and
10 transponder costs have increased by almost 200
11 million dollars from the original model,
12 resulting from E-ZPass's success as the
13 premiere method of toll collection.

14 Since March 1998, the contract
15 start date, the following contract milestones
16 were achieved:

17 One, opening a customer service
18 center in November 1998 operated by Chase
19 Manhattan Bank and handling about a million and
20 a quarter transactions daily.

21 Two, opening the E-ZPass
22 operation on the Atlantic City Expressway in
23 November 1998.

24 Three, opening the E-ZPass
25 operation on the toll facilities in Delaware in

1 1998 and 1999.

2 Four, opening the violation
3 processing center in 1999.

4 Five, opening the E-ZPass
5 operation on the Garden State Parkway in
6 stages, from December 1999 to September 2000,
7 when all toll plazas and ramp plazas were
8 functioning.

9 Six, opening the New Jersey
10 Turnpike for E-ZPass operation in September
11 2000.

12 And finally, construction of a
13 fiber network of nearly 400 linear miles that
14 services E-ZPass and generated 100 million
15 dollars in leases.

16 As of January 2002 there
17 remained work to be completed in software
18 development to provide for mixed-mode lane
19 operation on the Garden State Parkway and the
20 New Jersey Turnpike. Mixed-mode means a lane
21 that can simultaneously collect manually and
22 electronically or by coin-deposit and
23 electronically. Lane equipment performance and
24 violation processing center operation also
25 required improvement.

1 All of this work is important,
2 but it is far from impossible to achieve. The
3 contractor is responsible for successful
4 completion of the project and retainage of
5 about 12 million dollars which was being held
6 in the project as of January 2002, along with
7 performance bonds.

8 This project is not a failure.
9 However, it requires diligent effort by the
10 contractor and the consortium to successfully
11 complete.

12 E-ZPass as a means of collecting
13 tolls is an overwhelming success. The vast
14 number of motorists have not experienced
15 problems using E-ZPass, and have benefited from
16 the virtual elimination of queues at most of
17 the toll plazas, particularly on the New Jersey
18 Turnpike.

19 In 2001 the New Jersey Turnpike
20 commissioned Wilber Smith Associates to perform
21 a study on time and fuel savings by motorists
22 as a result of using E-ZPass on the New Jersey
23 Turnpike. The study showed that motorists
24 saved in time and fuel annually an estimated 27
25 million dollars.

1 As a result of E-ZPass, the
2 New Jersey Turnpike toll collection workforce
3 has been reduced from approximately 800
4 full-time collectors to about 475 collectors,
5 representing approximately 10 million dollars
6 in annual savings, all accomplished without any
7 layoffs.

8 In conclusion, it is my opinion
9 that the E-ZPass project has on an overall
10 basis provided substantial and important
11 benefits to the motoring public. With the
12 passage of time, it should only improve. We
13 need patience, a committed contractor, and
14 dedicated personnel to achieve the project
15 objectives.

16 Mr. Chairman, I would be pleased
17 to answer questions of the distinguished
18 Committee members. And thank you for
19 permitting me to make my opening statement.

20 CHAIRMAN WISNIEWSKI: Thank you,
21 Mr. Gross. I appreciate the opening statement
22 and sharing copies of that statement with
23 members of the Committee.

24 I would like to start off the
25 questioning and take the prerogative of the

1 chair.

2 The single greatest question
3 that this committee has had since we started
4 looking at E-ZPass is where did the notion that
5 E-ZPass could be a self-financed system come
6 from?

7 We've heard a variety of answers
8 to that question. We've heard answers that
9 this was a design of the consortium requesting
10 the bidders to come up with a system that is
11 self-financed. And we've heard that this is a
12 scenario developed by the bidders for the
13 consortium. And we don't have any consistent
14 answers.

15 Since you were the Executive
16 Director at the critical juncture, and the
17 Acting Executive Director, I would like to hear
18 your perspective on where did the notion come
19 that this would be implemented at no cost to
20 the taxpayers.

21 MR. GROSS: I am going to do my
22 very best to answer the question. But,
23 Mr. Chairman, I must say in preface to
24 answering that question that I did not
25 participate in the original design that led to

1 the base case model.

2 The Review Committee was chaired
3 by Tom Margo, the Chief Engineer of the
4 Turnpike. And he worked closely with Frank
5 Wilson, the Commissioner of Transportation, and
6 the Review Committee members.

7 And the development of the idea
8 that led to a statement in the request for a
9 best and final offer as a preference for zero
10 down and zero over the eight operating years
11 was generated by, in my -- I believe, by the
12 people I've just mentioned, not by me.

13 In fact, Mr. Chairman, I do
14 recall that I saw a draft of the request for a
15 best and final offer and reviewed it, and told
16 Mr. Margo that it was unacceptable in my
17 opinion to require the competitors to provide a
18 financing plan that had zero down and zero over
19 the eight years, that it should only be
20 permissive.

21 So the best I can say to you is
22 that the origin and idea came from the group
23 that was reviewing the procurements, and I
24 would assume -- I am assuming now -- the input
25 from the competitors who were generating

1 projected violation revenue and fiber revenue.

2 CHAIRMAN WISNIEWSKI: I am
3 concerned because the answers we've received
4 are essentially along the same lines. Nobody
5 is, quite frankly, sure where the idea came
6 from. Let me take another stab at it.

7 Before there was a request for a
8 best and final offer, did the consortium, which
9 was led by the Turnpike, consider at any time
10 that this simply was an infrastructure
11 improvement that should be financed the way
12 other infrastructure improvements are financed
13 on the Turnpike, that debt is incurred and paid
14 off over time, as opposed to this being a way
15 of trying something that's not been tried
16 before, to have it financed through a revenue
17 stream that was untested?

18 MR. GROSS: I recall some
19 dialogue at Executive Council meetings. If you
20 recall, in my opening statement I said that
21 there was an Executive Council that was chaired
22 by the Commissioner of Transportation, and each
23 member agency had a very high level executive
24 director or nearly executive director attend.

25 I recall conversations where the

1 Garden State Parkway expressed an inability to
2 pay for the system with the normal use of
3 capital, and was looking to the state through
4 the Commissioner of Transportation for support.

5 I recall Commissioner Wilson
6 indicating E-ZPass, or electronic toll
7 collection, is vital to improve the efficiency
8 of travel on our key roads, and we will figure
9 out a way for each of the agencies to pay for
10 it.

11 In my opinion, that was the
12 genesis, as information was being developed and
13 it became knowledgeable that the competitors
14 were both projecting significant violation
15 revenue, that a financing plan be attempted
16 that would allow for this new revenue stream or
17 dual revenue stream, fiber and violation
18 revenue, to be used to pay for the project
19 cost.

20 But there was always an
21 understanding -- and I can tell you this from
22 personal knowledge because my participation
23 grew dramatically after the Lockheed protest,
24 and then the negotiations for the terms of the
25 contract -- I can tell you without any

1 qualifications that each member agency
2 recognized, clearly recognized their obligation
3 to pay for the system. And that if the
4 revenues that were being forecast were not
5 generated either in kind or in time, that there
6 would be an obligation of the agencies to raise
7 capital for the purpose of paying whatever
8 balance was due.

9 And that's in the documentation
10 too, Mr. Chairman.

11 CHAIRMAN WISNIEWSKI: Was there
12 ever a mandate or a directive from the
13 administration, either from the Governor's
14 office or from the Department of
15 Transportation, that this system had to be
16 installed but without relying upon normal
17 revenue sources, either the trust fund or other
18 dollars that the highway authorities or the
19 Department of Transportation rely on for
20 capital projects?

21 MR. GROSS: It was never said to
22 me. That doesn't mean there weren't
23 conversations. But it was never said to me,
24 either by Commissioner Wilson, Tom Margo, or
25 anyone from Governor Whitman's staff.

1 CHAIRMAN WISNIEWSKI: I just
2 want to follow up. Because it seems that your
3 testimony is that the two competitors who were
4 responding to the request for a best and final
5 offer were, in a sense, part of the origin of
6 the self-financing scheme.

7 And I am looking at a document
8 that I would like to have somebody show
9 Mr. Gross so that he can have it as well. It's
10 entitled "The MFS NT Best and Final Offer
11 Clarification Questions."

12 And in that document prepared by
13 MFS NT, they say -- I am quoting -- "Our
14 financial concern with the terms requested by
15 the consortium is based on our view that the
16 E-ZPass project, including potential of
17 revenues, is not likely to be self-financed."

18 So I am a little bit at a loss
19 to understand how an organization that won the
20 bid, MFS NT, could be said to have been part of
21 this if their response for questions to the
22 best and final offer request says, we don't
23 think it's likely to be self-financed.

24 Can you explain the difference
25 between those two positions?

1 critical component of determining or projecting
2 your violation rate.

3 And it appears in this paragraph
4 that MFS was somewhat concerned with the
5 violation rates that each of the toll agencies
6 were providing. And you would expect them to
7 provide that because it's their facility and
8 their experience.

9 For example, on the Garden State
10 Parkway, before E-ZPass, an estimated 28,000
11 motorists didn't pay their tolls on a daily
12 basis, which is somewhere near, I think,
13 4 percent of the total motorists using the
14 facilities on a daily basis.

15 And I believe the Garden State
16 Parkway's violation rate came in initially at
17 around 2 and a half percent, and then moved
18 down dramatically as the public became
19 acquainted with the ability to determine who
20 violates and to assess a fee.

21 So it's that very issue which I
22 think doesn't necessarily make the third
23 paragraph in this BAFO clarification totally
24 inconsistent with ultimately what was projected
25 in the base case model prepared by MFS.

1 But the best I can say to you is
2 that I think MFS was initially asserting a
3 legitimate concern about violation rates.

4 CHAIRMAN WISNIEWSKI: So
5 apparently, then, what you are saying, changed
6 their mind at a later date, something changed
7 their mind?

8 MR. GROSS: There is no
9 question, Mr. Chairman, that when I became very
10 actively involved, which was immediately after
11 the Lockheed protest -- I was the hearing
12 officer for the Lockheed protest -- and after
13 the conclusion of the protest I became very
14 much involved in the process, there was never a
15 conversation that I had with MFS where they did
16 not exhibit when discussed a very positive
17 attitude towards violation rates.

18 But again, I say to you,
19 Mr. Chairman, that the violation revenue and
20 the fiber revenue was an attempt to pay project
21 costs. It wasn't an elimination of the toll
22 facilities' obligations to pay whatever
23 balances existed after those revenue streams
24 were used to pay the project cost.

25 That was always clear, that this

1 was an effort to generate some additional
2 revenue aside from toll -- traditional toll
3 revenue to help pay for the system.

4 CHAIRMAN WISNIEWSKI: But that
5 seems to vary a great deal from the way this
6 system was marketed.

7 A March 11, 1998 release from
8 the DOT says, "Agreement on E-ZPass Contract
9 Breach," and you are quoted as saying that
10 together, the five agencies are putting
11 together state-of-the-art regional ETC system
12 at no cost to the taxpayer.

13 Well, if it's at no cost to the
14 taxpayer, then there shouldn't be this issue
15 that you are bringing up now, that everybody
16 understood later on that there may be costs.
17 It can't be both ways.

18 MR. GROSS: I am sorry to
19 interrupt you, Mr. Chairman.

20 I agree with you. I think that
21 the initial releases in connection with this
22 contract in the beginning of construction
23 were -- set forth expectations that were very
24 high. And I think that was a mistake.

25 I think like in any new endeavor

1 when you are putting together projections and
2 you have no historic experience, you should be
3 more conservative in how you express yourself
4 based upon those projections.

5 I think that the level of
6 expectation was raised in early 1998 to a point
7 where anything short of that is deemed to be a
8 disappointment, saying that modestly. And I
9 think that was a mistake.

10 I think it should have been -- I
11 think the same approach was a sound approach.
12 I still believe it. But I think it should have
13 been set forth as this is a special effort that
14 is being made to have the cheaters, who hurt
15 every one of us that are honest all the time,
16 pay for the system. That there are no
17 assurances that will happen, but every best
18 effort will be made to collect from the
19 cheaters.

20 I think that would have been a
21 better way to present the initial financing
22 program than the way it was presented.

23 CHAIRMAN WISNIEWSKI: So at some
24 point in time after the award of the contract,
25 perhaps after the March 11, 1998 press release,

1 there was a realization that this could not
2 literally be a self-financing system?

3 MR. GROSS: Well, I think when
4 you move from March of 1998 to the end of 1998,
5 a relatively short period of time in
6 relationship to the project, you become aware
7 that the violation processing center is not
8 operating internally anywhere near the
9 performance criteria that's set forth in the
10 contract.

11 CHAIRMAN WISNIEWSKI: And that
12 was an event of default under the contract?

13 MR. GROSS: That was an event
14 that caused the assessment of liquidated
15 damages against the contractor.

16 CHAIRMAN WISNIEWSKI: Were those
17 damages collected?

18 MR. GROSS: They were collected,
19 because they were deducted from otherwise
20 payable disbursements. Nearly five million
21 dollars was collected in that fashion from the
22 contractor as a result of the violation
23 processing center not operating in accordance
24 with the contract specs.

25 The contract specs called for it

1 to be up and running with meeting performance
2 criteria by November of '98.

3 It wasn't opened until July of
4 '99. And when it was opened, it was still not
5 meeting the contract specs.

6 So trying to get back to your
7 question, there was a recognition early on that
8 until the violation processing center became
9 functional in accordance with the terms of the
10 contract, that the violation revenue that was
11 projected would not be generated in a timing
12 fashion as set forth in the model.

13 The model covered eight
14 operating years. The model didn't start until
15 all of the toll facilities were operating with
16 E-ZPass.

17 So what I am saying to you,
18 Mr. Chairman, is that this complex project as
19 it was being unfolded through construction
20 showed that the violation processing center was
21 not yet ready to be able to properly generate
22 the type of violation notices that were
23 projected in the model.

24 But that didn't mean that you
25 couldn't collect the revenue. That meant that

1 the timing -- you would be pushing out your
2 violation revenue collection based upon the
3 time it would take for the processing center to
4 be operating in accordance with the contract
5 terms.

6 CHAIRMAN WISNIEWSKI: So at the
7 point in time that the violation processing
8 center was up and running, there was a
9 realization that this was not going to be a
10 self-financing system?

11 MR. GROSS: No, Mr. Chairman. I
12 think the realization was that the revenue
13 projected in the year 2000 would have to push
14 out possibly to 2001 and 2001 to 2002.

15 But that the violation rates,
16 namely, the number of motorists that were not
17 paying their tolls, existed. And what was
18 required and what is still required is that the
19 violation processing center perform in
20 accordance with spec, and that the collection
21 techniques that I mentioned in my opening
22 statement be implemented.

23 You still need the collection
24 techniques and a good performing violation
25 processing center before you can actually

1 conclude that you can't collect the violation
2 revenue as projected or you can.

3 CHAIRMAN WISNIEWSKI: But those
4 collection techniques that you point out, for
5 instance, municipal court, those are not zero
6 cost techniques.

7 So that the projections of a \$25
8 per violation times the number of valid
9 violations is at the outset high because it
10 doesn't take into account the cost of going to
11 municipal court, the cost of actually having
12 those notices generated, and following up.
13 Even if you hire a collection agency, there is
14 some cost to that.

15 MR. GROSS: Under the terms of
16 the contract, based on my best recollection,
17 the contractor is responsible for generating
18 the evidence package and pursuing the court
19 activity.

20 CHAIRMAN WISNIEWSKI: So through
21 this day, since that's not happening, the
22 contractor is in violation of the criteria for
23 performance under the contract?

24 MR. GROSS: Absolutely.

25 CHAIRMAN WISNIEWSKI: So that is

1 another event of default?

2 MR. GROSS: Yes.

3 The contractor has not -- the
4 contractor had multi-faceted obligations in
5 connection with municipal court activity.

6 The first part of the obligation
7 was to generate an evidence package that would
8 cause success in going to municipal court. If
9 you're -- if you want an opportunity to collect
10 violation revenue, you don't want to lose your
11 first dozen cases in municipal court.

12 So the contractor had an
13 obligation to put together an evidence package
14 that the consortium's counsel was satisfied
15 would provide success.

16 That work, although materially
17 completed when I left the Turnpike, still had
18 some issues that were contractor related. And
19 one that I recall, because it was quite
20 important, was maintaining a proper mailing
21 log.

22 If you can imagine, you are
23 talking about thousands and thousands of
24 notices going out on a daily basis for
25 violations. So there has to be a system where

1 you could satisfy the court that you actually
2 mailed the document or letter in the event that
3 the defendant challenged and said, I never
4 received it.

5 The violation processing center
6 did not develop an adequate chain of mailing
7 that in the opinion of consortium's counsel
8 would absolutely succeed in court. And that
9 was --

10 So when I -- by the end of 2001,
11 that was still an issue.

12 What I am saying, it should have
13 been done quite before that.

14 CHAIRMAN WISNIEWSKI: When you
15 take all these issues together, you come back
16 to the proposition that in order to have any
17 reasonable expectation that this would be
18 self-financing, you have to be able to collect
19 a hundred percent of what you anticipated the
20 violation revenue to be, in order to do that,
21 you need an ability to go to court, in order to
22 do that, you need the evidence package, in
23 order to do that, you need the infrastructure
24 behind that in order to have the proper
25 documentation, none of which happened,

1 including which the violation processing center
2 did not open in a timely fashion.

3 So it seems, at least from my
4 perspective, abundantly clear that from a
5 fairly early stage, 1998, that this was not
6 likely to work out as planned.

7 Why didn't somebody then raise
8 their hand and say, we've got to drastically
9 change our expectations?

10 Because sitting as a member of
11 the Transportation Committee, as late as 2000 I
12 kept hearing reports that this would be
13 self-financing. And clearly, as we look at the
14 Star-Ledger today and we see reports and
15 references that I believe even you made,
16 Mr. Gross, that there is going to be a deficit.

17 How do we reconcile that?

18 MR. GROSS: Well, as I was
19 saying -- but I don't think I did a very good
20 job, Mr. Chairman -- in November of '98, which
21 was the date that the violation processing
22 center was supposed to open, it didn't open.
23 And the consortium authorized it opening in
24 July of '99, and we assessed liquidated
25 damages.

1 Now, when it opened in July of
2 '99, it still was not performing in accordance
3 with the contract specs. But that in itself
4 would not lead to the conclusion that you
5 couldn't collect the revenue.

6 If you look at the model,
7 starting with the March '98 model and then the
8 revisions in 2000 and 2001, what you see is the
9 pushing out into outer years the violation
10 revenue that is being projected.

11 Part of that is because the
12 violation processing center was not performing
13 adequately. But over a passage of time, there
14 were improvements. Part of that was no
15 collection agency. Part of that was no
16 municipal court action.

17 But at no time was it or did the
18 members collectively conclude that you couldn't
19 collect the collection revenue once the -- the
20 violation revenue once you had all of these in
21 place.

22 By pushing it out into a later
23 period, you're believing that you can correct
24 the operations of the violation processing
25 center, you can hire a collection agency, you

1 can get to municipal court, you could ask the
2 motor vehicle director to suspend the
3 registration of the most egregious violators.

4 And then, once you have all
5 that, you can then compare your actual results
6 to the model. And that wasn't yet achieved as
7 of the date that I left the Turnpike.

8 CHAIRMAN WISNIEWSKI: Which was
9 almost four years after the violation
10 processing center opened?

11 MR. GROSS: Yes.

12 CHAIRMAN WISNIEWSKI: It just
13 seems to me that at a certain point in time,
14 somebody should have looked at this and said,
15 we have a model, and the model says we are
16 going to meet certain benchmarks. And perhaps
17 in a very complicated system you don't meet
18 every one.

19 But it seems to me, and many
20 members of this committee, that virtually every
21 benchmark that was established failed to be
22 met. And at a certain point in time someone
23 should have said, this isn't working as
24 planned, and this is not going to pay under the
25 model.

1 Now, you know, outside the
2 model, 10 years down the road, maybe there
3 might be revenue, maybe not. But we are
4 talking about the model that said, this is
5 going to be a self-financing plan running
6 through 2008. It certainly was clear as early
7 as '98 that it wasn't going to happen that way.

8 MR. GROSS: I don't think it
9 was. In fact, I think -- you know, what you
10 are asking of me is, in my view, an honest and
11 sincere debate as to how you revise your base
12 case model.

13 It was revised in November of
14 2000 in accordance with the contract
15 obligations, and it was revised again in
16 November of 2001.

17 And a point of view that is
18 being expressed through your question, that you
19 should reduce the violation revenue because you
20 haven't achieved anything near what was
21 originally projected, is not frivolous. It's a
22 legitimate point of view.

23 What I am saying, that the point
24 of view that the member agencies took -- and I
25 believe correct -- and I took, both in 2000 and

1 2001, was that the performance requirements of
2 the violation processing center were all
3 correctable and all the responsibility of the
4 contractor.

5 And as an aside, they paid
6 some -- they were assessed not only liquidated
7 damages, but they didn't get their monthly
8 payments as a result.

9 But they were all correctable.
10 That hiring a collection agency was clearly
11 doable. Going to municipal court clearly was
12 doable.

13 And until you have a violation
14 processing center that was operating in
15 accordance with the performance standards,
16 until you have a municipal court that was
17 handing defendants far greater fines for their
18 action, until you had a collection agency that
19 was sending letters, you really couldn't
20 determine if you're going to ultimately collect
21 the violation revenue projected or not. You
22 could only determine that you wouldn't collect
23 it in the same time frame that the original
24 model projected.

25 So that's the way the member

1 agencies proceeded.

2 Now, I have said in connection
3 with the November revised model that the year
4 beginning December 1, 2001 through the end of
5 November of 2002 was very critical. Because if
6 you didn't have the -- during that period of
7 time you would have a collection agency, you
8 would be in municipal court, and the consortium
9 and the contractor are on the eve of doing
10 those things at the end of November of 2001.

11 And you would have a better performing
12 violation processing center. Then you would be
13 in a position with the next revised model to be
14 able to determine if your revenue forecasts
15 were going to be reasonably accurate or not.

16 CHAIRMAN WISNIEWSKI: I
17 appreciate that viewpoint. It just seems very
18 troubling that all of those things which you
19 say are doable, and perhaps are, were never
20 done.

21 I know Assemblyman Vice-Chairman
22 Gusciora has questions, and then Assemblyman
23 Impreveduto.

24 ASSEMBLYMAN GUSCIORA: Thank
25 you, Mr. Chairman.

1 Mr. Gross, thank you for coming.

2 Last night actually I had an
3 opportunity to go out with friends for dinner
4 from my hometown. And when I told them where I
5 was going to go today, my one friend said one
6 word, "debacle."

7 And when you have a projected
8 revenue of 450 million dollars in your release,
9 and we are operating at a 300 million dollar
10 deficit, that, sir, is a debacle.

11 And when you characterize it as
12 a sound approach, I think it's very important
13 that this government, this legislature, this
14 committee, get to the bottom of how we avoid
15 such unsound approaches in the future.

16 You before talked about the
17 Lockheed protest. That, in fact, was a
18 lawsuit; is that correct?

19 MR. GROSS: It started as a
20 protest under law before a bidder or a
21 party --

22 ASSEMBLYMAN GUSCIORA: And what
23 was the basis of that protest?

24 MR. GROSS: Lockheed had alleged
25 that there was not a level playing field. That

1 the consortium was materially changing the
2 terms of the procurement, and they were
3 changing it more favorably to MFS and against
4 the interests of Lockheed. That was --

5 ASSEMBLYMAN GUSCIORA: And you
6 were the hearing officer for this protest?

7 MR. GROSS: I was.

8 ASSEMBLYMAN GUSCIORA: It's like
9 the fox guarding the chicken coop.

10 And ultimately, this hearing
11 officer was the one that awarded it to MFS?

12 MR. GROSS: No.

13 ASSEMBLYMAN GUSCIORA: You
14 awarded it to WorldCom?

15 MR. GROSS: No. The contract
16 was -- the contract was signed by MFS Network.

17 But when I said no, I was the
18 hearing officer in the Lockheed protest, which
19 was appealed to court. And Lockheed's actions
20 were all dismissed.

21 But putting that aside, I wasn't
22 the one that awarded the contract. The Review
23 Committee concluded that MFS's overall proposal
24 was more favorable than Lockheed's.

25 The Review Committee then

1 recommended it to the Executive Council, and
2 then the Executive Council proceeded to
3 recommend it to all the boards of the member
4 agencies.

5 And ultimately, the Turnpike
6 board, after the other agency boards approved
7 it, approved the recommendation of the Review
8 Committee.

9 ASSEMBLYMAN GUSCIORA: Now, you
10 stated that you felt that it was a sound
11 approach that MFS would be able to project
12 the -- get the contract for projected violation
13 revenue, and that was based on their other
14 experience, their previous experience. What
15 experience was that?

16 MR. GROSS: I must apologize,
17 but I didn't follow the thrust of the question.
18 Could you give it to me again?

19 ASSEMBLYMAN GUSCIORA: I am just
20 looking at your testimony.

21 It says, I believe MFS's
22 projected violation revenue was based upon the
23 violation rate on a New Jersey Highway
24 Administration pre-E-ZPass and the experience
25 of other toll facilities operating with and

1 without electronic toll collection.

2 Is that MFS's experience?

3 MR. GROSS: It's the experience
4 of the toll facilities. It was information
5 that was provided and used by MFS.

6 As I said earlier --

7 ASSEMBLYMAN GUSCIORA: Were you
8 aware whether they had any previous experience?

9 MR. GROSS: Was I aware if
10 they -- if they as an entity had experience
11 with violation rates?

12 ASSEMBLYMAN GUSCIORA: Yeah.

13 Ultimately it was a decision
14 between Lockheed and MFS. And Lockheed
15 actually had experience in the consortium, they
16 were the ones that developed the New York
17 E-ZPass system.

18 What experience did you look at
19 from MFS to say this is a better company to go
20 with?

21 MR. GROSS: Well, again, I must
22 say this to you. I was not a participant in
23 the review process --

24 ASSEMBLYMAN GUSCIORA: But you
25 are the Executive Director; is that correct?

1 MR. GROSS: I was the Acting
2 Executive Director. It was --

3 ASSEMBLYMAN GUSCIORA: Before
4 1995 what experience did you have with the
5 Turnpike?

6 MR. GROSS: I was the Director
7 of Law. I was the Director of Law for the
8 Turnpike.

9 ASSEMBLYMAN GUSCIORA: And how
10 long -- and you are a lawyer?

11 MR. GROSS: I am.

12 ASSEMBLYMAN GUSCIORA: So you
13 are able to read contracts.

14 And in your experience -- how
15 long were you the Director of Law for the
16 Turnpike?

17 MR. GROSS: From February of '95
18 to October of '95.

19 ASSEMBLYMAN GUSCIORA: No.
20 Before 1995 what did you do? Were you in state
21 government before 1995?

22 MR. GROSS: I was the Deputy
23 Commissioner of Insurance for one year. And
24 before that I was the county counsel in
25 Middlesex County.

1 ASSEMBLYMAN GUSCIORA: And as
2 the county counsel of Middlesex County, outside
3 of the Turnpike going through Middlesex County,
4 what experience did you have with the Turnpike
5 in Middlesex County?

6 MR. GROSS: As county counsel
7 what experience did I have with the Turnpike?
8 Very little.

9 Experience, you mean what
10 relationship did I have, what contacts I had?

11 ASSEMBLYMAN GUSCIORA: Well,
12 obviously you put in place a proposal that was
13 estimated to raise 450 million dollars for
14 New Jersey taxpayers. So I want to try to get
15 to whether your expertise -- whether it's
16 excusable conduct or -- I think we should know,
17 you know, what your expertise is in this area.

18 MR. GROSS: I think the effort
19 to collect money from cheaters is a laudable
20 effort, sir.

21 ASSEMBLYMAN GUSCIORA: It's
22 laudable. But you didn't collect it, did you?

23 MR. GROSS: They certainly have
24 not collected as originally projected to today.

25 ASSEMBLYMAN GUSCIORA: The other

1 thing is that you also state in your testimony,
2 the model that you accepted with MFS discarded
3 50 percent of the violators based upon
4 nonreadable plate images, equipment failures,
5 and public error.

6 In other words, you are aware
7 that at least 50 percent of the images that
8 were read were absolutely no good; is that
9 correct?

10 MR. GROSS: Well, the model
11 contemplated that you would not get a clear
12 image of every license plate. That some plates
13 would be -- that the camera would be focused in
14 an area where you just wouldn't hit the license
15 plate. Some would not be readable because of
16 weather conditions. Some malfunctioning camera
17 equipment would cause nonreads.

18 So the original model took into
19 account the fact that you would have a
20 violator, but you wouldn't know who the
21 violator was.

22 It also took into account, you
23 know -- for example, I'll give you an
24 illustration. When you buy a car in
25 New Jersey, the dealer gives you a temporary

1 registration, and I believe puts it on the rear
2 windshield where the camera won't pick that up.

3 ASSEMBLYMAN GUSCIORA: Great.
4 But you knew at least 50 percent of the reads
5 were going to be unreadable?

6 MR. GROSS: That's what the
7 model said.

8 ASSEMBLYMAN GUSCIORA: Why,
9 then, sir, did you approve a contract that
10 mandated that the State of New Jersey pay MFS
11 every time they read something? Whether it was
12 readable or not, we are going to give them
13 money.

14 MR. GROSS: No. The contract
15 provided that --

16 ASSEMBLYMAN GUSCIORA: We would
17 pay them per read. And you knew that 50
18 percent of them were not going to be readable.

19 MR. GROSS: They weren't --

20 ASSEMBLYMAN GUSCIORA: How is
21 that a sound approach?

22 ASSEMBLYMAN D'AMATO:
23 Mr. Chairman, can the witness be permitted to
24 answer the question?

25 CHAIRMAN WISNIEWSKI: Yes. I

1 also think it will cause a problem with our
2 transcription. So please allow him to answer.
3 Thanks.

4 MR. GROSS: Thank you.

5 They weren't to be compensated
6 for a black image or no image at all. Their
7 compensation of, I think, \$1.31 or something
8 like that was based upon an actual image that
9 was transmitted to the center that they read
10 even if they couldn't read the plate.

11 But the original model
12 contemplated that they would be able to
13 generate, I believe, somewhere between 80 and
14 90 percent of readable images initially.

15 And when they were short on
16 that, as well as generating a much higher
17 percentage of E-ZPass customers as potential
18 violators, the consortium reduced the payments
19 to them dramatically.

20 ASSEMBLYMAN GUSCIORA: Now,
21 WorldCom had a performance bond with this
22 system, isn't that correct, for this project?

23 MR. GROSS: The performance
24 bonds were guaranteed by WorldCom.

25 ASSEMBLYMAN GUSCIORA: So that

1 if anything -- if the contract had to be
2 canceled or something was seriously wrong, a
3 performance bond would reimburse the taxpayers
4 for the failure of the system?

5 MR. GROSS: There are
6 currently -- or certainly when I left, there
7 was performance bonds that covered the
8 construction and operation of the --

9 ASSEMBLYMAN GUSCIORA: And also,
10 the consortium set penalties of \$5,000 a day
11 plus \$500 per day for each of the 700 toll
12 booths that were not completed in time. Is
13 that correct?

14 MR. GROSS: I don't remember the
15 precise amounts, but it certainly is correct
16 that there were liquidated damage provisions.

17 ASSEMBLYMAN GUSCIORA: And that,
18 in fact, it was about \$355,000 per day that the
19 consortium could have assessed against
20 WorldCom?

21 MR. GROSS: Any assessment of
22 liquidated damages would be against the
23 contractor, not against WorldCom.

24 ASSEMBLYMAN GUSCIORA: Or the
25 contractor, right?

1 MR. GROSS: I didn't do the
2 calculations that you may have done. But
3 potentially there was an opportunity for
4 sizeable liquidated damages. As I said
5 earlier --

6 ASSEMBLYMAN GUSCIORA: But they
7 were never charged, though?

8 MR. GROSS: As I said earlier,
9 there were almost five million dollars of
10 liquidated damages assessed and collected in
11 the method I've described in connection with
12 the violation processing center.

13 And then -- if I may finish,
14 sir -- then in addition, there was four million
15 dollars of violation processing center payments
16 that were withheld from the contractor that as
17 of January of 2002 were not paid.

18 Beyond that, there was a four
19 million dollar assessment against the
20 contractor as a result of the increased cost
21 the consortium was experiencing with their
22 outside consulting firm that was the supervisor
23 of the construction under the contract.

24 And in addition to that, there
25 was about seven million dollars, approximately,

1 of monies otherwise due the contractor that was
2 not paid because of a high percentage of
3 E-ZPass customers that were being reported as
4 violators.

5 So in general terms, this
6 contractor has been assessed in various
7 different ways about twenty million dollars.

8 ASSEMBLYMAN GUSCIORA: The
9 contract also called for termination default
10 provision; that if the contractor was unable to
11 live up to the project terms, we could either
12 have called in the performance bond or canceled
13 the contract.

14 Is that correct?

15 MR. GROSS: That's correct.

16 ASSEMBLYMAN GUSCIORA: Now,
17 WorldCom started out, who received the initial
18 proposal and it was accepted, they're a world
19 company, about 150 billion dollars in assets.
20 And then we get MFS, a penny stock company,
21 that stock during this time went down from \$20
22 a share to \$1 a share.

23 Did this set off any flags or
24 any concern to you that this -- MFS would not
25 be able to fulfill the expectations of the

1 State of New Jersey?

2 MR. GROSS: Well, I am not sure
3 you actually have the names in the right place.
4 But I think I have the genesis --

5 ASSEMBLYMAN GUSCIORA: It was
6 alphabet soup. It went from WorldCom to Able
7 to Adesta, and a bunch of others.

8 MR. GROSS: I think I have the
9 genesis of the question. Let me see if I can
10 respond to you, to what you are seeking.

11 The contract was signed with MFS
12 Network Technologies, which was a subsidiary of
13 WorldCom.

14 WorldCom, as I recall the
15 financial statements, was the bank of MFS.
16 They were supporting MFS. And MFS was in need
17 of a lot of capital because at that period of
18 time -- now we are talking about '95, '96,
19 '97 -- they were laying a lot of fiber all
20 around the United States and they weren't
21 generating a lot of revenue.

22 So WorldCom financially
23 supported MFS. And it was for that reason that
24 the consortium wanted WorldCom as part of the
25 transaction, and they guaranteed the

1 performance bonds.

2 Now, about four months or maybe
3 five months after the contract was executed and
4 the work was being performed in connection with
5 operating a customer service center and
6 violation processing center and the beginning
7 of construction, WorldCom announced the sale of
8 that business to Able Telecom.

9 I think that was July of '98. I
10 may not have the exact month, but it was near
11 that period of time, sir.

12 Now, that was a big
13 disappointment to every member of the
14 consortium, that the MFS/WorldCom relationship
15 was being changed.

16 As you --

17 ASSEMBLYMAN GUSCIORA: They also
18 lost all their top personnel; isn't that
19 correct?

20 MR. GROSS: There was a lot of
21 changes in the very senior management of MFS.
22 A lot of them, you are absolutely right, left
23 the employ of MFS at or around the announcement
24 or shortly after the announcement of the sale.

25 ASSEMBLYMAN GUSCIORA: And you

1 were supposed to be notified of those personnel
2 changes, isn't that correct, as part of the
3 contract?

4 MR. GROSS: I was trying to
5 finish -- I was trying to finish the historic
6 relationship of changes in contractors.

7 Do you want me to go to the
8 other question? What do you want me to do?

9 ASSEMBLYMAN GUSCIORA: Go ahead.
10 Go right ahead, sir.

11 MR. GROSS: Thank you.

12 ASSEMBLYMAN GUSCIORA: I will
13 give you plenty of time. I just know that we
14 don't want to keep you here all day. I
15 apologize for jumping in.

16 MR. GROSS: That's okay. Give
17 me the next question.

18 ASSEMBLYMAN GUSCIORA: No. You
19 are trying to answer this one, so --

20 MR. GROSS: I said that the
21 member agencies were very disappointed when we
22 heard publicly that WorldCom was selling the
23 stock of MFS to Able Telecom.

24 Able Telecom is a public
25 company. We looked at the financial statements

1 of Able, and they were small in relationship to
2 MFS, and certainly a very, very small entity in
3 relationship to WorldCom.

4 We formed a task force of
5 attorneys that studied that transaction to
6 determine if there was a basis for the
7 consortium to terminate the contract as a
8 result of that proposed sale. And the advice
9 to us was that we had little basis of objecting
10 to the sale of stock.

11 We had a right in the contract
12 to approve a transfer of the contract for sale
13 of assets, but not sale of stock.

14 We had many meetings with Able
15 Telecom, and they assured us of their continued
16 support of the contract by MFS. And we
17 continued to closely monitor the contract.

18 Over the passage of time,
19 Able -- it became public knowledge that Able
20 was having financial problems.

21 There were critical periods in
22 the contract where there were intense meetings
23 with MFS -- I don't remember if they changed
24 their name then or later, but they did change
25 their name to Adesta, but that was MFS.

1 We were hearing complaints from
2 subcontractors who were not getting paid
3 timely.

4 As I said, we had many meetings
5 with MFS. At times Able would have
6 representatives at the meeting. There were
7 commitments to put money into the company.
8 They did that from time to time.

9 I think at one point Able put 10
10 million dollars into the company. I don't know
11 if it was Able money, but 10 million dollars
12 went into the company to pay subcontractors,
13 bills that were outstanding.

14 I mean, this happened a number
15 of times. There was -- at some point in the
16 more recent financial questions of the
17 contractor, WorldCom came to the table and they
18 put money into the company for purposes of cash
19 flow.

20 It was a struggling period when
21 Able took over MFS, now known as Adesta.

22 And then Able actually sold
23 itself to a company in Canada called Bracknell,
24 which at the time looked like a very positive
25 development. Because when you looked at

1 Bracknell's financial statement, it was far
2 better -- far more attractive, I should say,
3 than Able's.

4 They were a company in business
5 for many, many years, medium size, making money
6 on an annual basis, as I recall it.

7 And they made a commitment to
8 put money into Adesta -- Adesta was MFS -- to
9 support it. And I believe they did do that.
10 And then Bracknell had financial problems.

11 So there has been a long history
12 of difficult -- and a difficult period for the
13 consortium dealing with a number of companies
14 that had some control over this contract
15 through ownership and had financial problems.

16 ASSEMBLYMAN GUSCIORA: Thank
17 you.

18 Mr. Chairman, this is actually
19 the last question. And I guess it's why I am
20 operating at a loss. That you have full
21 knowledge of the operation of these companies,
22 and you may have left out a few things, that
23 MFS was two years behind on a 30 million dollar
24 project in California, was 18 months behind on
25 the Atlantic City Expressway. Able, when they

1 took over, had massive personnel changes that
2 were supposed to notify you under the contract,
3 and you were supposed to approve those
4 personnel changes.

5 And with the performance bond
6 and a clause that you could have canceled the
7 contract, why with all of this -- the comedy of
8 errors, and obviously were not going to
9 complete the E-ZPass on time, and we are
10 operating -- we are at a 300 plus million
11 dollar deficit as we speak, why you never
12 called them into your office, called them on
13 the carpet, or threw them out of the State of
14 New Jersey.

15 This is not something that we
16 can be proud of to the taxpayers of New Jersey.
17 And again, I go back to my conversation last
18 night with nonpolitical friends, that they
19 called it a debacle. And that, unfortunately,
20 the taxpayers are going to have to foot the
21 bill.

22 Why you never at one point
23 instead -- I don't know who was asleep at the
24 switch, but it seems all these things were
25 going on, but yet there was no response from

1 the consortium or the Turnpike authority.

2 MR. GROSS: Let me say this to
3 you, sir. There was a lot of response, and
4 there was a lot of time and effort and a lot
5 of --

6 ASSEMBLYMAN GUSCIORA: And you
7 never --

8 CHAIRMAN WISNIEWSKI: Let him
9 finish.

10 ASSEMBLYMAN GUSCIORA: I don't
11 mean to interrupt.

12 MR. GROSS: You are. You are
13 constantly interrupting.

14 ASSEMBLYMAN GUSCIORA: Because I
15 am not getting the answers.

16 CHAIRMAN WISNIEWSKI: Let him
17 finish.

18 ASSEMBLYMAN GUSCIORA: We never
19 got the full assessed fine. And with all this
20 gross mismanagement and all these comedy of
21 errors, I think I, if I was at the helm, would
22 have charged them dollar for dollar what you
23 could have under the contract but didn't.

24 MR. GROSS: There were many,
25 many sessions over a number of years that

1 related to the company's financial condition,
2 their not paying their subcontractors timely,
3 public information concerning other contracts
4 that you mentioned, sir, that were outstanding.
5 They were never taken lightly.

6 And it was always a balancing
7 act. The balancing act was do you default the
8 contractor, bring in an insurance company, who
9 will then eventually bring WorldCom in. And
10 how do you restart this very complex contract
11 that has both software development and hardware
12 installation in 700 lanes?

13 And there was always -- what
14 always prevailed in connection with the member
15 agencies' analysis of what to do, and it was
16 never taken lightly, was so long as there is
17 progress, as we see progress in the
18 construction and in the software development,
19 and they get funds from either their parent
20 company or the guarantor of the bonds,
21 WorldCom, and they satisfy the subcontractors,
22 we are better continuing -- having continuity
23 than stopping the project and bringing in the
24 surety.

25 Those were judgment calls. But

1 there was always a belief that if we were
2 making progress and we can deliver E-ZPass,
3 electronic toll collection, to the motoring
4 public on these facilities in a more timely
5 fashion, that that was a better decision,
6 although a difficult one, than defaulting the
7 contractor and going another route which would
8 materially delay delivery of E-ZPass.

9 CHAIRMAN WISNIEWSKI:
10 Assemblyman Impreveduto.

11 MR. GROSS: Can I just take a
12 little water?

13 ASSEMBLYMAN IMPREVEDUTO: Sure.
14 Absolutely.

15 Mr. Gross, let me begin by
16 thanking you for coming and sharing the
17 information that you have with us and certainly
18 all those who may be watching today or later on
19 tonight or listening on the Internet.

20 This is an important issue to
21 the taxpayers. It's something that -- I am an
22 E-ZPass user, and many people that I know are,
23 and it's a great thing to have. When it works
24 properly and done the proper way, it's a good
25 thing.

1 And the reason that we are here,
2 obviously, is because there are problems with
3 it.

4 And certainly any time there is
5 a major construction with something, I suspect
6 there are going to be some problems. And we
7 all understand and know that.

8 This somehow or other has gone
9 beyond that. And I think that's what may cause
10 some of the frustrations of my good friend
11 here, Assemblyman Gusciora.

12 Who was the Executive Director
13 of the Turnpike at the beginning of this, in
14 1996?

15 MR. GROSS: I was the Acting
16 Executive.

17 ASSEMBLYMAN IMPREVEDUTO: In
18 1996?

19 MR. GROSS: Yes, sir.

20 ASSEMBLYMAN IMPREVEDUTO: So at
21 the beginning of this process, you were the
22 boss, you were the head guy?

23 MR. GROSS: As I said in my
24 opening remarks, I did not play any significant
25 role in the review process.

1 As the Executive Director, my
2 first serious contact with this project was
3 when Lockheed filed the protest. And from that
4 point on I was very much involved in the
5 process.

6 But up until October of 1996,
7 the most senior person at the Turnpike who was
8 involved in the procurement was Tom Margo, the
9 Chief Engineer.

10 ASSEMBLYMAN IMPREVEDUTO: That
11 being said, you were still the boss. And
12 unfortunately, if the team loses, although the
13 coach never went out on the field to play, the
14 coach takes the loss.

15 You were the coach in this case.
16 And you might not have been on the field
17 playing, but unfortunately, the buck stops
18 here.

19 MR. GROSS: I am trying to the
20 best of my recollection give you a historic
21 picture of how the contract and the procurement
22 unfolded.

23 There was no other objective of
24 mine than to tell you what role I played.

25 ASSEMBLYMAN IMPREVEDUTO: And

1 that's fine.

2 Do we know, in fact, what
3 was -- we talked about the model that MFS did
4 in its last and best offer, or best and final
5 offer, I guess is what you called it, and they
6 did a model for the self-funding projection.

7 Do you know what that model was
8 based on? Was it based on some other toll road
9 doing this somewhere else? What was the
10 foundation of the model?

11 MR. GROSS: Well, if your
12 question is, in part, why did one generate a
13 model, it clearly was generated as a result of
14 the consortium's expression of a preference in
15 the request for a best and final offer to have
16 a financing plan with zero down, zero over
17 eight operating years.

18 So the genesis of creating the
19 base case model was in compliance by the
20 contractor of the best and final offer terms
21 that they accepted.

22 They agreed in responding to the
23 request for a best and final offer to provide
24 private placement financing to achieve the
25 objective that was set forth as a preference by

1 the consortium members.

2 ASSEMBLYMAN IMPREVEDUTO: And
3 that's fine. And I understand the generation
4 of it.

5 My question, however -- let me
6 phrase it differently.

7 If I am looking at a weather
8 model, I am creating a weather model, I will
9 generally look back at history and say, gee, in
10 every September, October, we have hurricanes.
11 Therefore, the model would say it is a good
12 possibility we will have a hurricane in
13 September and October.

14 What was MFS's model based on?
15 If they are saying that we are going to
16 generate whatever amount of money we are going
17 to generate for the next eight years, were they
18 looking at a model of somewhere else to base
19 that hypothesis on?

20 MR. GROSS: Let's take the
21 less -- if I may use the word -- controversial
22 revenue stream first, and then we will try to
23 grapple with the other.

24 In connection with fiber, they
25 had a vast amount of experience.

1 ASSEMBLYMAN IMPREVEDUTO: They
2 were a fiber company.

3 MR. GROSS: They were a fiber
4 company. They laid fiber. They marketed
5 fiber. They understood the industry. They had
6 many projects going at or around the time that
7 they proposed.

8 One in particular that I
9 remember, because I spoke to that agency, was
10 similar type of project with the New York
11 Thruway Authority. Laid fiber, marketed,
12 shared revenue generated as a result of it.
13 Not necessarily the same, but similar.

14 So the fiber revenue forecast
15 was MFS's completely. It was based upon
16 the -- how much fiber was being put in the
17 ground -- actually duct, that at least duct or
18 fiber strength, and their assessment of the
19 industry.

20 And the 210 or 215 million that
21 they projected over 20 years was reviewed by
22 the consortium agencies.

23 There were a few people in that
24 group that had some experience with fiber. The
25 Garden State Parkway had some modest amount of

1 fiber on their right-of-way before that and was
2 in a marketing mode. So they understood the
3 code words and they understood the concepts
4 better than the other agencies.

5 There was some experience in
6 Delaware, as well.

7 But the driver was MFS, and
8 their experience.

9 Now, let's get to the violation
10 revenue.

11 ASSEMBLYMAN IMPREVEDUTO: There
12 you go.

13 MR. GROSS: Okay. They took
14 violation rates from the agencies.

15 ASSEMBLYMAN IMPREVEDUTO: Which
16 agencies?

17 MR. GROSS: The consortium
18 agencies. I mean, for example, the Garden
19 State Parkway, the Turnpike.

20 ASSEMBLYMAN IMPREVEDUTO: Our
21 agencies?

22 MR. GROSS: Right. Right. They
23 gave them some information -- I think it was
24 more difficult with the Turnpike because until
25 E-ZPass, the Turnpike -- virtually every lane

1 had a toll collector, and there was hardly any
2 violations at all. More difficult to blow a
3 lane with a person in a booth.

4 But they reviewed the rates, and
5 they generated the model. They generated the
6 concept of what percentage of the law violators
7 were identifiable, and then how many dollars
8 you would be able to collect using both the
9 violation processing letter writing and
10 collection agency in municipal court.

11 To the best of my knowledge -- I
12 wasn't personally there, but to the best of my
13 knowledge, it was MFS.

14 ASSEMBLYMAN IMPREVEDUTO: So
15 basically what you are telling me, then, is
16 that there was no actual model to compare this
17 against? They just made some numbers -- took
18 some numbers in and said, we think that 50
19 percent will not pay. Some will go through,
20 some will not go through, but we figure out we
21 are going to make some money, and this thing
22 will pay for itself.

23 No one thought to ask, well, how
24 did you come up with these numbers?

25 You know, when I was in

1 college -- and you are an attorney, and I am
2 sure you've studied the Uniform Commercial
3 Code -- the law professor once said, if
4 something looks too good to be true -- this is
5 for consumers -- it probably is.

6 And when you begin to talk about
7 nothing down and no further payments for the
8 next eight years, it sounds to me like it's too
9 good to be true, and some used car salesman
10 thought up the idea.

11 And it would seem to me that
12 intelligent people would be looking at this and
13 saying, you are telling me that we can pay this
14 off from violations? And MFS is saying, oh,
15 yeah.

16 And someone should have asked
17 the question, I would think, well, from what
18 source do you draw this information? Did you
19 do this on the thruways? Did you do this in
20 Delaware? Did somebody do it in California?

21 Is there anybody else in the
22 entire nation, or the world, for that matter,
23 who is using this kind of an E-ZPass system
24 paying for it through violations?

25 Was that question ever asked?

1 MR. GROSS: There was hours and
2 hours and days and days of dialogue in
3 connection with the assumptions that were set
4 forth in the base case model. And the dialogue
5 was the member agencies and their staff, their
6 finance people, MFS, Newcourt Capital.

7 I mean, there were extensive
8 meetings on the subject. There was extensive
9 testing of what assumptions were being used in
10 the model and why. This was not a 24-hour
11 self-creation.

12 Every toll agency that operates
13 electronically has one or two things: Either
14 gates or camera equipment and detection of
15 violations. There is no other option. Because
16 the third option is to abandon your basic core
17 toll revenue, you have no means whatsoever of
18 trying to reduce the violations.

19 So gates are the less popular of
20 the two options. And you could probably
21 understand why because they are at least
22 conceptually inconsistent with free flow
23 through a toll booth.

24 So every agency collects some
25 violation revenue. Now, more so today than in

1 '97 and '98 when this was being put together.
2 But there is some experience around the country
3 as to collections. Some are better than
4 others.

5 ASSEMBLYMAN IMPREVEDUTO: But do
6 you think -- if I may interrupt -- that someone
7 maybe should have said, is there anybody else
8 paying for the system in violations? And the
9 answer was clear. No.

10 MR. GROSS: But that doesn't
11 make it wrong.

12 I mean, what I am saying to
13 you -- I believe this as I sit here -- that it
14 was both creative and a lot more work to try to
15 rely upon those that are dishonest to pay for
16 as much of the system as possible than doing it
17 the traditional way.

18 ASSEMBLYMAN IMPREVEDUTO:
19 Creativity is good in art. Creativity is good
20 in lots of things. But I am not so sure
21 creativity is good in financing to this level.

22 When you are looking at
23 something that there is no experience on, that
24 no one has done it before, and we are saying,
25 we can pay for this without putting a penny out

1 of our pockets because the violators are going
2 to do it. It's not being done anywhere else,
3 so don't ask me to show it to you, but believe
4 me.

5 You know, it's the guy that
6 tells you, if you drink this serum, it's going
7 to grow hair on your head. Believe me. It may
8 not happen for anybody else, but believe me, it
9 will happen. And eight years from now, if it
10 doesn't happen, bring the bottle back, and we
11 will gladly give you your money back.

12 MR. GROSS: I respect what you
13 said. And I understand completely.

14 But the point of view that drove
15 the use of violation revenue was not that you
16 never have to pay for it. There was always a
17 recognition that just like any other
18 improvement on a toll facility, you have to pay
19 for it.

20 It was an effort to elevate the
21 violation revenue as a real means of paying for
22 as much of the system as possible.

23 I said in answer to the Chairman
24 honestly, and I think forthrightly, that the
25 level of expectations that were raised in '98

1 were wrong. It wasn't marketed well. And
2 anything short of what was originally projected
3 was deemed to be a failure.

4 But the concept of getting money
5 from cheaters is a good one. And if you can't
6 get it all, there was always the recognition by
7 the members that you have to pay for it. And
8 there was provisions of review and reserves.

9 And I have said this publicly
10 during the period I was Executive Director.

11 Let's assume for the moment that
12 you don't collect 450 million dollars over
13 time. You only collect 150 million.

14 You get the violation processing
15 center working as well as you can, you go to
16 municipal courts, you hire a collection agency,
17 but the results are not there. Motorists
18 become more honest, the rate is lower, or your
19 ability to collect is not what you think it
20 was. And you only collect 150 million dollars.

21 What's wrong with that? What's
22 wrong with getting 150 million dollars from
23 cheaters and applying it against the cost of
24 the system?

25 There is nothing wrong with it.

1 ASSEMBLYMAN IMPREVEDUTO:

2 Absolutely nothing. I agree with you.

3 MR. GROSS: What was wrong was
4 that in '98 there were many that believed that
5 the cheaters and the lessees of the fiber would
6 pay for the whole system. And to date, that's
7 not happening.

8 ASSEMBLYMAN IMPREVEDUTO: And I
9 think there is nothing wrong, that you are
10 absolutely right.

11 But I think we also need to
12 remember -- and I am not going to belabor this
13 point on the zero down and no further payment
14 thing -- but we have a fiduciary responsibility
15 to the taxpayer, and this fiduciary
16 responsibility was not met on this issue.

17 MR. GROSS: If I may say
18 this -- I interrupted you, and I am sorry for
19 that. Please excuse me.

20 If you pay for it in a
21 traditional way, traditional way is -- I mean,
22 just generally speaking, you went out and, you
23 know, you issued bonds, and you either raised
24 your tolls or you had -- if you had adequate
25 revenue to support the bonds you didn't raise

1 tolls then, and you just paid off the bonds.
2 And you took the money and you paid for the
3 construction and the operation based on the
4 traditional way.

5 And under this financing
6 arrangement, say -- let's hypothetically say 60
7 percent of your costs are going to be due in
8 2008, and you reserve for them over each year
9 so you don't get really hit in 2008, and you
10 pay for it with 2008 dollars.

11 I mean, that's still better than
12 the conventional way of paying up front with
13 1998, 1999 and 2000 dollars.

14 ASSEMBLYMAN IMPREVEDUTO: Excuse
15 me. I don't necessarily agree with you. Let's
16 leave that be for now. I think we've beaten
17 that up pretty well. That zero down, no
18 further payment thing will be debated at some
19 other point in time somewhere else.

20 I think the construction of the
21 system is something we need to look at. Was
22 there, for lack of a better term, a clerk of
23 the works of this issue? Who is the overseer
24 to make sure that the contractor was performing
25 properly during this time period?

1 MR. GROSS: There were a lot of
2 levels, sir. The first that comes to mind was
3 the outside engineering firm that was hired to
4 be the project manager, I guess, is as good a
5 word I can think of, Parsons Brinckerhoff.

6 ASSEMBLYMAN IMPREVEDUTO: Is
7 that the same Parsons Brinckerhoff that gave us
8 the automobile inspection system?

9 MR. GROSS: I think it's the
10 same firm. It is probably a different team.

11 ASSEMBLYMAN IMPREVEDUTO: That
12 may have been a warning in itself.

13 MR. GROSS: I don't have any --
14 They were hired to --

15 ASSEMBLYMAN IMPREVEDUTO: Please
16 excuse me.

17 The question here, was it
18 Parsons Brinckerhoff or Parsons Infrastructure?
19 Do we know that?

20 MR. GROSS: Parsons Brinckerhoff
21 is not the same entity as Parsons
22 Infrastructure.

23 Parsons Brinckerhoff was awarded
24 the contract through the consortium to do
25 supervision of construction of the violation

1 processing center and the customer service.

2 ASSEMBLYMAN IMPREVEDUTO: And
3 just for the record, they were the same company
4 that did not do the construction of the
5 inspection system, the automobile inspection
6 system, but they were the experts we used to
7 oversee it?

8 MR. GROSS: I believe that's
9 correct.

10 ASSEMBLYMAN IMPREVEDUTO: So
11 they were overseeing both of these things. And
12 that doesn't bode well for me.

13 MR. GROSS: I believe you are
14 correct. But I also believe -- I don't have
15 personal knowledge, but I think it's inevitable
16 that because those two contracts were occurring
17 about the same time, there was different
18 personnel from Parsons.

19 ASSEMBLYMAN IMPREVEDUTO: Yeah,
20 probably.

21 MR. GROSS: So Parsons was the
22 eyes and ears of the consortium in connection
23 with construction.

24 The chief engineer of each
25 facility was a responsible person in connection

1 with approving plans.

2 Remember, this was a
3 design-build contract. So MFS -- if I may use
4 MFS -- MFS was designing, submitting their
5 plans to the consortium, and the consortium
6 then either approving them or rejecting them.

7 So the chief engineer of the
8 Highway Authority, the chief engineer of the
9 Turnpike Authority where the principal
10 construction was taking place were eyes and
11 ears of the construction. And then there are
12 engineering teams that worked under them.

13 There was a program director who
14 coordinated both the status of construction,
15 technology, marketing, operations. Her name is
16 Carol Hollows. And she had many consortium
17 employees trying to be balanced so that all
18 members had as much of an input in the contract
19 construction and software as possible reporting
20 to her.

21 ASSEMBLYMAN IMPREVEDUTO: There
22 were people overseeing --

23 MR. GROSS: There were a lot of
24 people.

25 ASSEMBLYMAN IMPREVEDUTO: The

1 reason that I ask the question, I had an
2 opportunity to speak to the folks that had the
3 contract with the transponders.

4 MR. GROSS: Mark IV.

5 ASSEMBLYMAN IMPREVEDUTO: I've
6 forgotten the name. Forgive me.

7 And in my conversation with
8 them, it was pretty much based on the fact that
9 there had been statements made that the reason
10 that there are so many problems is because the
11 transponders weren't properly recording what
12 they were supposed to be recording.

13 And I guess that theory was shot
14 down when we heard from the Motor Truck
15 Association who said, well, the same
16 transponders work every place else except in
17 New Jersey. So my interest then said, let me
18 speak to the people who do the transponders.

19 And in speaking to the people
20 that do the transponders, they said, it's not
21 the transponders -- which I expected them to
22 say -- but they said other things which
23 intrigued me.

24 Like, generally they would
25 provide the equipment and install the

1 equipment. However, in this particular case,
2 the contractor wanted to install the equipment
3 in order to save money. Or the equipment was
4 installed improperly in most cases.

5 And the provider of the
6 transponders and the software had to come back
7 on numerous occasions and fix the antennas and
8 do different things.

9 I don't remember all the things
10 that had to be done, but they were not the
11 people that were supposed to be doing this
12 because they were only supplying the equipment,
13 and in fact, not installing it.

14 Their statement to me was that,
15 for the most part, this stuff was installed
16 completely wrong. And they had said this, they
17 had made complaints.

18 In fact, when they went back in
19 to look at why some of the lanes weren't
20 working properly, they found things that were
21 broken, things that weren't properly installed
22 and were causing the major problems.

23 In fact, I asked them to get me
24 a list of every lane that was installed
25 improperly. And I have not received that, but

1 I am waiting for that.

2 Where were our folks that were
3 supposed to be overseeing this? The
4 transponder people -- forgive me, I don't
5 recall the name of the company.

6 Mark IV. They said they brought
7 this to the attention of the people, but
8 nothing was done.

9 Probably the genesis of the
10 problems that we are having today is based on
11 the fact that the equipment was never installed
12 properly. And yet we had people overseeing
13 this and were told about the problems.

14 You know, as I said to you
15 before, when you look at construction of a
16 school, of anything, when there is major
17 construction there are problems, and people go
18 into bankruptcy, and things happen.
19 Subcontractors don't complete the job.

20 But here is a situation where
21 something, a gross violation -- no pun
22 intended -- took place and was reported, and
23 nothing was done about it.

24 MR. GROSS: I appreciate some of
25 the assumptions that you made that are part of

1 was a regular and fairly continuous dialogue
2 between Mark IV, the consortium technology
3 people, and the contractor.

4 Now, that doesn't mean that it
5 was all done perfectly or correctly. And there
6 are lanes that are generating false violations
7 when it's an E-ZPass customer at a much too
8 high percentage to merely attribute it to the
9 public not having their transponder in their
10 car or waving it.

11 And that could be the location
12 of the antenna. That could be a bad antenna
13 that got hit by a truck. That could be some
14 component of the equipment that was installed
15 by the contractor in a bad location.

16 But keep in mind, you know, the
17 construction was not done blindly. There were
18 prototypes that were generated for the lanes
19 that are currently being operated called
20 dedicated lanes and prototypes for mixed-mode.
21 They were tested and re-tested by groups of
22 consortium members and Parsons. And no lane
23 went into operation without a thorough test.

24 Now, no matter how much you
25 test, it's not the same as the kind of volume

1 that gets thrown at a lane in real operation.
2 And remember, you have weather that affects
3 components that are working on a 7/24 basis.
4 So your test results may deteriorate over a
5 period of time.

6 The problem that I saw in the
7 construction operation, if I may say, was bad
8 communication between -- or poor communication
9 is a better choice of words -- between the
10 contractor and the consortium.

11 The contractor has capacity
12 through the customer service center, the
13 violation processing center, to almost in real
14 time know when a lane is not performing. You
15 are talking now about 360 lanes that are
16 currently operating with dedicated electronic
17 toll operation for a number of years.

18 This contractor has the capacity
19 to see something going down faster than the
20 employees of the toll roads have. And to have
21 a lane operating or not operating well for five
22 days or four days before that is
23 communicated -- I am not talking about a lane
24 that's obvious, it has half of its equipment
25 laying on the ground. I am just saying

1 something in the software is not working
2 properly or an antenna is broken, or something
3 that is not necessarily self-evident by looking
4 at it, but it's generating bad reads.

5 The communication between the
6 contractor and the consortium, in my view, left
7 a lot to be desired, to be able to get to that
8 lane and do the necessary repairs and get it
9 running properly, and has generated an awful
10 lot of false violations that should be and can
11 be corrected.

12 ASSEMBLYMAN IMPREVEDUTO: And
13 this requires no response. I am just going to
14 summarize. I know there are lots of other
15 folks that would like to ask some questions.

16 Mark IV sells and installs the
17 equipment, the software, the antennas. And I
18 believe nowhere else except in New Jersey did
19 somebody else do that installation, and that
20 was our contractor.

21 Probably for financial reasons
22 since they were having some financial
23 difficulty, they were looking to save a few
24 bucks and do the installation themselves. They
25 were inept in doing that installation, is my

1 belief.

2 I honestly believe that after
3 speaking to those folks -- and they tell me
4 that if they go in now they will find many
5 things that are not connected that should have
6 been connected, or connected improperly, and
7 are the cause of the major problems with the
8 system, problems that are affecting every
9 motorist who chooses to use E-ZPass.

10 This entire system, which should
11 have been a good system and can be a good
12 system and save motorists the time and the
13 effort by just using that little thing in the
14 window, was a good theory that's gone awry.
15 And it's gone awry because of some poor
16 management. Maybe not completely your fault,
17 but some poor management on our fault, the
18 State of New Jersey, and a horrible contractor
19 who was unable to do the job.

20 I suspect that those who looked
21 at the bids and chose the contractor probably
22 should have looked a little more carefully.

23 And with that, thank you.

24 CHAIRMAN WISNIEWSKI: Thank you,
25 Assemblyman.

1 I know Assemblyman D'Amato has
2 questions.

3 I just wanted to ask Mr. Gross
4 this one question. We kept talking about
5 earlier the violation experience of the various
6 toll roads in the consortium, and a 1 percent
7 violation number was assumed in the
8 projections. Correct?

9 MR. GROSS: Over -- on average,
10 over eight operating years. Every road had a
11 slightly different projected violation --

12 CHAIRMAN WISNIEWSKI: Right.
13 They homogenized it, and they came up with a
14 number -- I just wanted to go to the
15 projections. And I think earlier we talked
16 about a 1 percent number and 50 percent. Do
17 you remember that testimony earlier?

18 MR. GROSS: Yeah. I was trying
19 to make it simple by --

20 CHAIRMAN WISNIEWSKI: I guess I
21 had a follow-up question on that. I just
22 wanted to go to that point in time and give you
23 a reference point.

24 Those projections, that
25 1 percent, had nothing to do with monies

1 collected. That just simply was a projection
2 or a historical reference point on the number
3 of vehicles that had violated toll barriers and
4 could be expected in the future; correct?

5 MR. GROSS: Road violations.

6 CHAIRMAN WISNIEWSKI: So the
7 historical experience of the toll roads in
8 terms of raising revenue through violations was
9 not -- there was no historical experience on
10 that?

11 MR. GROSS: Well, if I
12 understand your question, pre-E-ZPass on the
13 Garden State Parkway, they didn't have any
14 cameras. They had virtually little way of
15 identifying a violator.

16 What they did do from time to
17 time is they put a person behind a one-way
18 mirror. And they didn't do that frequently,
19 but when they did that, that person would write
20 down the license plate of the violator and then
21 send the information to the State Police and a
22 summons was issued.

23 But it was not really a serious
24 collection effort for the violators.

25 CHAIRMAN WISNIEWSKI: Let me

1 interrupt.

2 That was never viewed as a
3 revenue source, that was simply a way of
4 enforcing the tolls?

5 MR. GROSS: Absolutely. Because
6 when the State Police issued a summons, in
7 fact, there was a fine associated with it. It
8 went to the state, and the municipality didn't
9 go through the toll road.

10 CHAIRMAN WISNIEWSKI: So except
11 for the numerical number, the figure of
12 1 percent, which represented an amalgamation
13 and experience from the various toll roads and
14 perhaps represents a homogenized number over
15 time, I know there is an eight-year period
16 there, there was no experience in terms of
17 raising revenue from that?

18 MR. GROSS: None of the
19 co-facilities used violation revenue as a
20 source of revenue prior to that.

21 CHAIRMAN WISNIEWSKI: So though
22 they could estimate that 1 percent of the
23 vehicles may violate the toll barriers, there
24 really was no basis of estimating how much
25 money would come out of that, that was really a

1 shot in the dark?

2 MR. GROSS: Well, it was the
3 informed judgment that was set forth in the
4 model. But pre-E-ZPass, it was not very
5 difficult to determine how many violations
6 existed because you had shrettles (phonetic) in
7 the concrete, and you counted axles against
8 your revenue, you knew what you were short.

9 So fairly reliable statistics on
10 most toll facilities of what percentage
11 violated.

12 CHAIRMAN WISNIEWSKI: I am not
13 disagreeing with that. Obviously that is
14 empirical data taken from observations made by
15 equipment.

16 The question is is that up until
17 E-ZPass, that violation rate was never then
18 translated to collecting money?

19 MR. GROSS: That's correct.

20 CHAIRMAN WISNIEWSKI:
21 Assemblyman D'Amato.

22 ASSEMBLYMAN D'AMATO: Thank you,
23 Mr. Chairman.

24 Mr. Gross, it is my
25 understanding that sometime in 1994 or 1995,

1 the then-Commissioner of Transportation, Frank
2 Wilson, testified before this committee that
3 the State of New Jersey was losing
4 approximately \$25,000 a day in toll cheats for
5 perhaps -- if my math is right -- about nine
6 million dollars a year.

7 Did you ever hear that
8 statistic?

9 MR. GROSS: I am not familiar
10 with his testimony, but I am familiar with the
11 estimated number of motor vehicle violations on
12 the Garden State Parkway during that period.

13 And that would be right,
14 somewhere in the area of four to five million
15 dollars a year.

16 ASSEMBLYMAN D'AMATO: Was one of
17 the reasons that the State of New Jersey wanted
18 the E-ZPass system was that it felt with the
19 E-ZPass system they would be better able to
20 detect who the toll cheaters were?

21 MR. GROSS: No.

22 ASSEMBLYMAN D'AMATO: And
23 explain why not.

24 MR. GROSS: The driving force
25 for electronic toll collection was to improve

1 the efficiency of the trip on a toll facility.

2 The most vivid illustration of
3 that principle, if not almost exclusive
4 objective, is that if you compare the
5 New Jersey Turnpike pre-E-ZPass to post-E-Z
6 Pass.

7 Before E-ZPass on the New Jersey
8 Turnpike in the a.m. and p.m. peaks there
9 virtually wasn't a toll plaza from Central
10 New Jersey to the northern most terminus that
11 didn't have a queue anywhere from five to
12 fifteen minutes. Right after E-ZPass, that all
13 disappeared.

14 So what E-ZPass did on the
15 Turnpike is less vivid on the Garden State
16 Parkway, but I've seen statistics, and there is
17 major improvement on the Garden State Parkway
18 as well.

19 What it's done, it's saved the
20 motorists time. It saved them wear and tear on
21 their vehicles. It made a more convenient way
22 to pay your toll; that is, going into your
23 wallet and getting bills out, et cetera, or
24 just getting a monthly statement.

25 And it also saved toll roads

1 like the Turnpike, that was almost exclusively
2 manual with a toll collector, it saved labor
3 money, as I said in my opening statement. The
4 Turnpike is saving nearly 10 million dollars a
5 year in labor as a result of that. It saves in
6 capital construction.

7 There were many plazas on the
8 Turnpike before E-ZPass that would have been
9 expanded but for the fact that E-ZPass was on
10 the horizon. So expansion of toll plazas is
11 unnecessary as a result of that.

12 It also allowed for value
13 pricing that you probably are all familiar with
14 today, that I think is one of the most
15 important tools to manage this eastern region
16 of the country which has so much vehicle
17 traffic and continues to grow.

18 You can't do value or variable
19 pricing without electronic toll collection.
20 You can't do it manually.

21 So there are so many laudable
22 reasons to deliver E-ZPass. And, of course,
23 you know, the region had already -- including
24 New Jersey had already embraced E-ZPass as a
25 concept back in 1991 and '92.

1 ASSEMBLYMAN D'AMATO: Even if it
2 was absolutely clear to the members of the
3 consortium that the self-financed concept would
4 not work, would we still have gone ahead with
5 the installation of the E-ZPass system?

6 MR. GROSS: In my opinion,
7 absolutely.

8 ASSEMBLYMAN D'AMATO: For the
9 reasons that you just shared with us a few
10 moments ago?

11 MR. GROSS: Absolutely. Using
12 this revenue stream was just a means of payment
13 or an attempted means of payment. It wasn't a
14 reason why electronic toll collection was
15 delivered to the State of New Jersey.

16 ASSEMBLYMAN D'AMATO: Now, we
17 know that the regional consortium for E-ZPass
18 was established in September 1995. We know
19 that the E-ZPass contract was awarded to MFS NT
20 in March of 1997.

21 Now, during that time frame,
22 there were Executive Council meetings of the
23 various representatives from the authorities;
24 is that correct?

25 MR. GROSS: Yes. You said March

1 of '97. The contract was signed with MFS in
2 March of '98.

3 ASSEMBLYMAN D'AMATO: It was
4 awarded, was it not, to MFS in 1997? That's
5 the information we have.

6 MR. GROSS: It was. The Board
7 of Commissioners approved it, but the contract
8 wasn't executed for about a year.

9 ASSEMBLYMAN D'AMATO: You are
10 correct.

11 During that time, you attended
12 these Executive Council meetings; correct?

13 MR. GROSS: Yes.

14 ASSEMBLYMAN D'AMATO: And were
15 notes taken at those meetings, minutes?

16 MR. GROSS: I don't know.

17 ASSEMBLYMAN D'AMATO: Do you
18 recall ever receiving a memorandum in the mail
19 after a meeting saying, this is to memorialize
20 what was discussed and what was agreed upon?

21 MR. GROSS: I vaguely recall
22 that I received that.

23 ASSEMBLYMAN D'AMATO: Would you
24 agree that the financing of the E-ZPass system
25 was something that was discussed on a regular

1 basis at these meetings?

2 MR. GROSS: At the Executive
3 Council level? I couldn't say -- my
4 recollection does not permit me to say that it
5 was discussed regularly.

6 ASSEMBLYMAN D'AMATO: Was it
7 discussed?

8 MR. GROSS: Certainly it would
9 have been discussed at one time or another, but
10 I don't think regularly.

11 ASSEMBLYMAN D'AMATO: What I am
12 trying to learn for myself is this: We are
13 going back many, many years. And if I and the
14 other members of this committee were attending
15 the meetings, Executive Council meetings, would
16 it be clear to us that there was a real chance
17 that the self-financing concept was not going
18 to work?

19 MR. GROSS: I am trying to
20 understand your question. I really don't
21 understand it.

22 Could you try it again for me?

23 ASSEMBLYMAN D'AMATO: Sure. I
24 am trying to go back in time and trying to
25 appreciate what the various members in

1 attendance at these Executive Council meetings
2 were being told about the likelihood of success
3 versus failure of the self-financing concept.

4 And to be fair to them, I am
5 trying to learn, did they say to themselves, we
6 are going to try this but there is a real
7 chance it is not going to work? Or were they
8 saying, oh, this is definitely going to work
9 based upon what we are told?

10 MR. GROSS: The genesis of the
11 zero down and no money for -- no obligation to
12 pay for eight years was that request on a base
13 case model.

14 I don't recall the Executive
15 Council discussing that at length before the
16 preference for that type of financing was set
17 forth in the base case model.

18 What I recall at the Executive
19 Council level was discussions fairly frequently
20 by the Garden State Parkway that they didn't
21 have the capital to spend at that time on this
22 project. And that Commissioner Wilson said, we
23 will deal with that issue. And the
24 Commissioner trying to keep the consortium
25 together, to move on with the objective of

1 getting electronic toll collection on the
2 New Jersey toll facilities.

3 And I believe, although I wasn't
4 party to the dialogue, that it was the
5 expression of that issue about capital that
6 gave rise to a financing plan that would be
7 consistent with the Garden State Parkway's lack
8 of capital funds.

9 ASSEMBLYMAN D'AMATO: What was
10 your understanding of the relationship between
11 Chase Manhattan with MFS at the time that MFS
12 was awarded the contract?

13 MR. GROSS: At the time they
14 were awarded the contract, Chase was the
15 subcontractor that was to operate the customer
16 service.

17 ASSEMBLYMAN D'AMATO: The fact
18 that Chase Manhattan was involved in this
19 project, was that a factor that was considered
20 by the members of the consortium in awarding
21 the contract to MFS?

22 MR. GROSS: I can answer that
23 for me personally. I really can't tell you
24 what was in the minds of the Review Committee
25 as they assessed and scored the contractor.

1 But Chase Manhattan Bank was
2 very important to me. The operation of the
3 customer service center is a back office
4 operation, something that Chase Manhattan Bank
5 had experience in and was considered one of the
6 finest in the world.

7 And customer service was an
8 integral and crucial part of successfully
9 operating the E-ZPass system. You had to have
10 an entity that was capable of dealing with the
11 public on a regular basis, getting statements
12 out, getting transponders out, properly
13 debiting their account, dealing with their
14 questions, their issues, their complaints. And
15 I could think of no one better than Chase
16 Manhattan Bank. So that was very important to
17 me.

18 ASSEMBLYMAN D'AMATO: Now, you
19 were questioned as to why you personally heard
20 the -- sorry.

21 You were questioned before as to
22 why you personally heard the protest of
23 Lockheed when they did not win the contract.

24 Why did you do that?

25 MR. GROSS: The New Jersey

1 Turnpike was the lead agency for the
2 procurement. So from the standpoint of the
3 law, it was the regulations and law associated
4 with administrative hearings that would
5 prevail.

6 Under the Turnpike regulations,
7 I was the person, the employee, that was
8 designated to hear protests in connection with
9 procurements. Under the law, as provided to me
10 by counsel, even if I participated in the
11 review process I could still be the hearing
12 officer if I felt under the law that I would be
13 objective.

14 But the question was an easier
15 one for me because I hadn't participated. And
16 therefore, clearly, based upon the Turnpike
17 regulations, I should and could be the hearing
18 officer.

19 Interestingly, Lockheed did not
20 raise that as an objection until they got a bad
21 decision from me. And they raised it for the
22 first time in the Appellate Division in the
23 Superior Court, and it was rejected in the
24 Appellate Division.

25 ASSEMBLYMAN D'AMATO: And the

1 New Jersey Supreme Court decided not to even
2 hear the appeal from Lockheed after that; is
3 that correct?

4 MR. GROSS: That is correct.

5 ASSEMBLYMAN D'AMATO: I have one
6 final question.

7 The stated purpose of these
8 hearings is for this body to acquire
9 information so that we can make recommendations
10 to state government as to not only how to
11 improve the process, but how to avoid the
12 problems that we have seen. Let's give you the
13 benefit of the historical examination of the
14 past events.

15 What recommendations would you
16 make to this committee so as to avoid some of
17 the mistakes of the past?

18 CHAIRMAN WISNIEWSKI: Mr. Gross,
19 I just wanted to interrupt for a second. We
20 have a lot of background noise. It is making
21 it hard for our transcriber to hear. So if we
22 could all just speak as loudly as possible.

23 MR. GROSS: Are those my fans
24 waiting for me?

25 CHAIRMAN WISNIEWSKI: Those are

1 all people who have gotten APR's.

2 MR. GROSS: Can I go down with
3 you?

4 I would not have procured
5 electronic toll collection on a consolidated
6 basis as the consortium has done. Knowing what
7 I know today, I would have recommended that it
8 be done individually by each of the agencies
9 that made up the consortium. And I will tell
10 you why.

11 First of all, the common thread
12 is Mark IV. Mark IV is the common thread.
13 That is a technology that was approved in the
14 eastern region of the country to make all the
15 E-ZPass systems interoperable.

16 So when you have your
17 transponder in your car, you could go from the
18 Turnpike to the Garden State Parkway to the
19 New York Thruway to the Massachusetts Turnpike,
20 and you don't have to have a separate
21 transponder, and it debits your account. You
22 don't need a separate transponder, you drive
23 these roads as if they were one road.

24 And without that common
25 technology, you would not have a successful

1 E-ZPass system.

2 If you had to have seven
3 transponders and seven statements and seven
4 deposits with you or on you as a result of
5 electronic payments, you would not pay
6 electronically.

7 ASSEMBLYMAN D'AMATO: I
8 apologize for the interruption.

9 Just for the benefit of the
10 reporters, the question that Mr. Gross is
11 answering is what recommendations he would make
12 to this committee so as to perhaps avoid some
13 of the mistakes that we have learned about as
14 part of our analysis.

15 I just wanted them to know what
16 you were talking about.

17 MR. GROSS: So I would have each
18 toll road procure independently. And the
19 reason for that is this:

20 Unless the toll facilities are
21 consolidated -- and I am not opening myself up
22 to questions about the merits of consolidation,
23 but I am saying this is a fact. It is
24 extremely difficult to get the member agencies
25 to all agree as you go forward with a very

1 complex project.

2 And even though the Turnpike was
3 the lead agency, it didn't have the ability to
4 tell the Garden State Parkway what to do. It
5 didn't have the ability to tell the Port
6 Authority, the State of Delaware, what to do.

7 So it became extremely difficult
8 to manage the process over a period of time.
9 Because the Turnpike had the responsibility as
10 being the lead agency, but it really was
11 nothing more than sharing a group and making
12 recommendations, listening to dialogue. And
13 that was extremely difficult, and I think to
14 some extent not well managed.

15 I don't mean that the people
16 didn't manage well, but the process wasn't well
17 managed because of it.

18 In addition, if you did it
19 separately, you may have more than one
20 contractor, because each agency would then
21 procure separately. They all use Mark IV,
22 which is the common technology, but they may
23 have more than one contractor.

24 And I think that the experience
25 that we had with contractors having cash flow

1 problems, going out of business, issues in
2 connection with construction that were brought
3 up during today's discussions, you reduce your
4 risk if you have multiple contractors.

5 And I don't know if that would
6 have been the result. Theoretically, one
7 contractor could have gotten it all. But more
8 likely, that wouldn't have been the case.

9 So I think that would have been
10 beneficial as well.

11 And these two roads, the Garden
12 State Parkway and the Turnpike, are not typical
13 of a facility that has installed E-ZPass. They
14 are far more challenging. And that's why I say
15 separating them may help.

16 Think of this: The Turnpike is
17 not a point of payment system. You get your
18 ticket, you enter, it's all according to how
19 far you travel that you are assessed a toll.
20 So the Turnpike system requires that your
21 E-ZPass transponder is read twice, and then
22 matched, entrance and exit, and matched
23 correctly.

24 If you have a failure on entry,
25 you have a problem in matching, or if you have

1 a failure on exit. It's much more complicated
2 software. It has resulted in some software
3 redesign issues. It's more difficult to
4 deliver that system.

5 There are not many -- there are
6 some, but not many toll facilities around the
7 country that have the -- that are required to
8 be read twice.

9 On the other hand, on the Garden
10 State Parkway, 70 percent of their toll lanes
11 are automatic coin machines. Many of them are
12 10 years old. They don't work very well. And
13 to be able to create software that can read the
14 machine and the machine to operate
15 satisfactorily for the software -- you are
16 talking about 1/100th of a second -- inevitably
17 you are going to have a lot of challenges with
18 the software.

19 So it's for those reasons that I
20 would recommend that unless roads are
21 consolidated to become one, that major
22 procurements are done independently.

23 Even though there is good reason
24 to consider the consolidation -- because you
25 save money, there is no question about it. The

1 costs for a customer service center if you look
2 historically around the country are far less
3 because of the volume that was delivered. But
4 I think the detriments outweigh the benefit.
5 So I would keep them separate.

6 ASSEMBLYMAN D'AMATO: Thank you,
7 Mr. Gross, for coming here.

8 Thank you, Mr. Chairman.

9 CHAIRMAN WISNIEWSKI: Thank you.
10 Assemblywoman Stender has some
11 questions.

12 ASSEMBLYWOMAN STENDER: Thank
13 you, Mr. Chairman.

14 Mr. Gross, you said that before
15 you went to the Turnpike Authority you were the
16 county counsel and you held other positions in
17 the state government. If you were county
18 counsel, you came out of county government as
19 an attorney.

20 MR. GROSS: I was county counsel
21 for almost three years, about two and a half
22 years.

23 ASSEMBLYWOMAN STENDER: And
24 having served previously as freeholder from
25 Union County, the RFP process is what we would

1 go through in the county.

2 Typically if you went to go out
3 for a proposal you put it out there for vendors
4 to come back with a proposal based on what you
5 have asked for; correct? Isn't that typically
6 how you saw that done?

7 MR. GROSS: Correct.

8 ASSEMBLYWOMAN STENDER: But in
9 this process, according to the court case that
10 you referred to and as reported out of the
11 Appellate Division, in fact, this proposal was
12 by design intended to be based on the
13 preferences of the bidders' proposals.

14 So what this says is that rather
15 than the consortium apparently doing their due
16 diligence or checking with other systems to
17 find out about the best and worst practices,
18 you went to the bidders and said, we want to
19 take advantage of all of your expertise in this
20 area, and we'd like to rely on you to help
21 design this proposal.

22 Is that correct?

23 MR. GROSS: I think you are
24 right. I think it would -- one would say this
25 was a performance driven RFP where the

1 consortium expressed in terms of results and
2 let the competitors say, we'll tell you how you
3 get there.

4 ASSEMBLYWOMAN STENDER: So that
5 it really did allow them to also by design
6 create a contract or a system that would make
7 sure that no matter how it performed, that they
8 would be covered. Because in fact, the system
9 by design or contract made sure that the
10 contractors get their money regardless of
11 whether they performed well in the end.

12 MR. GROSS: I don't think that's
13 the conclusion. I think if one reviews the
14 contract -- and it would take a while to
15 review, it's fairly lengthy -- the contractor
16 has an enormous amount of responsibilities and
17 exposure in connection with meeting the
18 construction terms or the operation.

19 ASSEMBLYWOMAN STENDER: But in
20 the end, regardless of how or whether it
21 performs or not, they get their money. At the
22 end of the contract, they get paid regardless
23 of all the other problems or what it ends up
24 costing us to get it done.

25 MR. GROSS: Well, you know, most

1 respectfully, that is a very broad statement,
2 I'd say. Because it's so broad I would say no,
3 that's not the case.

4 I mean, the contractor has a
5 responsibility to provide an operating system
6 at a certain percentile. I don't remember what
7 the percentile is. But hypothetically, let's
8 say it's 99 percent.

9 The component hardware and
10 software in a lane has to be able to be
11 accurate as to say it was 99 percent or
12 whatever the percentage is.

13 If you don't meet that
14 performance criteria, then you will never get
15 final system acceptance, and you're in default.
16 And if you don't correct it, there's
17 consequences.

18 So, you know, I would think that
19 if this contract were fully reviewed, the
20 conclusion would be that the contractor has a
21 great deal of responsibility, liability and
22 exposure.

23 ASSEMBLYWOMAN STENDER: That is
24 not what I've seen so far.

25 In your opening statements you

1 principally there to help the consortium
2 finance people go through the base case model
3 and ask questions and lead dialogue and
4 discussions.

5 There was another firm that
6 helped in the creation of the RFP. Howard
7 Needles was hired for that purpose to help the
8 consortium members generate the request for
9 proposals.

10 ASSEMBLYWOMAN STENDER: All
11 right. So you go through the whole thing, and
12 we have the giant shuffle that is about to go
13 on with all the companies.

14 But at the same time, part of it
15 was this private financing that was built in in
16 terms of selling bonds. Because to me, one of
17 the great questions is how is it that these
18 bonds could have ever been legitimate or legal
19 when they put the full faith of the state
20 behind them in the end but there were what to
21 me looked like very questionable assumptions of
22 how they were ever going to be repaid.

23 MR. GROSS: Well, the State of
24 New Jersey is not responsible for the bonds
25 that were issued through the EDA. They were

1 issued to a relatively small number of private
2 investors that are banks and insurance
3 companies.

4 And that private placement was
5 arranged by a company called Newcourt Capital
6 that I think was acquired by CIT or -- I'm not
7 sure about that. But I think if you look up
8 Newcourt Capital today, they don't exist,
9 per se, but they were a fairly large
10 independent financial house.

11 The bonds tracked the commitment
12 of MFS under their best and final offer to
13 provide financing with no money down to the
14 member agencies and no money for eight
15 operating years and two construction years,
16 which is a total of 10 years.

17 The lenders hired Coopers &
18 Lybrand to look at the revenue projections. I
19 never saw the Coopers report. Is that your
20 next question? But I was told by Newcourt
21 Capital, as I said in my opening remarks, that
22 Coopers looked -- they were satisfied with the
23 fiber, and thought the violation revenue was
24 conservative.

25 The lenders were interested,

1 shall I say, in my opinion -- this is my
2 opinion now, because I wasn't a lender -- but
3 the lenders were interested in those revenue
4 streams to conclude that that is the likely way
5 that they would get paid their principal and
6 interest.

7 But ultimately, the lenders
8 relied upon the creditworthiness of the five
9 toll agencies, member agencies -- not toll
10 agencies, member agencies -- and spent a lot of
11 time in negotiations with the consortium on the
12 percentages that each member would be liable
13 for, the fact that the model had to be revised
14 every year as actual data was generated, and
15 that if balances were projected to be due in
16 2008, which would be to the lenders, then each
17 agency reserved money on an annual basis.

18 So the lenders were interested
19 in the revenue flow that would support the
20 obligations of the project, but were most
21 interested in the creditworthiness of the five
22 member agencies.

23 ASSEMBLYWOMAN STENDER: But yet
24 they were designed -- I mean, the intent here
25 was not have the agencies pay those bonds, it

1 was to have -- it was to be paid by these
2 revenue stream calculations; correct?

3 MR. GROSS: The calculations
4 were based upon projections. It is not any
5 dissimilar than -- let's take the budget of the
6 State of New Jersey. From what I read in the
7 newspapers, the revenue forecasts were way in
8 excess of what actually was collected in this
9 last fiscal year.

10 Budgets, projections are all
11 subject to change, some more significant than
12 others based upon future events. And these
13 projections were based upon little historical
14 experience, as the chairman pointed out in his
15 questions to me. And the lenders and the
16 consortium knew that, you know, if those
17 revenue streams were not as forthcoming as in
18 the original budget, they would have to reserve
19 money annually and pay in 2008.

20 So, I mean, I have said now for
21 the third time that when the publicity was
22 being generated about the contract, that there
23 was -- the expectations were raised far too
24 high. And a lot of people, including the media
25 that had picked up on this issue a long time

1 ago, said, well, you are not generating the
2 revenue you projected, you're wrong, you
3 failed.

4 The approach in 1998 should have
5 been something to the effect that efforts are
6 going to be made to collect from violators,
7 they should pay for the system. And if there
8 is not adequate money through that revenue
9 source, then the agencies will pay in 2008.

10 I think that if we didn't raise
11 expectations like we did in '98, this would not
12 be the principal issue that we spent a couple
13 hours on this morning, we would be talking
14 about other aspects of the contract.

15 And for that, you know, I regret
16 that. But clearly, if you look at the model,
17 you read the model, you will see all kinds of,
18 you know, disclaimer kind of language, that
19 this may not happen, these are only
20 projections, and they are subject to change,
21 they are subject to actual performance. It
22 goes on and on and on.

23 And that's what they are.
24 That's all they are is -- hopefully they were
25 intelligently made with good common sense and a

1 basis for the assumptions, but they don't
2 necessarily reflect that it will actually
3 happen.

4 ASSEMBLYWOMAN STENDER: And then
5 there was also a performance bond put in place
6 to cover in case some of this wouldn't work;
7 correct?

8 MR. GROSS: Well, the
9 performance bond didn't cover the collection of
10 violation revenue. It covered the construction
11 of the system and the operation of the customer
12 service center, the violation processing
13 center, and the fiber network that was built.

14 ASSEMBLYWOMAN STENDER: As part
15 of all of this mess, Adesta filed bankruptcy.
16 And in the final order, the Court order cured
17 the past debts of the company, i.e., the
18 default on E-ZPass and their inability to
19 finish the work.

20 But you never filed an objection
21 to that final bankruptcy order. So it would be
22 questionable whether New Jersey would ever be
23 able to call that performance bond that it
24 probably would have been entitled to as part of
25 this.

1 MR. GROSS: I spent a great deal
2 of time over the years that this contract was
3 in various different stages to protect the
4 performance bond because I consider the
5 performance bond and WorldCom's indemnity to
6 the surety of vital importance to the project.

7 And when WorldCom most recently
8 entered into a contract with Adesta to acquire
9 the New Jersey contract, I insisted upon a
10 letter from the surety acknowledging that those
11 activities of WorldCom would in no way impair
12 the performance bond and the rights of the
13 consortium. Such a letter exists.

14 ASSEMBLYWOMAN STENDER: It's my
15 understanding that the bankruptcy court set all
16 of those issues aside, all the defaults aside,
17 so that New Jersey would have limited ability
18 to collect on that bond at this point.

19 MR. GROSS: I hope that's not
20 the case --

21 ASSEMBLYWOMAN STENDER: Me, too.

22 MR. GROSS: -- if it's necessary
23 to look to the surety, that one can't look to
24 the surety.

25 The approach the consortium took

1 toward the end of 2001 when Adesta notified the
2 consortium, which I think was about October of
3 2001 that it did not have adequate cash to
4 continue to meet its obligations and, in
5 essence, asked the consortium to provide money
6 to it -- which was rejected out of hand -- was
7 to either take the project over or encourage
8 WorldCom to come to New Jersey and finish the
9 contract.

10 And the decision of WorldCom to
11 do that was considered by me to be very
12 possible. Someone said earlier WorldCom is a
13 very large company. And we are now talking in
14 the period of the fall and winter of 2001. All
15 of my remarks are based upon the time that I
16 was Executive Director of the Turnpike.

17 And the fact that they were
18 willing to bring management, engineers, finance
19 people, money to this contract and get complete
20 and get out was to me the best of any
21 alternative to have the contract perform in
22 accordance with its terms, deliver E-ZPass,
23 that was good and reliable, and have a
24 reasonable opportunity to collect violation
25 revenue.

1 ASSEMBLYWOMAN STENDER: So you
2 didn't file any objections to the bankruptcy
3 order as it was done at the time?

4 MR. GROSS: Well, I mean, I
5 can't talk technically to you. We had counsel.
6 But what I can tell you is that the consortium
7 had absolutely no objection to WorldCom taking
8 an assignment of the contract at the time.

9 ASSEMBLYWOMAN STENDER: I am
10 being shown the bankruptcy order. It says, all
11 defaults or other obligation of the debtor
12 under the assumed contracts arising or accruing
13 prior to the date of this order shall be deemed
14 cured by the debtor upon payment by the debtor
15 at the closing or as soon thereafter as
16 practicable of the cure payment amounts, if
17 any.

18 MR. GROSS: All those orders
19 were reviewed by counsel.

20 My objective as the Executive
21 Director was to have WorldCom take over the
22 contract and finish it. And I had absolutely
23 no intention of releasing WorldCom from any of
24 its responsibilities or liabilities under the
25 contract. Although I was aware that WorldCom

1 once it took assignment of the contract wanted
2 to sit down and negotiate with the consortium,
3 which would be understandable, things had to
4 be -- certain terms had to be changed in order
5 to step in and finish the contract terms. So I
6 expected negotiations.

7 But I never intended to release
8 WorldCom from any responsibilities other than
9 through negotiations.

10 ASSEMBLYWOMAN STENDER: I have
11 another little different question here.

12 When you talk about the
13 financing and the base case financial model
14 that was done, on which the premise of all this
15 was done, and we have a letter from you from
16 March 10th where you -- it is to Mr. Thomas
17 Simmons. You say, prior to the commencement of
18 the operations that a base case financial model
19 would be prepared by the consortium based upon
20 the actual notice to proceed date --

21 MR. GROSS: Excuse me. I am
22 missing some of your words. Instead of asking
23 you to say it all over before you finish, I
24 will ask you to start again.

25 ASSEMBLYWOMAN STENDER: I am

1 sorry.

2 It is a letter from you from
3 March of '98 where you note that prior to the
4 commencement of operations that there would be
5 a base case financial model. And you've
6 referred to that model a couple of times in
7 terms of the projections of the revenues from
8 the violations and from the fiber optic stream.

9 We do have from the Public
10 Resources Advisory Group, which I guess is the
11 group that was actually generating the base
12 case financial model updates, but we don't have
13 a copy of the actual base case. I have not
14 been able to find one.

15 Are you familiar with that issue
16 or --

17 MR. GROSS: The base case
18 financial model, which I believe is dated
19 March 10, 1998, is an exhibit under the
20 contract documentation that was executed.

21 ASSEMBLYWOMAN STENDER: I have
22 to look for that. So far we haven't been able
23 to find that.

24 The reason I ask about that is
25 follow-up reports from Public Resources

1 Advisory Group -- and that I guess is the
2 agency that was creating this model. Are you
3 familiar with that?

4 MR. GROSS: That entity provided
5 services to the consortium pre-contract
6 execution dealing with various projections on
7 the model.

8 Subsequent to the execution of
9 the contract, that agency was hired by the
10 consortium to help it revise the model on an
11 annual basis, which was a requirement under the
12 contract; that the lenders required either a
13 financial advisor or one of the -- I think at
14 the time one of the five accounting firms to be
15 hired to provide accounting services in
16 connection with the revision of the loan.

17 CHAIRMAN WISNIEWSKI: Mr. Gross,
18 maybe for clarity, the question is who prepared
19 the original, the first base case financial
20 model?

21 MR. GROSS: MFS prepared that.

22 CHAIRMAN WISNIEWSKI: MFS
23 prepared the model?

24 MR. GROSS: The one that
25 became -- the one that I've referred to as the

1 base case dated March 10, 1998. MFS.

2 CHAIRMAN WISNIEWSKI: Now, the
3 subsequent models were prepared by a different
4 entity; is that correct?

5 MR. GROSS: The revisions to the
6 model were prepared by the consortium with the
7 help of Public Resources.

8 ASSEMBLYWOMAN STENDER: So they
9 actually did the report? They didn't prepare
10 the model, they just reviewed the model, or
11 they reviewed the data in the model?

12 MR. GROSS: That's correct.
13 They took -- they went to each agency, they
14 took actual data that was available to the date
15 that they were reporting, and then they put
16 that actual data into the model, made certain
17 changes based upon those results, and then
18 submitted drafts to the consortium members for
19 discussion.

20 And that's the genesis of two
21 revisions. There was a revision in November of
22 2000, as required by the contract, and a
23 revision in November of 2001.

24 ASSEMBLYWOMAN STENDER: So the
25 model would have been -- was in the contract,

1 and I guess is similar to the financing, if you
2 will, that was part of the best and final offer
3 summary where you are explaining where the
4 revenues are going to come from on the toll
5 side and where they are going to come from on
6 the fiber side; is that correct?

7 MR. GROSS: If I understand your
8 question, I think the base case model was
9 generated to meet the financing criteria that
10 MFS accepted, which was to provide for each
11 member not being required to put any money down
12 or any capital monies during eight years.

13 So I think that is the genesis
14 of the base case model.

15 Does that answer your question?

16 ASSEMBLYWOMAN STENDER: I guess.

17 CHAIRMAN WISNIEWSKI: I just
18 wanted to take the prerogative of the chair and
19 take a half hour recess. Perhaps when we get
20 back the noise level will be a little lower.

21 Mr. Gross, you've been
22 testifying now for close to three hours, and I
23 think some of the members here just would like
24 a short break.

25 So we will reconvene at 1:30,

1 and continue that line of questioning that we
2 have been engaged in. Thank you all.

3 (Lunch break taken.)

4 CHAIRMAN WISNIEWSKI: I would
5 like to call this meeting of the Assembly
6 Transportation Committee back to order.

7 When we broke we were hearing
8 testimony from Mr. Gross under questions from
9 Assemblywoman Stender.

10 Assemblywoman Stender, if you
11 would pick up where you left off.

12 ASSEMBLYWOMAN STENDER: Thank
13 you, Mr. Chairman.

14 I think we were in conversation
15 about the base case financial model and some of
16 the projected revenues that were proposed as
17 part of the contract.

18 Let me start this time with the
19 issue of the fiber revenues.

20 In the best and final offer
21 summary from MFS NT under the potential
22 additional net revenues, there is a line there
23 that says "Base and Expanded Fiber."

24 So could you just explain what
25 that is referring to? I mean, I would think

1 that the base fiber is what was being laid
2 down, and expanded is that there would be an
3 expectation that there would be additional
4 fiber at some point.

5 Is that correct?

6 MR. GROSS: I am handed a
7 document. Is this the document you are looking
8 at?

9 ASSEMBLYWOMAN STENDER: Yes, I
10 think so. It came out of the best and final
11 offer document. Best and final --

12 MR. GROSS: Can I just look at
13 it for a moment?

14 ASSEMBLYWOMAN STENDER: Sure.

15 MR. GROSS: I'm not familiar
16 with the term "base and expanded fiber." And I
17 would only be hazarding a guess.

18 I know that the base case model
19 only defined fiber revenue in one fashion.

20 ASSEMBLYWOMAN STENDER: As a
21 whole?

22 MR. GROSS: Yeah.

23 Now, they may be
24 referring -- you know, the fiber network was
25 originally designed and proposed to provide the

1 most reliable communication system for E-ZPass
2 operation, which is essential in order to
3 protect the base core total revenue facilities.

4 But, you know, maybe "base"
5 referred to that portion of the system which
6 only operated the E-ZPass system, although I
7 don't -- I'm not sure that's the case.

8 ASSEMBLYWOMAN STENDER: Okay.

9 MR. GROSS: I know that based
10 upon the number of ducts and fiber strands that
11 was agreed to be constructed, MFS projected
12 over 20 years revenue of about 215 million
13 dollars.

14 ASSEMBLYWOMAN STENDER: Okay.

15 Well, that leads to my next
16 question, which is in this document it shows
17 that MFS/Chase proposed that as part of a
18 potential additional revenue source of base and
19 expanded fiber, that the system would generate
20 125, almost 126 million dollars versus a
21 Lockheed projection of nine, which obviously is
22 a tremendous difference, and in fact, to the
23 bottom line, is all the difference in the world
24 between the revenues that they were proposing
25 would be generated versus what Lockheed would

1 have proposed to be generated.

2 And while we know that none of
3 it really worked because the whole thing has
4 fallen apart, there is such a significant
5 difference there, I was wondering if you could
6 address what that would have been about?

7 MR. GROSS: To the best of my
8 recollection, Lockheed did not propose a
9 comprehensive fiber network laid on the
10 right-of-ways of the member agencies. They
11 proposed a modest amount of fiber being placed
12 on the New Jersey Turnpike with an option to
13 expand that.

14 But it was, you know, very much
15 different than the proposal of MFS. And that's
16 why the projected revenue on those two items
17 was significantly different.

18 ASSEMBLYWOMAN STENDER: So
19 that's probably in part why the MFS/Chase
20 proposal had been accepted over the Lockheed,
21 because the amount of revenue that they were
22 representing could be generated by the
23 contract?

24 MR. GROSS: The answer is yes.

25 But if I can go further with

1 that, as I recall it, the Review Committee's
2 collective scores for Lockheed and MFS for
3 technical confidence, to construct the system,
4 operate the system, were separated by so few
5 points as to effectively say they were equal to
6 each other.

7 MFS scored considerably better
8 than Lockheed in what is called option
9 opportunity, which was to generate a fiber
10 network, potentially generate revenue. And
11 they also proposed to arrange financing
12 consistent with the preference expressed by the
13 consortium.

14 And I think those are the two
15 significant -- there were other differences, I
16 imagine, but those were the significant
17 differences in the two proposals.

18 ASSEMBLYWOMAN STENDER: It does
19 appear to me that based on what we -- as we
20 unravel this, that MFS adopted a program to
21 make a presentation that said, this is how you
22 self-finance now.

23 As we have all been discussing,
24 very grave concerns about the ability for that
25 ever to have occurred, but be that as it may, I

1 understand what you are saying on that.

2 On the violation side, which was
3 another piece of the financing -- because it
4 seems to me in your comments that you really
5 think that part of the problem here is that the
6 violation collection system just hasn't been
7 working, and that is at the heart of the
8 problem.

9 We've been told, the committee,
10 that the system as we have it is generating
11 about -- is triggering about a 4 percent
12 violation rate, meaning that about 4 percent of
13 the users are getting notices. 2 percent is
14 really more typical in the experience of other
15 systems.

16 And that after you take out of
17 the 2 percent the ones that were not violators,
18 that it actually takes it down to under 1
19 percent in terms of the money -- the violation
20 rate that actually exists with E-ZPass.

21 Are you with me on that?

22 MR. GROSS: I think I am
23 following you.

24 ASSEMBLYWOMAN STENDER: Okay.

25 That was at the foundation of

1 the financing. Yet we've heard from other
2 people who have been here in front of us that
3 the typical experience is at 2 percent.

4 So you built in a financing mode
5 that was lower than what experience even would
6 have suggested would have worked.

7 Did nobody ever check with other
8 E-ZPass systems to see how they worked around
9 the country for efficiency?

10 MR. GROSS: Well, the original
11 model had a violation rate that gradually
12 turned downward.

13 It began well above 2 percent on
14 average. And as the system matured and the
15 public became acquainted with it, it went down
16 to a half of 1 percent. And the average over
17 eight years was 8/10ths of 1 percent.

18 And, you know, my recollection
19 is that the consortium was most satisfied with
20 that. And if you look at the document that you
21 were kind enough to furnish to me a few minutes
22 ago, you can see that the violation fees
23 projected by Lockheed and MFS were about the
24 same.

25 ASSEMBLYWOMAN STENDER: Yes.

1 MR. GROSS: What I've said on
2 this subject this morning is that, A, you have
3 to have a violation processing center that's
4 performing better than it was performing as of
5 the time that I left the Turnpike.

6 And B, you must have the
7 collection tools that will communicate to those
8 that are cheating the system that there is a
9 real consequence if they are caught, and there
10 is a real chance they are going to get caught.

11 If you don't have those two
12 things working, in my opinion, you cannot say
13 that the ability to collect the violation
14 revenue is nonexistent. You could be
15 frustrated by not having a good performing
16 violation processing center, and I understand
17 that, and you can be upset that there hasn't
18 been municipal court activity or a collection
19 agency.

20 But without those elements, in
21 my judgment, you cannot conclude that you can't
22 collect this violation revenue.

23 ASSEMBLYWOMAN STENDER: I agree
24 with what you are saying. But the projections
25 were just so far way out of whack with what

1 reality was, I think that's the frustration
2 with reviewing all of this.

3 Because in the end, the
4 projection is for about 157 million dollars
5 through March of 2008 to be collected, but the
6 original plan proposed 450 million.

7 I mean, they weren't even close.
8 There is just no intersection of reality there.

9 MR. GROSS: Maybe this will
10 help, for a moment. If you go back to 1998,
11 the contract called for two years of
12 construction and eight years of operations.

13 At the end of two years, the
14 construction schedule called for final system
15 acceptance with the Turnpike, the Garden State
16 Parkway, Delaware, Atlantic City, and the Port
17 Authority all operating all their lanes either
18 dedicated or mixed-mode.

19 At the end of that two years, it
20 was eight years with all agencies operating at
21 what's called a hundred percent. It was during
22 those eight years that it was projected that
23 there would be a gross recovery of about 400
24 and something million dollars of violation
25 revenue.

1 Now, since the Turnpike, the
2 Garden State Parkway is not complete,
3 mixed-mode is not yet in operation, and there
4 isn't final system acceptance, you don't have
5 the beginning of the eight-year period.

6 ASSEMBLYWOMAN STENDER: Okay.

7 MR. GROSS: But what you do have
8 is you have a fixed maturity date of March
9 2008. That doesn't move with final system
10 acceptance.

11 So assume for the moment that
12 you are going to collect your violations
13 revenue. You are not going to collect it at
14 the same gross amount by 2008 because you
15 haven't finished your systems, and you are not
16 operating fully, full capacity. You may
17 collect that revenue in 2009, 10, 11 and 12.

18 That, therefore, does not reduce
19 the burden of the toll agencies to pay the
20 balance due in March of 2008. They have to pay
21 that balance.

22 ASSEMBLYWOMAN STENDER: I
23 understand.

24 CHAIRMAN WISNIEWSKI: Mr. Gross,
25 if I could just interject on that line of

1 questioning.

2 Certainly appreciate the fact
3 that there is no enforcement mechanism
4 currently other than the issuance of APR's, so
5 it's almost an honor system. If you pay the
6 APR, there is enforcement. If you don't, there
7 is no municipal court mechanism.

8 That's correct?

9 MR. GROSS: That's correct.

10 CHAIRMAN WISNIEWSKI: There is a
11 cost associated with establishing that
12 municipal court collection system. And
13 somebody has got to go to court and prosecute
14 the case.

15 MR. GROSS: It's the obligation
16 of the contractor under the contract.

17 CHAIRMAN WISNIEWSKI: After
18 eight years, somebody is still going to have to
19 go and prosecute those cases, and it's going to
20 cost money.

21 MR. GROSS: That is true after
22 eight years. But if I may -- can I contribute
23 something further?

24 CHAIRMAN WISNIEWSKI: Let me
25 just finish the question I had, and then you

1 can contribute it.

2 The question I had is that even
3 assuming that all of those dollars can be
4 collected as projected in the base case
5 financial model, what I don't see anywhere is
6 an estimate or an anticipation of the cost of
7 collection beyond that.

8 So what I understand you to be
9 saying is that since we haven't reached final
10 acceptance, we don't know how well the system
11 is going to perform in terms of generating
12 revenue, and we will get to the end of the bond
13 period perhaps before everything is up and
14 running fully.

15 But in the out years beyond
16 that, we may have revenue generated. But we
17 don't have any -- my question is we don't have
18 any idea what the collection is going to cost,
19 either what the cost of having a collection
20 agency involved will be or what the cost of
21 municipal court prosecution will be.

22 Isn't that correct?

23 MR. GROSS: After the expiration
24 of the eight operating years, which is the term
25 of the contract with the contractor, you are

1 absolutely right. During that eight-year
2 period, the contractor's responsible for
3 generating the steps necessary to go to court.
4 The collection agency is an obligation of the
5 consortium, if it elects to use that. And the
6 2001 model showed collection agency expenses.

7 But I was going to contribute
8 something even beyond that.

9 There is a mechanism in the
10 municipal court system to pay a lesser fine by
11 mail. Similar to when you get a parking
12 ticket, anything -- there is many different
13 offenses that don't require a court appearance.
14 You can just sign the summons, plead guilty,
15 send in your fine, and it's less than if you go
16 to court and you have to pay the court costs.

17 CHAIRMAN WISNIEWSKI: Exactly.

18 MR. GROSS: Right. That
19 system -- those principles were negotiated with
20 the Administrative Office of the Courts for
21 E-ZPass. And they will be in place as soon as
22 municipal court activity on a volume basis
23 occurs.

24 And it is projected, if I may,
25 that similar to parking tickets, that a very

1 large percentage of the suits filed in
2 municipal court will not result in a court
3 hearing but will be paid through the violation
4 bureau rates.

5 CHAIRMAN WISNIEWSKI: People
6 will understand they violated and willingly
7 send the money in. The only exceptions will be
8 those people who have a dispute as to whether
9 they validly received the violation.

10 MR. GROSS: That's correct.

11 CHAIRMAN WISNIEWSKI: And it's
12 for those people that there will be an expense
13 in actually prosecuting the case.

14 If I receive an APR and
15 ultimately I receive a municipal court summons,
16 and I look at my account and say, well, I am
17 paid up, there is no reason I should have
18 received that, then I will go to municipal
19 court and someone will be -- it will be
20 necessary to have someone there to prosecute
21 the case.

22 MR. GROSS: That is true. The
23 municipal prosecutor will prosecute the case.
24 But that is true. But that is because your
25 illustration fell through the crack, so to

1 speak.

2 CHAIRMAN WISNIEWSKI: Let me
3 just stop you at that point.

4 Because you say the municipal
5 prosecutor will prosecute the case. I've
6 spoken to municipal prosecutors, I am not
7 familiar with many who are anxious to add to
8 their duties prosecution of toll violation
9 cases for which the revenue is going to the
10 toll road.

11 I mean, they've got their hands
12 full with what they've already got.

13 Is there something, an agreement
14 with the Administrative Office of the Courts or
15 the prosecutor's office that this is definitely
16 going to happen?

17 MR. GROSS: Well, there is an
18 understanding with the Administrative Office of
19 the Courts. And the revenue doesn't go to the
20 toll agency through the municipal court action.
21 Let me explain that.

22 If you are the subject of a
23 complaint for failure to pay your tolls, you go
24 to court, you contest it, you lose. The judge
25 under the law has discretion to fine you

1 somewhere between \$50 and \$200 plus court
2 costs.

3 Let's assume you're fined \$100
4 plus \$30 court costs. That \$130 is divided in
5 some formula -- and I don't know the precise
6 formula -- between a municipality and the State
7 of New Jersey. None of it goes to the toll
8 authority where the violation occurred.

9 The judge in addition under the
10 law has a discretion over and above what I've
11 just described to assess the \$25 fine and the
12 unpaid toll against the violator.

13 If the judge does that, then the
14 violation fee and the unpaid toll goes to the
15 toll agency.

16 So the revenue stream to the
17 municipality and the state is precisely the
18 same as the revenue stream in a parking
19 violation or any other municipal action that
20 leads to a fine.

21 CHAIRMAN WISNIEWSKI: But there
22 is the possibility, then, under that scenario
23 that toll violations that proceed in municipal
24 court could result in the toll agency receiving
25 no revenue.

1 MR. GROSS: No revenue. That's
2 right. It's up to -- it's the discretion of
3 the court.

4 It's likely, I would say, that a
5 municipal court judge who has concluded that
6 the person before him or her has violated the
7 toll regulations of the New Jersey Turnpike and
8 should be fined \$100 will also direct that that
9 person pay the unpaid toll and the \$25, but
10 it's not mandatory.

11 CHAIRMAN WISNIEWSKI: I would
12 just respectfully suggest -- and I understand
13 you are the former Executive Director of the
14 Turnpike -- that that is not necessarily a
15 recipe for success. Because, as I said,
16 anybody who has practiced in municipal court
17 recently has seen how prosecutors and judges
18 already have their hands full with the whole
19 range of actions that are amenable to municipal
20 court action. This is just going to add to it.

21 I am not so certain or confident
22 that should we get enforcement mechanism in the
23 municipal court that as a matter of course toll
24 agencies will necessarily receive the violation
25 money that is anticipated.

1 It's possible, but human nature
2 being what it is, I am not sure that municipal
3 courts are going to view their first
4 responsibility to raise revenue for a toll
5 agency.

6 MR. GROSS: Well, I don't
7 disagree with that. But I do think it is more
8 likely than not that when you get to that step
9 that you are going to collect your
10 administrative fees at a discounted amount and
11 your unpaid toll through the violation bureau
12 schedule of fees.

13 Because virtually all of those
14 that receive a municipal court summons are
15 guilty.

16 CHAIRMAN WISNIEWSKI: Well,
17 that's not the way it's supposed to work. You
18 are presumed innocent.

19 MR. GROSS: What I mean by
20 that -- and I say that respectfully -- is that
21 if you get a notice that you drove on the
22 Garden State Parkway, you went through a toll
23 booth and you didn't pay your toll, and you owe
24 the consortium \$25.35, and you are an E-ZPass
25 member, you are going to take the

1 time -- although you are going to be annoyed
2 that you got the notice -- you are going to
3 take the time on the back of that form to say,
4 I have an E-ZPass account, here's my account,
5 and you are going to put it in the mail.

6 Let's assume you don't do it the
7 first time. You are going to get a second
8 notice from the violation processing center.
9 And you are going to say these people are
10 crazy, but at some point in time you are going
11 to communicate the fact that you are not a
12 violator, debit my account.

13 Those that don't respond twice,
14 don't have their license plate on file so you
15 can independently check if they are an E-ZPass
16 member, the overwhelming likelihood is that
17 they are just cheaters. And it's those that
18 would be the subject of a municipal court
19 action.

20 Even before the municipal court
21 action, they will get a letter from a
22 collection agency. And if they are E-ZPass
23 members and they didn't answer the first two
24 letters, and now they are getting a collection
25 notice, once again, they have an opportunity to

1 communicate back.

2 So the chance is so high that
3 those that find themselves in municipal court
4 are just plain ordinary cheaters.

5 CHAIRMAN WISNIEWSKI: That may
6 be. It all goes back to the original point
7 that I was trying to make, is that none of that
8 happens without cost. And those costs then
9 take away from the ability of the system to
10 generate the revenues that would offset the
11 indebtedness.

12 MR. GROSS: I understand that.

13 But if you are a cheater, and
14 now you have a summons and complaint before
15 you, and you read it, and it says that if you
16 are found guilty you may have to pay up to \$200
17 plus court costs, plus the unpaid toll, plus
18 the administrative assessment of \$25, and you
19 know you did it, what are you going to do?

20 You are going to say, well, how
21 do I get out of this? And that is why paying
22 through the mail is the most likely result,
23 which has diminimus administrative costs.

24 CHAIRMAN WISNIEWSKI: We will
25 have to agree to disagree on that point.

1 Assemblywoman Stender, did you
2 have further questions?

3 ASSEMBLYWOMAN STENDER: Yes.
4 Thank you, Mr. Chairman.

5 Just as a follow-up, that
6 assumes this whole process works. I would
7 agree with you except that what we are seeing
8 and what we've been hearing is that the whole
9 thing isn't working properly, and that in fact,
10 people get so many violations that they give up
11 trying to respond because nobody is listening
12 to them.

13 But that is a whole other part
14 of this problem in terms of how this system has
15 been --

16 MR. GROSS: Can I be somewhat
17 responsive to that? Do you mind? I know it's
18 not in the form of a question, but I do have
19 something I would like to say.

20 ASSEMBLYWOMAN STENDER: Okay.

21 MR. GROSS: The system needs
22 improvement. There are lanes on both the
23 Garden State Parkway and the Turnpike, at least
24 as of the end of the year, that were generating
25 much too high a percentage of what we

1 call -- what was called false violations. And
2 that is what you are referring to. And it has
3 to be improved.

4 Now, having said that, if you as
5 an E-ZPass holder don't put your -- keep your
6 E-ZPass in your glove compartment, leave it at
7 home, or deliberately don't want it to be read,
8 you are going to be initially deemed a
9 violator.

10 Now, if you don't have your
11 license plate on file, there is no way that any
12 system in the world can determine that you in
13 fact are an E-ZPass holder and not a violator,
14 and you are going to get a notice.

15 Now, some percentage of these
16 false notifications are generated by, let's
17 call it, inadvertent conduct by the motoring
18 public.

19 Let me give you -- and let me
20 also say to you that those that are riding the
21 toll facilities every day and have no problems
22 are much less likely to call public officials
23 and commissioners and executive directors.
24 Because people tend to complain, they normally
25 don't commend. It's just human nature.

1 Nothing bad about human beings, but that's the
2 way we behave. I behave that way, too.

3 Let me give you an illustration.
4 This doesn't mean this is the way it happens
5 all the time, but I think it drives home the
6 fact that not all of these false violations are
7 generated by lane failures, something wrong
8 with these violation processing center
9 operations.

10 There was a gentleman, unnamed,
11 member of the public, driving Garden State
12 Parkway and the Turnpike. He was an E-ZPass
13 holder. And he would regularly get his monthly
14 statements, and there would be a wholesale
15 amount of charges to that statement. And he
16 never used the roads at those times.

17 So he would -- he complained.
18 And ultimately, the consortium placed his
19 transponder, asked him probing questions, where
20 do you locate your transponder? Do you have
21 your license plate on file? Yes, I have my
22 license plate on file. Kind of mysterious.

23 He got very angry. He wrote to
24 the governor. He wrote to his public
25 officials. He actually made an appearance

1 before the Board of Commissioners on the Garden
2 State Parkway. And he was going to -- he
3 threatened suit. This went on for months.

4 Well, I mean, we couldn't figure
5 it out either. Because it couldn't be lane
6 equipment based upon the fact that the charges
7 were at various different toll plazas on a
8 regular basis.

9 Do you know what the problem
10 was?

11 The problem was that when he
12 filled out his application and he put his
13 license plate down on the application so we
14 could cross-check it, he reversed two numbers.
15 And as luck had it, the license plate he
16 actually recorded on his application was a live
17 license plate of a cheater.

18 So when the cheater went through
19 the system, that plate was pictured, and it was
20 a lookup. And what happened? Lookup was the
21 honest gentleman's plate came up on the plate
22 file, and his account was charged.

23 Now, I am not saying that's why
24 we have false violations regularly. But what I
25 am saying to you, it's not that simple. It's

1 not that every complaint is justified.

2 It's a system that needs to be
3 refined on a regular basis. The public needs
4 to be more responsive than they are as to
5 mounting. And there will be errors by the
6 public and by the operators of the customer
7 service center and the VPC. It's not perfect.

8 But I have to tell you, there is
9 a million and a quarter transactions a day, and
10 at least 96 or 97 percent of them have no
11 complaints.

12 So we are dealing with a lot of
13 people. But a small percentage -- and I
14 believe that with some patience and diligence
15 and a contractor committed and consortium
16 personnel on top of it, these problems could be
17 materially reduced.

18 CHAIRMAN WISNIEWSKI: I agree
19 with you. I am sorry. I wanted to follow up
20 one point.

21 You talked about the license
22 plates. Isn't it correct that the application
23 that you fill out for the E-ZPass account, when
24 you get to the part of your license plate, it
25 says it's optional whether you put that down?

1 That's what we've been told in the past.

2 MR. GROSS: I don't know if it
3 was changed or not. But initially it was
4 believed by the consortium that we didn't want
5 to discourage the public from becoming E-ZPass
6 members by asking them for information that
7 they thought was private.

8 There has been a lot of
9 articles -- recently they haven't appeared --
10 where they've criticized E-ZPass or electronic
11 toll collection because it's invasion of
12 privacy, we are giving too much information to
13 government, we shouldn't tell government where
14 we are going, when we are going, who we're
15 with, and that type of analysis.

16 And the consortium initially
17 believed that although it was very important to
18 have a license plate, we didn't want to mandate
19 it.

20 I have a general recollection
21 that that form has been changed.

22 CHAIRMAN WISNIEWSKI: That would
23 be beneficial.

24 Assemblyman Johnson, I know you
25 had some questions.

1 ASSEMBLYMAN JOHNSON: Thank you,
2 Mr. Chairman.

3 Thank you, Mr. Gross. I have a
4 few questions. I am not going to repeat what
5 we've heard before.

6 I am trying to determine or
7 understand the thinking when they are planning
8 on collecting the money from the violators.

9 And when a summons or when a
10 complaint is signed, what is the charge
11 exactly?

12 MR. GROSS: Toll violation,
13 which is a statutory violation. Both the
14 regulation --

15 ASSEMBLYMAN JOHNSON: Is that
16 disorderly, do we know?

17 MR. GROSS: I don't remember
18 under what section --

19 CHAIRMAN WISNIEWSKI: Title 39
20 violation.

21 ASSEMBLYMAN JOHNSON: Motor
22 vehicle violation. Okay.

23 So let's say that you have some
24 violators up at exit 18 on the Turnpike and you
25 have -- 18 is Ridgefield Park, 16 is maybe

1 Secaucus, you have different exits. Each
2 municipal court is going to entertain these
3 complaints?

4 MR. GROSS: The answer would be
5 yes.

6 It's wherever the plaza is
7 located, that's where the municipal court
8 action will be filed.

9 ASSEMBLYMAN JOHNSON: And there
10 will be some type of team of people that go in
11 from different courts to assist the prosecutor
12 in prosecuting these cases?

13 MR. GROSS: The answer is yes.

14 An expert -- it took a while,
15 you know -- I said earlier that it's much too
16 long for the evidence package to have been
17 generated. And that is a correct statement.

18 But part of the delay was
19 finding an expert that the consortium
20 reasonably believed would be persuasive in the
21 municipal court system in going through the
22 technology.

23 Just like 25 years ago one had
24 to prove the reliability of radar. Well, it
25 will be a requirement when in municipal court

1 to prove the reliability of the operation of
2 the lane and the violation processing center so
3 that the court is satisfied that in fact the
4 person before them is the person that went
5 through the toll lane and didn't pay their
6 toll.

7 And once that expert -- well,
8 that expert has been secured, and there is
9 about a dozen test cases in municipal court.

10 There is a process where you can
11 ask the court system to take judicial notice of
12 the reliability of the system.

13 And if that is done and judicial
14 notice is taken, then the amount of time you
15 are really going to have to go to court and
16 prosecute these cases should be relatively
17 small. Because if you screen out -- if the
18 system operates satisfactorily, it's going to
19 screen out those that have legitimate defenses.

20 And most of the violators are
21 going to not contest the matter because the
22 consequences are so great.

23 But to answer your question, the
24 operator of the system is required to provide
25 both the lay and expert witnesses to testify in

1 municipal court under the contract.

2 ASSEMBLYMAN JOHNSON: Even in
3 radar cases, let's say, where it's accepted by
4 the court that this type of instrument is
5 approved and is reliable, the defendant or the
6 violator in this case has the right to face his
7 or her accuser. In this case, it would be this
8 consortium. So someone would have to be there,
9 I take it, to present your side of the case
10 before the prosecutor.

11 MR. GROSS: You are right. All
12 I was saying, Assemblyman, is that the number
13 of times you are required to do that should be
14 relatively small in relationship to volume.

15 Because a person is less likely
16 to contest a charge against them when they know
17 they are in violation. And when they lose,
18 they are going to be paying so much more in
19 fines than they would if they didn't contest
20 it.

21 ASSEMBLYMAN JOHNSON: I
22 understand.

23 Has the collection agency
24 collected any money? Is there a collection
25 agency on board yet?

1 MR. GROSS: As of the time I
2 left the Turnpike, the answer is no. There was
3 an RFP. There was a company that consortium
4 members selected as the most desirable. There
5 were contract negotiations and draft contracts
6 prepared. And work started to have
7 communications between the violation processing
8 center and that company.

9 That's as far as it went when I
10 left.

11 ASSEMBLYMAN JOHNSON: As the
12 chairman said before, it's kind of on the honor
13 system right now.

14 MR. GROSS: Well, the honor
15 system is not good.

16 ASSEMBLYMAN JOHNSON: No.

17 MR. GROSS: It's not good
18 because all you need to do is look at the
19 experience on the Garden State Parkway who
20 before E-ZPass, 70 percent of their lanes were
21 automatic baskets where you threw your coins in
22 and -- I believe this is a correct
23 number -- nearly or about 28,000 violations a
24 day.

25 So there will be a very higher

1 percentage of violations if the violators
2 believe they can get away with it.

3 ASSEMBLYMAN JOHNSON: That's all
4 I have.

5 CHAIRMAN WISNIEWSKI: Senator
6 Burzichelli.

7 ASSEMBLYMAN BURZICHELLI: Thank
8 you, Mr. Chairman.

9 Thank you, Mr. Gross, for your
10 patience, forthright discussion with this
11 committee.

12 I only have a few short things.
13 Have you seen today's
14 Star-Ledger in your travels today?

15 THE WITNESS: No, I haven't.

16 ASSEMBLYMAN BURZICHELLI: The
17 heading is "E-ZPass deficit is ballooning,
18 Revenue projected to fall 469 million dollars
19 short."

20 And listening to you today and
21 the details discussed, I don't think for a
22 moment that this is the legacy that you wanted
23 to leave or be associated with. And I believe
24 that.

25 I happen to in our packet of

1 information, happen to have had a chance to
2 read a chapter from the book called "Sold
3 Short." I am certain you glanced that. It's
4 called "Gross Mismanagement."

5 MR. GROSS: Yes, I've read the
6 chapter.

7 ASSEMBLYMAN BURZICHELLI: Do you
8 care to offer us your critique of this
9 individual's assessment of the events
10 surrounding the system?

11 MR. GROSS: I believe the author
12 of that book is a Mr. Asensio, if I have it
13 right. I may not be pronouncing it correctly.

14 This gentleman contacted --
15 tried to contact me soon after, I believe, Able
16 acquired this contract with WorldCom.

17 My recollection is I spoke to
18 him once, and after that was advised by the
19 consortium counsel not to engage in
20 conversation.

21 This gentleman was selling short
22 the stock of Able to Telecom, and was doing so,
23 I believe, much before Able acquired MFS from
24 WorldCom. And he was driven by a motive other
25 than the proper performance of a contract. He

1 was driven by his own business intentions.

2 And he regularly tried to speak
3 to me. And I didn't speak to him because Able
4 was a public company, and I was not going to
5 provide any information to him that -- in
6 connection with what the consortium was doing,
7 how it was negotiating with the company,
8 et cetera.

9 And that was, in my judgment,
10 the genesis of his writing a book with a
11 chapter about E-ZPass.

12 He then -- for about nine months
13 we didn't hear from him. And then he wrote a
14 letter to me and said, I am writing a book, and
15 here is a list of questions that I will give
16 you an opportunity to answer.

17 And they were all loaded
18 questions. And we were still dealing with Able
19 at the time.

20 So at the advice of counsel I
21 wrote back to him and said, if you write your
22 book, send me a draft before you send it to the
23 printer and I will give you my comments. And
24 he never did that.

25 ASSEMBLYMAN BURZICHELLI: Would

1 you consider any of his conclusions or
2 allegations to be actionable with regards to
3 what is directed at you?

4 MR. GROSS: The article is very
5 inaccurate as to me. And I asked counsel for
6 their opinion in connection with a suit. And
7 they advised that as a public official, the
8 opportunity of successfully prosecuting a suit
9 was minuscule.

10 ASSEMBLYMAN BURZICHELLI: I
11 raised the same question to the director of my
12 political campaign last year and got a similar
13 answer. I am familiar with those frustrations.

14 If I can ask one more question.

15 We've heard a lot of testimony
16 prior to your arrival between the Parsons
17 people and the relationships, the availability
18 of information, and how the project seemed to
19 be being managed internally. And frankly, for
20 a project so large, we all were very concerned
21 and somewhat surprised.

22 And I ask this, and I don't mean
23 to be harsh in this question, but I need to ask
24 this question. We don't know one another
25 personally, so I don't have a sense of how you

1 handle certain things.

2 But considering you were
3 involved in arbitrating, making a decision as
4 to whether or not the other contractor had a
5 valid claim when that issue came about, and
6 then later -- and you chose the other people
7 who eventually had the contract. And through
8 this process it became very clear that it just
9 got deeper and deeper, that the performance
10 wasn't as certain as you hoped it would have
11 been, but you had to make a decision as to
12 whether to stay with them or not stay with
13 them, when do you cut bait, when do you leave,
14 when do you start again.

15 I heard you say today, we made
16 the decision because we thought if we stayed a
17 little longer, with the influx of money, with
18 them being propped up, we could get through
19 this, and it made more sense to do that rather
20 than stop that, bring in insurance companies,
21 and start again.

22 Were you comfortable that you
23 could be unbiased, after having chosen these
24 people in legal proceedings, to then walk away
25 from them halfway through? Did you feel any --

1 I don't want to say pressure, but did you have
2 an alliance, de facto alliance with the people
3 you chose to do this job?

4 Did it benefit you -- I don't
5 mean benefit financially, but since you chose
6 them, did you feel you had to support them
7 other than based on their performance?

8 MR. GROSS: Absolutely not.

9 My objective, and I believe the
10 objective of all consortium members at all
11 times, was what is in the best interest of the
12 public in connection with being able to deliver
13 an E-ZPass system to the public that was
14 timely.

15 Each time that there was -- I
16 think it's fair to say a crisis with the
17 contractor, and there were numerous ones, there
18 were extensive meetings, both with the
19 contractor and with the consortium members
20 separate from the contractor.

21 And the unanimous decision of
22 the consortium -- even though the Turnpike was
23 the lead agency, the Turnpike never made any
24 significant decisions on its own. It was
25 always a collective decision of all the

1 agencies, and sometimes, with the participation
2 of the Commissioner of Transportation.

3 And each time we had a
4 crisis -- and there was probably at least four
5 of them, there was a number of amendments,
6 there were a number of times we assessed
7 liquidated damages. There was -- each time
8 there was always dialogue about should we end
9 it now? Should we just, you know, call in the
10 bonding company?

11 And each time we tried to
12 balance that. And the contractor came through
13 with either a few new managers, more money,
14 either from Able or WorldCom. The ultimate
15 conclusion -- and I am simplifying it -- was
16 that it was in the best interests of the public
17 who we were serving to continue with the
18 contractor than not.

19 But it was always based upon
20 what is in the best interest of the public.

21 ASSEMBLYMAN BURZICHELLI:

22 Mr. Gross, one last question. Almost a
23 philosophical question.

24 But at this point, who do the
25 people in New Jersey say about the 469 million

1 in default? You are no longer there. Are we
2 to be satisfied because you are no longer there
3 that the pound of flesh has been extracted from
4 really what has turned out to be a project that
5 was not favorable, with all good intentions?

6 It seemed to be working
7 elsewhere, not working here. Lot of
8 frustrations, lot of layers. This committee is
9 having difficulty cutting through the layers.

10 Here you speak of management
11 that has layers as deeply as difficult.

12 Who do we say?

13 MR. GROSS: Well, as you would
14 expect, A, I haven't read the Star-Ledger
15 article, and I certainly haven't read the
16 report. So I don't know what the assumptions
17 in the report are that leads to the conclusion
18 that there would be a balance due of 469
19 million dollars in March of 2008.

20 What I can only speak to is what
21 I signed off on in the end of November of 2001
22 when -- based on that date, based upon
23 everything that we knew and what we believed to
24 be reasonable projections, that the balance
25 would be 161 million.

1 But we also knew that if certain
2 things didn't fall into place promptly, which
3 were part of the assumptions in November of
4 2001, that number could get much larger.

5 Now, having said all that, I'll
6 say hypothetically whatever the number is, it's
7 still something less than a hundred percent of
8 the cost of construction and operations. There
9 is already 100 million dollars in fiber leases
10 revenue -- I shouldn't say that.

11 There is about 80 million
12 dollars -- I am speaking again from the time I
13 left, I don't know what happened in the past
14 four months. 80 of the 100 million dollars in
15 fiber revenue was prepaid. So the consortium
16 has that money. There is 100 million dollars
17 in fiber leases. That is 100 million dollars
18 less than what would otherwise have to be paid
19 for the system.

20 And, you know, it's all
21 according to how you look at the violation
22 revenue.

23 If you look at performance to
24 date and say, you are never going to collect
25 anything, and then you revise your model and

1 you take out 200, 300 or 400 million dollars,
2 you are going to be building up a potential
3 number in March of 2008 that is fairly
4 significant.

5 If you believe that there has
6 not been an adequate testing of the collection
7 of the violation revenue, then you are not
8 going to project such a large number until the
9 testing occurs.

10 So it's hard for me to tell what
11 is the makeup of that 469 million dollars.

12 There is one other point that we
13 should all be aware of as we go through this
14 exercise. And that is that when the original
15 forecast occurred, the operating expenses,
16 which are the transaction expenses -- every
17 time you go through a toll booth, every time
18 you use the road which uses a transponder, that
19 is called a transaction.

20 And Chase Manhattan Bank
21 receives a little more than 4 cents for
22 processing that. In addition, every time your
23 credit card is charged there is a bank charge.
24 92 or 93 percent of the public that is an
25 E-ZPass member uses a credit card. And a

1 family, a noncommercial family, can get up to
2 four transponders without payment.
3 Transponders cost \$22 and change apiece.

4 Originally it was projected that
5 35 percent on average of the motorists using
6 the five toll facilities would become E-ZPass
7 members, and the other 65 percent would pay as
8 they previously had paid, by cash or throwing a
9 coin in or buying a token on the Garden State
10 Parkway.

11 That 35 percent, when I left,
12 was up to 55 percent. The difference between
13 35 and 55 percent of E-ZPass users is a couple
14 hundred million dollars in additional good
15 expenses.

16 Because it is to me -- you say,
17 what do you want to leave with? It is a good
18 feeling, it is a warm feeling to know that
19 E-ZPass has been accepted as the premiere
20 method of collecting tolls, and that now 55
21 percent of the public that is traveling on
22 these toll roads that form the consortium are
23 using it. But it costs more money to do that.

24 So when you are looking at what
25 is the balance due in 2008, you need to take

1 that into account.

2 ASSEMBLYMAN BURZICHELLI: All
3 that being said, hindsight being 20/20, you
4 having sat through the decision-making process
5 between the two potential vendors, would
6 Lockheed have been a better choice?

7 MR. GROSS: I didn't sit through
8 that. I was not part of the Review Committee.

9 ASSEMBLYMAN BURZICHELLI: I
10 don't mean the review. I mean the
11 administrative law that took place when they
12 did the protest.

13 MR. GROSS: I was the hearing
14 officer.

15 Let me say this without in any
16 way denigrating Lockheed or anyone else. There
17 are relatively fewer number entities that hold
18 themselves out legitimately as being in this
19 industry that will design and construct an
20 electronic toll system.

21 There is not one toll agency
22 that I know of as of the time that I was with
23 the Turnpike that had a deliverable on time,
24 that worked in accordance with the contract.

25 This is a very tough assignment

1 for anybody to do. And the entities that went
2 into this business initially all believed it
3 was easy. They all believed that since the
4 technology was shelf technology, this was a
5 good way to expand their business potentially.

6 And they all found as they got
7 into it and were implementing the programs that
8 even though it's shelf technology, it's very
9 complex. Because you are dealing with millions
10 of transactions in weather conditions, and you
11 are dealing with them at about one-thousandth
12 of a second.

13 And there has been significant
14 problems that all over time have been resolved
15 by every one of the companies that hold
16 themselves out in this industry.

17 Some of the companies would not
18 have had the cash flow problems that this
19 contractor had throughout the years that caused
20 an incredible amount of problems for the
21 consortium. So from that standpoint, others in
22 the field would have avoided that problem.

23 But from the standpoint of
24 technical issues, it's hard to say that one
25 would find themselves with significantly

1 different resources to date.

2 As I said earlier -- I am sorry
3 to be long-winded -- the Garden State Parkway
4 and the Turnpike are more difficult to have a
5 well operating E-ZPass system than most other
6 roads in the country for the reasons I
7 described earlier.

8 ASSEMBLYMAN BURZICHELLI: Very
9 good. Thank you, Mr. Gross.

10 CHAIRMAN WISNIEWSKI:
11 Assemblywoman Stender.

12 ASSEMBLYWOMAN STENDER: Thank
13 you.

14 Just to follow up on a couple
15 other things that I was speaking to before.

16 We were talking about the
17 violations processing center. The original
18 contract called for an integrated system. So
19 there would be one center that would send out
20 the violations and then process them, the
21 customer service and the violations. But in
22 the end, you allowed the contract to be amended
23 into two separate centers.

24 Could you speak to that?

25 MR. GROSS: Yes, I can. And you

1 are right.

2 The contract only has one
3 section. It's called a customer service
4 center. I don't know what it's captioned. But
5 the contract reads that the customer service
6 functions and the violation processing
7 functions are really united in their operation.

8 Chase Manhattan Bank elected not
9 to do the violation processing. And I don't
10 know really to this day the precise reasons.
11 That was between negotiations between MFS and
12 Chase. And --

13 ASSEMBLYWOMAN STENDER: I am
14 sorry. Wasn't that part of the contract? If
15 that was part of the contract, they were
16 supposed to do the whole thing.

17 MR. GROSS: MFS is responsible
18 for everything under the contract. The
19 consortium has no direct contractual
20 arrangement with any subcontractor. The
21 consortium approves the major subcontractors
22 under the contract, but it has no contract with
23 them. The entire contract is with the prime
24 contractor, MFS.

25 MFS under the contract is

1 obligated to build and operate both the
2 customer service center and the violation
3 processing center.

4 It was initially contemplated
5 that both those functions would be served by
6 Chase Manhattan Bank. But they weren't. Chase
7 declined to operate the violation processing
8 center. And what I was saying is I don't know
9 the precise reasons that caused Chase not to
10 operate the violation processing center. I
11 trust they were as a result of not reaching
12 agreement with MFS.

13 So Chase became the customer
14 service center operator. And MFS proposed
15 another entity, whose name escapes me, as the
16 violation processing center operator.

17 And the consortium reviewed the
18 credentials of this entity -- and, I am sorry,
19 I just can't remember the name, it had initials
20 in it -- and was satisfied that this entity had
21 both the requisite experience and skill to run
22 a violation processing center, to design it and
23 to run it.

24 MFS had a dispute with that
25 entity. It came to the consortium in the

1 summer of '98 and said that -- it offered a
2 second entity to build and operate the VPC.

3 And that is why, if you
4 remember, I said to you, liquidated damages
5 were assessed early in the contract. They were
6 supposed to have a violation processing center
7 operating in November. Well, in the end of
8 August, they still didn't have a contract.

9 They ultimately in either
10 September or in that time frame advised the
11 consortium that they were going to operate it
12 themselves. And they submitted a proposal.
13 They were going to build it. They were going
14 to do the software for it and operate it
15 themselves.

16 And the consortium was very
17 upset with that because MFS had absolutely no
18 experience in operating a violation processing
19 center. However, counsel advised us that the
20 prime contractor under the contract could
21 perform any aspect of the contract. And that's
22 how MFS came to be the VPC operator.

23 ASSEMBLYWOMAN STENDER: So you
24 didn't have to amend the contract to allow
25 that, that was just something they could do

1 under the contract?

2 MR. GROSS: If we had to give
3 consent, we would not have consented to that.
4 MFS had absolutely no experience in operating a
5 back office.

6 And I remember a meeting with
7 them in September, September of 1998. And I
8 looked -- we were critiquing their proposal to
9 build and operate the center. And I said to
10 them, you will regret this because you will
11 fail.

12 ASSEMBLYWOMAN STENDER: Well,
13 apparently they have.

14 Earlier when we had talked about
15 the base financial model, and you said that was
16 in the contract. In the documents we have it
17 is not in the contract. And your letter in
18 fact said that that was going to be provided
19 for the consortium.

20 I understand that you probably
21 can't provide better information at this point
22 in time, but we are still looking for that base
23 financial model because we don't have it. And
24 that is sort of part and parcel of what we are
25 trying to gather here.

1 Because I think that is
2 important for us to understand as we try to put
3 this puzzle together, which doesn't seem to be
4 going together.

5 MR. GROSS: I read the letter
6 over the lunch period, and it does say that.
7 But again, I say this to you and I ask you to
8 ask the Turnpike. On the contract signing
9 date, which I believe is March 10, 1998, the
10 base case model was made an exhibit of the
11 contract. There are a whole variety of
12 exhibits, and the model was one of them.

13 But the Turnpike certainly has
14 that model. That model was put out. It was
15 given to the press when we had the press
16 conference after the execution. It's been
17 distributed and discussed with the media
18 hundreds of times. And it certainly is
19 available to you. But I don't have access to
20 it.

21 CHAIRMAN WISNIEWSKI: Just for
22 point of clarification, I think, Assemblywoman,
23 we have a copy provided to us by the Turnpike
24 of the contract documents. And not included
25 with the -- I mean, as of a month ago, not

1 included with those documents, not appended,
2 not indexed, is the base case -- it's not
3 there.

4 So while we will certainly take
5 your word that it should be, as we speak today
6 it's still not part of the documents. And that
7 I guess -- perhaps it's entirely innocent. But
8 certainly it creates more suspicions on the
9 part of this committee as to the underpinnings
10 of the finances where a document is supposed to
11 be there but it's not.

12 I am sorry to interrupt.

13 MR. GROSS: May I address the
14 chairman for a moment?

15 Do you have the revised model
16 dated November 2000?

17 CHAIRMAN WISNIEWSKI: Yes, we
18 do.

19 MR. GROSS: As an exhibit to
20 that revised model is the original model.
21 Because the first revision referred to the
22 original model of March 10th.

23 So indirectly you've got it.
24 You should have gotten it differently, but you
25 do have it.

1 CHAIRMAN WISNIEWSKI: So it's
2 appended as an exhibit to the revised model.

3 MR. GROSS: To the 2000 revised
4 model.

5 CHAIRMAN WISNIEWSKI: The
6 November 2000 report should be in everybody's
7 packet. I would imagine appended to that would
8 be that document then.

9 MR. GROSS: Yeah. Not the 2001.
10 The 2001 revised the 2000. But the 2000
11 revised the original model. And that is an
12 exhibit to that report.

13 CHAIRMAN WISNIEWSKI: Thank you.

14 ASSEMBLYWOMAN STENDER: As a
15 final point, you've referred often to the fact
16 that as part of the MFS contract that Chase
17 Bank was essential in your mind to it being
18 successful.

19 If Lockheed had been the
20 contractor, what bank would have been involved?
21 Do you know?

22 MR. GROSS: Lockheed runs its
23 own customer service.

24 ASSEMBLYWOMAN STENDER: So they
25 would not have been involved, Chase Manhattan,

1 at all?

2 MR. GROSS: Chase was not on the
3 Lockheed team.

4 ASSEMBLYWOMAN STENDER: I think
5 that really concludes my questions.

6 I believe, Mr. Gross, that in
7 your heart of hearts you believe that the
8 problems that we have here are really in large
9 part, especially with the violations,
10 individual problems. And I guess while I
11 really appreciate your being here and answering
12 our questions, I just couldn't disagree with
13 you more.

14 What you call creative I find to
15 be incredibly -- I don't know whether it's
16 delusional or incompetent. But the system is a
17 disaster. And the more questions that we ask,
18 the more questions that we have.

19 And we've spent a lot of time
20 today going through a lot of details. And as
21 yet, it makes not a lot of sense to me how you
22 can represent -- and I believe you believe
23 this -- that all of these decisions were made
24 with informed judgment. It just seems like an
25 oxymoron to me, and it's a disgrace.

1 Thank you.

2 Thank you, Mr. Chairman.

3 CHAIRMAN WISNIEWSKI: Thank you.

4 Assemblyman Gusciora.

5 ASSEMBLYMAN GUSCIORA: Thank

6 you.

7 I will conclude my remarks. I
8 also apologize for my impatience. However, I
9 think after five hours I don't think we are any
10 closer to a resolution of this matter or
11 getting to really the essence of what went
12 wrong, how did it go wrong, and what could we
13 do for the future.

14 What really struck me is just
15 the tone of indifference. And I think maybe
16 that is indicative of the entire Whitman
17 Administration. It's no wonder why we are
18 facing a six billion dollar deficit. It's
19 almost as if it's other people's money.

20 You brought up one example of
21 one car owner who -- one clerical error on his
22 license plate. We have trucking companies who
23 testified before us that have canceled their
24 E-ZPass because they don't have the resources
25 to deal with the false violations.

1 Wakefern Foods, one of the
2 biggest food distributors in the country,
3 testified that they have two full-time persons
4 just to go through the monthly bills to
5 straighten them out, but yet we don't have an
6 answer for that.

7 We also have the violation
8 processing center itself, missed deadlines
9 after deadlines, still not fully running. We
10 don't have a collection agency.

11 We have Arthur Andersen, who did
12 the audit of Able, and yet somebody allowed
13 Able to continue grossly underfinanced,
14 mismanaged, and yet the agency not once
15 bothered to step in. And we had the ability to
16 say -- to force WorldCom to continue the
17 contract, we allowed -- because we've
18 contracted WorldCom.

19 We didn't contract with Able or
20 Adesta or the other alphabet soup companies
21 that were in here. But yet there was no
22 oversight, no invoking of the provisions that
23 would have canceled the contract, that we could
24 have gone after the performance bond.

25 And in the end, we find out in

1 the final bankruptcy order we may never be able
2 to collect any money because we did not even
3 protest the final bankruptcy order that
4 said -- that wiped out all these old debts.

5 And then finally, we get a
6 figure that's 700 million dollars off. Today
7 in the Star-Ledger it says we are 469 million
8 dollars in the hole, and you guys projected
9 that we'd be 488 million dollars in the black.

10 I don't know why there is such
11 indifference or there is not some explanation,
12 no apology, no nothing, no admission of error.
13 It's just this indifference that we've gotten
14 for the last five hours. And yet we are not
15 any closer to what went wrong, why it went
16 wrong, and what could we do in the future.

17 Thank you, Mr. Chairman.

18 CHAIRMAN WISNIEWSKI: Thank you.
19 Assemblyman D'Amato.

20 ASSEMBLYMAN D'AMATO: Thank you,
21 Mr. Chairman.

22 Mr. Gross, you became the
23 Executive Director at what point?

24 MR. GROSS: The Executive
25 Director in February of 1997. But I was Acting

1 Executive Director since October of '95.

2 ASSEMBLYMAN D'AMATO: And you
3 left in January 2002?

4 MR. GROSS: That's correct.

5 ASSEMBLYMAN D'AMATO: From '95
6 to 2002, where was your office located?
7 Physically located?

8 MR. GROSS: Administration
9 Building, which is right off Interchange 9 in
10 New Brunswick.

11 ASSEMBLYMAN D'AMATO: Of the
12 New Jersey Turnpike Authority?

13 MR. GROSS: Correct.

14 ASSEMBLYMAN D'AMATO: Give me an
15 average of how many employees were there during
16 your administration, if you will.

17 MR. GROSS: In the building or
18 in the workforce?

19 ASSEMBLYMAN D'AMATO: In the
20 workforce.

21 MR. GROSS: On average,
22 full-time employees, about 1,600. There was
23 also part-timers, about 600, and about 400
24 temporaries.

25 ASSEMBLYMAN D'AMATO: Was there

1 a record retention policy relative to
2 correspondence, memos, e-mails, minutes of
3 meetings during that time?

4 MR. GROSS: Yes.

5 ASSEMBLYMAN D'AMATO: And what
6 was that policy?

7 MR. GROSS: Well, preserve and
8 file.

9 ASSEMBLYMAN D'AMATO: For how
10 long?

11 MR. GROSS: I don't recall what
12 the State law is, if it's three or seven years.
13 But in accordance with law.

14 ASSEMBLYMAN D'AMATO: Every time
15 the consortium met were you present?

16 MR. GROSS: No.

17 ASSEMBLYMAN D'AMATO: Why not?

18 MR. GROSS: Well, take the
19 construction phase. There was a project
20 manager. There were leaders in the area of
21 finance, in the area of technology, in the area
22 of actual construction.

23 These groups -- and we are
24 talking about 40, 50, 60 people from all the
25 agencies -- would meet on a regular basis,

1 daily, weekly, and all report their meetings to
2 the project manager, who would attend some of
3 the sub-meetings based upon the subjects being
4 discussed.

5 I would attend a weekly meeting
6 on occasion based on the agenda item, and then
7 would meet with the chief engineers and the
8 project manager and the deputy manager on a
9 fairly frequent basis to get a sense of issues,
10 and then, from time to time, meet with the
11 contractor.

12 And, of course, when things
13 became a crisis -- and it happened at least a
14 half dozen times during the period -- I became
15 directly involved.

16 ASSEMBLYMAN D'AMATO: You are
17 telling us that there was a printed agenda for
18 some of these meetings that you just
19 referenced?

20 MR. GROSS: Some of the
21 meetings, again, many of which I wouldn't
22 attend, had agendas, yes.

23 ASSEMBLYMAN D'AMATO: If we
24 wanted to look at those printed agendas over
25 the years, would they be located in some room

1 in the New Jersey Turnpike Authority?

2 MR. GROSS: Yes. The E-ZPass
3 operation had a section, physical section,
4 where a number of employees worked, you know,
5 on Monday through Friday, and records were
6 retained there. Minutes and e-mails all were
7 retained there or under the jurisdiction of
8 some of the various technical leaders of the
9 project.

10 ASSEMBLYMAN D'AMATO: Mr. Gross,
11 when you left who was the person or persons in
12 charge of that section where they retained all
13 these documents that you just mentioned?

14 THE WITNESS: I really don't
15 know if there was one person that was totally
16 responsible. But I would think that either
17 Carol Hollows or Steve Beunte -- Steve Beunte
18 is a senior engineer at the Turnpike and was
19 assigned to the engineering responsibilities of
20 the project -- would certainly be able to
21 secure for you and the committee all of the
22 areas that we spoke to.

23 ASSEMBLYMAN D'AMATO: Thank you,
24 Mr. Gross.

25 And thank you, Mr. Chairman.

1 CHAIRMAN WISNIEWSKI: Mr. Gross,
2 I just wanted to followed up on a couple of
3 various issues that were raised during your
4 testimony.

5 The first, going back to your
6 opening statement, one of the things you had
7 said was that -- talking about the delays in
8 the implementation of E-ZPass, you said,
9 however, the principal but not exclusive cause
10 of delay was the Lockheed litigation.

11 My records show that the Supreme
12 Court denied cert on that litigation in July of
13 97, and the contract wasn't signed until March
14 of '98. So approximately nine months after the
15 end of the litigation.

16 What was the cause of the delay
17 after the litigation ended before the contract
18 was signed?

19 MR. GROSS: I am sorry. I had
20 my date wrong. That statement was done from
21 memory, so I apologize if I was wrong with the
22 date of the Supreme Court decision.

23 At the direction of counsel, the
24 consortium was instructed not to meet with MFS
25 and advance the terms of the contract until the

1 Lockheed litigation was concluded.

2 So once we were given the green
3 light to proceed, it took a considerable period
4 of time to complete a contract. And I think
5 you and your staff have seen, it's fairly
6 extensive. Some of the exhibits to the
7 contract are just as extensive as the contract
8 itself.

9 CHAIRMAN WISNIEWSKI: Just to
10 summarize, I guess, your answer is that the
11 reason it took nine months between the
12 conclusion of the Lockheed litigation and the
13 signing of the contract is that was the period
14 of time in which negotiations on exact terms
15 were carried out?

16 MR. GROSS: That is correct.

17 In addition to that, the
18 negotiations on the private lending also took
19 place during the period we just described. And
20 that took a considerable amount of time as
21 well.

22 CHAIRMAN WISNIEWSKI: The
23 private lending you are talking about is the
24 lending that financed the construction and the
25 operation of the service center and the

1 violation center per the contract?

2 THE WITNESS: Right.

3 CHAIRMAN WISNIEWSKI: That is
4 financing that came through EDA but was
5 privately placed?

6 THE WITNESS: Correct.

7 And there was one other thing --
8 you are sugaring my recollection. There is one
9 other thing that took place during this period
10 of time, and that was the enforcement
11 legislation that was required in order for the
12 project to work.

13 And that also happened in that
14 time frame that we just discussed.

15 CHAIRMAN WISNIEWSKI: I wanted
16 to go back to an issue that seems to be the
17 central focus, and quite honestly, I would
18 agree with that, and that is where did the
19 notion of self-financing come from?

20 And we've heard testimony from
21 you today that this was a contractor response
22 to a best and final offer. Is that correct?

23 THE WITNESS: That's correct.

24 CHAIRMAN WISNIEWSKI: I
25 understand that you came on board in late '95,

1 early '96 as acting Executive Director. Is
2 that correct?

3 MR. GROSS: October of '95.

4 CHAIRMAN WISNIEWSKI: I just
5 wanted to point out for you the Request for
6 Proposal issued by the consortium. And my aide
7 is going to show you the page.

8 On a page called "Proposal
9 Procedures," 1.0, requirements and conditions
10 for the proposals, there is a lot of language
11 there, but in its pertinent part it says,
12 Furthermore, the procurement process will
13 include the valuation and negotiation of
14 proposed financial and work scope options. And
15 it goes to on to say, these options can take
16 the form of added-value, revenue that offsets
17 capital and operation costs associated with the
18 service and materials provided under this
19 contract.

20 And I wanted to show this
21 language to you because my understanding of
22 this is this is where the respondents to the
23 request for proposal came up with the notion of
24 revenue generation. It came from the Request
25 for Proposal itself.

1 Would you agree with that?

2 THE WITNESS: I have not looked
3 at that for a while, but I certainly agree with
4 you that as one of many options, the consortium
5 through this paragraph asked the proposers to
6 consider revenue enhancements as set forth.

7 CHAIRMAN WISNIEWSKI: And as a
8 matter of practicality, it came down to
9 Lockheed and MFS, both knowing that the
10 consortium is looking to see who can propose
11 the best financial package as well as work
12 package.

13 MR. GROSS: There is no question
14 that, as I recall, the request for a best and
15 final offer indicated the consortium's
16 preference for zero down, zero over the
17 construction, operating term.

18 CHAIRMAN WISNIEWSKI: But this
19 document would seem to indicate that the
20 genesis, the base from which all of this
21 stemmed was the Request for Proposals that
22 asked for the respondents to elaborate on
23 options for added-value revenue that offsets
24 capital and operation costs.

25 MR. GROSS: That's right.

1 This document that you are
2 referring to, the RFP, didn't create violation
3 revenue.

4 As I said earlier, there is only
5 one or two ways you can build an electronic
6 toll collection system; either put gates in the
7 toll lanes or have a camera system and attempt
8 to identify the violators.

9 CHAIRMAN WISNIEWSKI: There is
10 another way of paying for it, and that is
11 simply viewing it as an infrastructure cost
12 without regard to violation revenue and paying
13 for it that way.

14 MR. GROSS: I am not talking
15 about how you finance it or what you rely upon.

16 I am saying, when you construct
17 an E-ZPass system, physically, just picture a
18 lane, a toll lane, and you either have to put a
19 gate there so as to prevent the violator from
20 passing through or we have to have a camera
21 system to identify the violator.

22 You can't have an unmanned
23 electronic toll system operating in a lane
24 without one or the other or you are not going
25 to collect your toll revenues.

1 CHAIRMAN WISNIEWSKI: I

2 understand your point.

3 MR. GROSS: So what I am saying
4 to you -- excuse me, Mr. Chairman.

5 What I was saying was that once
6 you recognize that you have to have a camera
7 system, assuming you reject gates, you know you
8 are going to generate violation revenue. The
9 question is, to what extent, and how you use
10 it.

11 So this paragraph in the RFP was
12 not created for the first time for violation
13 revenue. It was asking the proposals to be
14 creative.

15 CHAIRMAN WISNIEWSKI: With the
16 violation revenue?

17 MR. GROSS: Right.

18 CHAIRMAN WISNIEWSKI: When you
19 boil it down, that's where the notion of
20 self-financing first started in the RFP.

21 MR. GROSS: Yeah. I would say
22 you are right. But again -- I am not trying to
23 cop out on you, but again, I didn't prepare
24 this and I didn't really participate in it.
25 But reading this, I agree with you.

1 CHAIRMAN WISNIEWSKI: Thank you.

2 One of the things I believe you
3 said, Mr. Gross, was that the reason why we are
4 having difficulties with E-ZPass system
5 was -- perhaps this is not exactly what you
6 said -- its unexpected popularity. That
7 because there are so many users, it's run into
8 problems in terms of the cost of the
9 transponders, so on and so forth.

10 Is that an accurate
11 representation of what you said?

12 MR. GROSS: I think so, except I
13 didn't say it was a problem. I think it is a
14 good thing, but it just costs more to be able
15 to service a higher percentage of the motorists
16 with E-ZPass.

17 CHAIRMAN WISNIEWSKI: Problems
18 in terms of the financing, in terms of the
19 financial picture, it is certainly costing more
20 than was anticipated.

21 MR. GROSS: That is correct.

22 CHAIRMAN WISNIEWSKI: I wanted
23 to draw your attention to an MFS document that
24 has attached as an exhibit the consortium
25 income payment matrix.

1 This is a document -- it was
2 part of their October 10, 1996 best and final
3 offer. And I wanted to just draw your
4 attention to it. And Nancy is going to show
5 you the document.

6 But in 1996 it seems that if you
7 accept the 50 percent collection rate, and you
8 accept the 1 percent on average violation
9 rate -- and I understand it starts higher and
10 goes down lower, but assume 1 percent -- that
11 at 35 percent penetration, 35 percent users,
12 you have a break-even case. But as the
13 penetration goes up, as it becomes more
14 popular, you create a deficit.

15 And I wanted to understand
16 whether this was something that you as
17 Executive Director were aware of, or the
18 consortium was aware of, that there was a
19 potential built in in 1996 that as this became
20 more popular, as the penetration rate
21 increased, it was going to lose more money.

22 MR. GROSS: There is no
23 question, if anyone thought about it in that
24 period of '96 to '98 that with more motorists
25 using E-ZPass it would be more expensive, and

1 it would not -- it would generate more expenses
2 than the projected revenues. There is no doubt
3 about it.

4 But I've got to take you back to
5 this period of '96 to '98. E-ZPass was still
6 very new. There were members of the consortium
7 that believed 35 percent was way overstated.

8 I will take you back to the
9 early '90s when the inter-agency group -- which
10 is a regional group that was formed at least to
11 create uniform technology so you can have an
12 E-ZPass system -- they believed that when the
13 system was totally mature and in the entire
14 eastern area, which took up -- included
15 New Jersey and New York, which is the bulk,
16 there would be a million transponders in
17 circulation. There is more than seven million
18 today.

19 They believed early in the '90s,
20 which belief continued through the mid-'90s,
21 that you had to motivate the public to become
22 members of E-ZPass or they wouldn't buy into
23 it. That asking a motorist to put up some
24 money up front, even on a charge card that they
25 don't pay right away, was a burden that they

1 wouldn't accept. That E-ZPass potentially
2 developed more information about a motorist
3 than otherwise if they paid manually, and that
4 that would be a detriment as well.

5 So when we talk about the time
6 frame of '96 to '98, we talk about members of
7 this consortium that legitimately believed
8 wouldn't even reach 35 percent.

9 So you are right, 40 and 45 and
10 50 and 55 generates more expenses. But the
11 group collectively felt 35 percent was a pretty
12 impressive percentage as a goal.

13 CHAIRMAN WISNIEWSKI: And
14 perhaps at that point in time that may have
15 been legitimate thinking. Obviously today,
16 with the benefit of hindsight, we see
17 penetration at 40 and almost 50 percent in some
18 cases, we know that doesn't work.

19 But what is -- perhaps "amazing"
20 is the word -- that this was a business plan
21 that we were looking at, the state, the
22 agencies were looking at, in 1996, this was a
23 business plan for a new venture. And the
24 business plan for the new venture said that as
25 this becomes more popular, we start to lose

1 money.

2 And it just seems -- and this is
3 not so much a question as a statement, but tell
4 me if you agree, that it seems somewhat ironic
5 or perhaps unbelievable that we would embrace
6 the concept of self-financing under the
7 assumption that if it does better than we
8 think, we are going to do worse than we
9 expected.

10 MR. GROSS: We didn't enter into
11 this venture to make money or necessarily just
12 to break even.

13 The E-ZPass electronic toll
14 project was a material improvement that we owed
15 to the motoring public that used the toll
16 facilities in New Jersey, Delaware and the Port
17 Authority.

18 CHAIRMAN WISNIEWSKI: Nobody
19 disagrees with you.

20 MR. GROSS: And therefore, we
21 never looked at it as money making or will we
22 break even because we are going to generate
23 revenue.

24 It happened that we used the
25 projected violation revenue and the fiber

1 revenue as a dedicated means to pay cost, and
2 that was a concept that we believed in then.

3 But as somebody asked me, one of
4 the committee members asked me earlier, what
5 was the objective in entering into this
6 project? Was it to generate violation revenue?
7 Absolutely not.

8 The objective was to improve
9 trips for motorists on the New Jersey Turnpike
10 and Garden State Parkway, Atlantic City
11 Expressway, et cetera. Something vitally
12 needed over a long period of time if we are
13 going to have a transportation artery that's
14 considered tops in the United States.

15 So E-ZPass was an improvement
16 that had to be done, like building a bridge or
17 adding a lane to a highway.

18 CHAIRMAN WISNIEWSKI: Mr. Gross,
19 I don't think anybody here is questioning
20 whether or not E-ZPass should have been
21 installed.

22 I think the question is that the
23 representations made, and, therefore, the
24 expectations of legislators and administrators
25 and the public, was that, as many of the press

1 releases said, this was a system that was going
2 to be installed at no cost to the public. And
3 clearly by your own testimony today that is not
4 how it's working out. And that may have been
5 because of incorrect assumptions, misguided
6 assumptions.

7 But that's the basis of the
8 problem we face today. That there was an
9 expectation -- right or wrong, there was an
10 expectation generated by the agencies, by the
11 government, that this was going to be a
12 self-funded operation, and it's not. And that
13 is why everybody is scratching their heads
14 today.

15 If you could, Mr. Gross, in the
16 folder, there is the Regional Consortium
17 Project Recalculation, the document you pointed
18 out to us that has the base case financial
19 model in it. And I think it may be folded open
20 for you there.

21 It says -- the top of the
22 document says, "ETC Regional Consortium Base
23 Case Financial Model."

24 Could you tell me who prepared
25 this? Was this prepared by the same

1 organization that prepared the subsequent
2 revisions?

3 MR. GROSS: Is your question who
4 prepared the revision dated November 30, 2000?

5 CHAIRMAN WISNIEWSKI: Who
6 prepared the original base case that was
7 appended to this document which is a
8 recalculation dated November 30?

9 MR. GROSS: The March '98
10 document?

11 CHAIRMAN WISNIEWSKI: Yes.

12 MR. GROSS: That was prepared by
13 MFS, and input from the consortium members.

14 CHAIRMAN WISNIEWSKI: Subsequent
15 to that, that was revised by the company called
16 Public Resources Advisory Group?

17 MR. GROSS: They were the
18 financial advisors. And they structured the
19 revisions. The consortium members provided the
20 input, agreed upon the assumptions, and signed
21 off on the revisions.

22 CHAIRMAN WISNIEWSKI: Can you
23 answer how much did the falloff in anticipated
24 fiber optic revenues affect the financial
25 model? Leave apart and outside the answer

1 those concerning toll violation revenues.

2 My understanding is that when
3 the model was prepared, there was an
4 expectation of a certain lease rate for fiber
5 optic. For whatever reasons in the market,
6 that did not happen.

7 Can you answer or address the
8 issue of how much less was collected? What was
9 the shortfall, if you will?

10 MR. GROSS: Well, as of the end
11 of 2001, about 100 million dollars is under
12 lease. About 80 million of that is already
13 paid. And these leases are 20-year leases.

14 Most of the leases that the
15 consortium secured are for ducts, very small
16 portion are fiber strands.

17 The original model called for
18 about 210 or 215 million dollars in fiber
19 revenue generated over 20 years, with most of
20 the marketing completed by now. So one could
21 say that there is about 100 million dollars in
22 less -- 100 million dollars short in fiber
23 revenue.

24 However, the fiber network built
25 under this project is very desirable. It's in

1 a very demanding area of the United States.
2 It's right -- sandwiched right between New York
3 and Washington, D.C. And when the industry
4 begins to rebound, there is a reasonable
5 expectation in the minds of those that
6 understand the industry that marketing of
7 available capacity will resume.

8 Having said that, the most
9 recent model, the November 2001 model, pushes
10 out the fiber revenue slightly, but doesn't
11 change the end result that in 20 years, either
12 210 or 215 -- I don't remember exactly the
13 number -- of revenue generated.

14 CHAIRMAN WISNIEWSKI: The 100
15 million that has been generated represents what
16 percentage of the overall fiber capacity?

17 MR. GROSS: My recollection is
18 that about 75 percent of the duct capacity has
19 been leased, and a very small percentage of the
20 fiber capacity. And small being less than a
21 quarter of the fiber has been leased.

22 CHAIRMAN WISNIEWSKI: So it's a
23 combination of 25 percent of the duct capacity
24 and 75 percent of the fiber capacity over the
25 next 20 years, the anticipation is that another

1 100 million will be generated?

2 MR. GROSS: Yeah. And I may not
3 have those percentages really fixed correctly,
4 but I think they are generally correct.

5 The answer is correct. That as
6 of November 2001 there was still being
7 projected that when the industry turned around,
8 that there was enough capacity remaining to
9 still generate the projected -- call it 200
10 million dollars.

11 CHAIRMAN WISNIEWSKI: Many of us
12 don't believe that based on past experience,
13 but we will have to wait and see.

14 MR. GROSS: If I may ask,
15 Mr. Chairman, don't believe the industry is
16 going to turn around?

17 CHAIRMAN WISNIEWSKI: I think
18 many of us don't believe the projections.
19 Since the projections that were originally made
20 haven't panned out, many on this committee
21 don't believe future projections that now
22 somehow even though we are 100 million dollars
23 short, that is going to be made up.

24 But again, that is something
25 that remains to be seen.

1 MR. GROSS: If I may say to you,
2 Mr. Chairman, when the industry was doing well,
3 the execution of fiber leases was ahead of the
4 curve. And there was a point that the
5 consortium members met with the advice and
6 recommendations of MFS that was marketing the
7 available fiber and actually raised the mileage
8 charges. And it didn't hurt the potential
9 sales until the industry actually fell apart.

10 CHAIRMAN WISNIEWSKI: And the
11 question remains as to whether the industry
12 will get back together, whether the capacity
13 will ever be sufficient to drive up the prices.

14 I want to go back to the
15 implementation of the contract. The best and
16 final offer contemplated a simultaneous
17 implementation of E-ZPass, but that was at some
18 point modified to a phased implementation.
19 Correct?

20 MR. GROSS: The contract called
21 for the construction of both dedicated and
22 mixed-mode at the same time.

23 CHAIRMAN WISNIEWSKI: And at
24 some point that was changed to be a phased
25 installation?

1 THE WITNESS: That is correct.

2 CHAIRMAN WISNIEWSKI: Who made
3 that decision to make that change?

4 MR. GROSS: The consortium
5 reached the conclusion that the construction of
6 the fiber network and the construction of the
7 700 plus lanes and the development of the
8 software could not be achieved under the
9 original schedule. That it was not -- A, the
10 schedule wasn't realistic, and the contractor
11 was not performing as well as the consortium
12 wanted it.

13 And the decision to separate the
14 ETC construction and concentrate first on
15 dedicated lanes, putting in operation, and then
16 going back and doing the mixed-mode was a
17 consortium decision.

18 Mr. Chairman, I can tell you
19 that there are some agencies that only have
20 dedicated lanes. It's either dedicated E-ZPass
21 or manual. There are agencies that operate
22 very successfully, an E-ZPass system or
23 electronic toll system, with no mixed-mode.

24 CHAIRMAN WISNIEWSKI: The act of
25 changing the implementation to one of a phased

1 implementation wound up costing additional
2 revenue, costing more money to implement.

3 MR. GROSS: I don't think so.
4 My recollection is that the consortium did not
5 pay the contractor any additional money for
6 phasing in the project as described.

7 There were other change orders
8 over time, none of which in their total
9 exceeded the contingency that was projected at
10 the inception of the contract.

11 CHAIRMAN WISNIEWSKI: The
12 contingency was some 30 million dollars?

13 MR. GROSS: I think it was less.
14 I think it was like 22 million dollars plus a
15 reserve for additional transponders.

16 But I don't look at the
17 transponders as part of the construction. I
18 think the construction was somewhere in the
19 area of 10 percent of the original contract,
20 about 21 or 22 million.

21 CHAIRMAN WISNIEWSKI: For these
22 changes, whether it be from the phased -- the
23 simultaneous deployment to the phased
24 deployment or for the change orders implemented
25 by the contractor and presented to the

1 consortium, was there a need for the consortium
2 to go back to its individual constituent
3 members and seek approval?

4 THE WITNESS: That's the only
5 way this project operated from the inception.

6 CHAIRMAN WISNIEWSKI: So for any
7 of the changes -- for instance, you were the
8 Executive Director of the Turnpike Authority,
9 and there was some change that came to the
10 consortium, and the consortium went to the
11 constituent agencies. So at some board meeting
12 of the New Jersey Turnpike Authority there was
13 a decision made to approve the change?

14 MR. GROSS: True. But the last
15 part of it is not correct. Any change order
16 required the sign-off of every agency, but it
17 did not require the additional approval of the
18 Board of Commissioners.

19 CHAIRMAN WISNIEWSKI: Is it
20 true, then, that what the Board of
21 Commissioners did was to delegate the authority
22 for those change orders to you as Executive
23 Director or to in other agencies some other
24 person?

25 MR. GROSS: That is true.

1 The concept of change orders
2 within the confines of the contract, that is
3 that 20 some odd million dollars, was already
4 part of the anticipation as it is with other
5 contracts. All change orders don't go back to
6 the boards. So there was delegation within the
7 Authority.

8 CHAIRMAN WISNIEWSKI: I wanted
9 to follow up on one of the statements you made
10 that I personally found somewhat interesting.

11 You had said in the answer to I
12 think the question asked by Assemblywoman
13 Stender that this was viewed as an easy project
14 by the contractors.

15 Not to mix the pun of E-ZPass,
16 but that it was not viewed as a particularly
17 unusual or burdensome type of project.

18 THE WITNESS: I didn't intend to
19 say that, if I did. What I thought I was
20 trying to say -- I guess I wasn't very
21 articulate -- was that when this industry was
22 forming, those that decided to become
23 implementators --

24 CHAIRMAN WISNIEWSKI: WorldCom,
25 for instance, or MFS.

1 MR. GROSS: MFS, Lockheed,
2 Transworld, in my opinion, they all believed
3 that it was a relatively easy jump. And that
4 therefore, they embarked upon this industry
5 thinking that it was all within the scope of
6 their expertise, and they could make money, and
7 they all got surprised.

8 CHAIRMAN WISNIEWSKI: Why was
9 that? Did they bite off more than they could
10 chew?

11 MR. GROSS: Well, as I said
12 earlier -- and didn't say it very well -- the
13 technology itself is on the shelf. But when
14 you put it all together and you have to make it
15 work in hundreds of lanes 7/24, and really work
16 in one-thousandth of a second, and just
17 continuous -- you look at the traffic on the
18 Garden State Parkway, just continuous beating
19 on the system, and weather, et cetera,
20 et cetera, it just meant -- it's a far more
21 complex and far greater challenge than those
22 that went into the industry originally
23 believed. That is what I was intending to say.

24 Nobody ever believed that the
25 contract that is the focus of this hearing was

1 easy. Actually, the consortium contract came
2 after many, many contracts, and a lot of
3 contractors hadn't worked on implementation at
4 other toll agencies. And there was a fair
5 recollection -- a fair understanding that it
6 was not easy.

7 But in itself, this was a very
8 complex contract.

9 CHAIRMAN WISNIEWSKI: You had
10 mentioned in your opening statement that the
11 chair of the Review Committee was Tom Margo,
12 the Chief Engineer of the Turnpike Authority.
13 And my understanding of your testimony was that
14 he was an individual who was prior to your
15 arrival as Executive Director and assumption of
16 the responsibilities of that office, was
17 chiefly responsible for the birthing of this
18 project.

19 Is that correct?

20 MR. GROSS: Well, Mr. Margo
21 joined the Turnpike after I did.

22 CHAIRMAN WISNIEWSKI: Would that
23 be Mr. Carras then?

24 MR. GROSS: Paul Carras was
25 involved in the project. But when -- I don't

1 remember the exact date Mr. Margo had joined.
2 But he was there from the inception of the
3 creation of the Request for Qualifications.

4 CHAIRMAN WISNIEWSKI: Who are
5 you talking about?

6 MR. GROSS: Margo.

7 CHAIRMAN WISNIEWSKI: I want to
8 draw your attention to the March 20, 1997 memo
9 that my aide just put in front of you, which is
10 a memo to you as Executive Director. And it
11 says, Re: Recommendation to Award Contract,
12 the Consortium Regional Electronic Toll
13 Collections Implementation Program.

14 This is a memorandum signed by
15 Paul Carras as the ETC program manager, and
16 signed by William Wolf, counsel for the
17 consortium, and Edward Gross, yourself, as the
18 Executive Director.

19 Was not there a signature line
20 on this memo at one point in time for the
21 comptroller of the Turnpike Authority, a
22 Catherine Schladebeck, to sign it?

23 THE WITNESS: Yeah. An earlier
24 draft had that on there because virtually -- I
25 shouldn't say all, but most of the agenda

1 items -- the Turnpike called them agenda items,
2 you may more commonly refer to them as
3 resolutions -- had a signature line that
4 provided funds available by the comptroller,
5 and an original signature line in the first
6 draft. And it's not uncommon to have numbers
7 of drafts of these agenda items when they are
8 finalized have that signature.

9 CHAIRMAN WISNIEWSKI: Would you
10 then disagree with the statement that's been
11 represented to members of this committee that
12 her name was removed from this document when
13 she refused to sign it?

14 MR. GROSS: She said it was
15 inappropriate for her to sign it because she
16 wasn't certifying funds available, that the
17 funding was coming from the bond issue and
18 projected from the violation revenue and the
19 fiber revenue.

20 I considered her position to be
21 sound.

22 CHAIRMAN WISNIEWSKI: So would
23 you disagree, then, that she refused to sign it
24 because she was unable to reconcile the numbers
25 that were presented to her in terms of the

1 projected revenues from toll violations and
2 fiber optic, that she had a fundamental
3 disagreement with what was being projected and
4 what she was able to justify for her own
5 numbers?

6 MR. GROSS: At that time in
7 March of '97 she advised me that she and her
8 staff had not fully reviewed all of the
9 assumptions and projections of the fiber
10 revenue and the violation revenue. That is
11 true. She did do that.

12 But between March of 1997 and
13 the contract signing on March 10, 1998 the
14 finance department of the Turnpike had fully
15 reviewed and critiqued and signed off on the
16 projections.

17 CHAIRMAN WISNIEWSKI: Did the
18 comptroller sign off on it?

19 MR. GROSS: The department
20 signed off on it. I assume if someone else
21 signed off on it they didn't do it without the
22 approval the comptroller. I can't -- unless
23 you show me a document, I can't remember whose
24 signature.

25 CHAIRMAN WISNIEWSKI: So you

1 would disagree with the representation that the
2 reason her signature is not on here is that she
3 had a problem with what was being proposed?
4 Your testimony is that there was not an
5 adequate review of the information presented?

6 MR. GROSS: My testimony is
7 two-fold. Number one, she shouldn't have been
8 asked to have a signature line in the first
9 place because the comptroller of the Turnpike
10 certifies funds available, and this was a
11 project where the Turnpike didn't have funds
12 available, the funds were generated off the
13 Turnpike in the manner that I just described to
14 you.

15 B, in addition, she indicated
16 that she had not fully reviewed, signed off on
17 the revenue projections, and her staff was
18 still working on it, and they were having some
19 difficulty getting some of the underlying
20 worksheets, which ultimately was straightened
21 out.

22 And as I said, over a period of
23 time the Turnpike's finance department did all
24 of their due diligence and signed off on it.

25 CHAIRMAN WISNIEWSKI: But you

1 are not certain whether the comptroller herself
2 signed off or someone else signed off in her
3 place?

4 MR. GROSS: I am certain to this
5 extent, that there was a senior person in the
6 comptroller's office that worked on the
7 project. I just don't remember at this point
8 who signed off. But I am certain that whoever
9 signed off, if it wasn't the comptroller, it
10 was -- received the comptroller's approval.

11 CHAIRMAN WISNIEWSKI: I am just
12 trying to understand the nature of it. Because
13 you said there were no funds available because
14 it came from outside. But didn't the funds to
15 implement E-ZPass come from the proceeds of the
16 bond sale?

17 MR. GROSS: In March of '97 that
18 wasn't yet generated. There was not
19 negotiations with the private group. That was
20 generated sometime thereafter. It was only an
21 expectation.

22 CHAIRMAN WISNIEWSKI: Mr. Gross,
23 I wanted to fast forward now to December 2001.
24 At that point in time you were the Executive
25 Director of the Turnpike Authority, and at some

1 point in time you were made aware of the fact
2 that Adesta, which started out as MFS, was
3 filing for bankruptcy protection. Is that
4 correct?

5 MR. GROSS: I became well aware
6 of that, they filed Chapter 11 proceedings.

7 CHAIRMAN WISNIEWSKI: Were you
8 made aware of that because the Turnpike
9 Authority was served with papers as a creditor
10 of Adesta?

11 MR. GROSS: No. My personal
12 awareness was, I think, a telephone call from
13 WorldCom advising me of that event.

14 The background was that Adesta
15 had come to the Turnpike about a month before
16 that, maybe even six weeks before that, and
17 said it's going to run out of money, and asked
18 the consortium to take -- to reverse their
19 position on the number of items that would
20 generate revenue to Adesta. And based upon
21 that, Adesta said they could continue to
22 perform under the contract.

23 And the consortium members
24 unanimously rejected the proposal of Adesta.

25 What happened at that point was

1 that the consortium wanted a transition plan to
2 take over the operation, and at the same time,
3 asked WorldCom if they were willing to step in
4 to take over the contract.

5 CHAIRMAN WISNIEWSKI: Who asked
6 WorldCom? The consortium?

7 MR. GROSS: Yeah. I think
8 WorldCom was -- on the demand of the
9 consortium, I believe WorldCom was present at
10 one or two of the meetings at which Adesta
11 advised the consortium that they were running
12 out of money.

13 CHAIRMAN WISNIEWSKI: They were
14 running out of money because they weren't being
15 paid under the E-ZPass contract or they were
16 running out of money just generally because
17 their corporate situation had changed?

18 MR. GROSS: From the standpoint
19 of the consortium, we were paying them what
20 they were entitled to receive. From their
21 standpoint, we were holding back money that
22 they should have received.

23 CHAIRMAN WISNIEWSKI: This was
24 the penalties that you had mentioned earlier,
25 some five million dollars --

1 MR. GROSS: They never really
2 raised the liquidated damages, but they
3 regularly wanted the consortium to pay them for
4 the monthly payments we held back for VPC
5 operations, which amounted to about four
6 million dollars, and for deductions that the
7 consortium was making on monthly VPC payments
8 based upon an excessive amount of false reads.
9 They wanted that money back.

10 CHAIRMAN WISNIEWSKI: Adesta
11 wanted to be paid, and the consortium was
12 saying, no, we've got problems, and we are not
13 going to pay?

14 MR. GROSS: Correct.

15 CHAIRMAN WISNIEWSKI: Was there
16 any consideration by the consortium at that
17 point in time by not making the payments that
18 it would put Adesta into bankruptcy?

19 CHAIRMAN WISNIEWSKI: The
20 consortium members took the position privately
21 and with Adesta and WorldCom that if need be,
22 the consortium would take over the contract.
23 We are not going to make payments that we could
24 not justify.

25 CHAIRMAN WISNIEWSKI: But the

1 consortium never took over the contract.
2 Instead, discussions were held with WorldCom to
3 step in and acquire that through bankruptcy.

4 MR. GROSS: It didn't happen
5 just that way.

6 The consortium began to develop
7 a transition plan to take over the project.
8 The consortium's view, and I think correctly,
9 was that we could not allow Adesta to shut
10 their doors and not have access to the
11 software, the source codes, the machinery, the
12 personnel, the leases, the licenses.

13 In essence, the first time there
14 was a major problem with the software, you
15 could actually shut the whole system down.

16 That the consortium had to be in
17 a position to maintain at least a system that
18 was working today.

19 WorldCom was not committing to
20 step in and take over the contract. So the
21 consortium created a task force to begin
22 transition. And there was some difficulties
23 with cooperation from the contractor. But the
24 consortium was moving in that direction.

25 At the same time, the consortium

1 made it well known to WorldCom that if they
2 came in and provided the technical skill and
3 the cash that were necessary for the contractor
4 to finish, that would be more than
5 satisfactory. It would be a better result than
6 the consortium taking over the contract
7 obligations.

8 CHAIRMAN WISNIEWSKI: And that's
9 ultimately what happened?

10 MR. GROSS: Ultimately WorldCom
11 advised me via letter that they had made an
12 agreement in principle with the parent of
13 Adesta, whose name is Bracknell, to assume the
14 contract, and they have to document that.

15 And they had already produced a
16 fairly impressive team of managers that were at
17 the Adesta facilities reviewing the status of
18 the contract and the issues.

19 So the consortium was reasonably
20 satisfied at that point that WorldCom would
21 proceed as they had noted.

22 And they also represented they
23 would advance some money so that some of the
24 subcontractors that were threatening to stop
25 work would get partial payments.

1 CHAIRMAN WISNIEWSKI: Did they
2 do that? Did they advance money?

3 MR. GROSS: I don't think they
4 did that. I don't think they did that for some
5 period of time. They did it ultimately, but
6 they didn't do it in the time frame that they
7 had indicated to the consortium.

8 CHAIRMAN WISNIEWSKI: Was there
9 any understanding on the part of the consortium
10 that WorldCom obviously would have to seek
11 bankruptcy court permission to acquire the
12 assets of Adesta, including the contract, and
13 that in doing so the order approving that would
14 cure all defaults and conditions of default
15 that had existed up until the date of that
16 order?

17 MR. GROSS: Absolutely not.

18 CHAIRMAN WISNIEWSKI: That came
19 as a surprise?

20 MR. GROSS: You are jumping
21 ahead. But that's okay, because that is your
22 question. There were steps that intervened.

23 But there was never any
24 conversation with WorldCom to release Adesta or
25 them from their responsibilities under the

1 contract to date, except to say to you that
2 there was the development of an agenda of
3 issues to discuss between the consortium and
4 WorldCom. And it clearly was the objective of
5 the consortium at that time to negotiate an
6 amendment to the contract with WorldCom. Not
7 to assess penalties against them, but to move
8 the contract forward and get it done, have
9 final system acceptance.

10 That was the state of mind and
11 intent of the consortium. Not to assess
12 further liquidated damages for either delays or
13 nonperformance. To get talented people into
14 the contract, to improve the performance of the
15 violation processing center, to correct lane
16 deficiencies, to better communicate, to finish
17 whatever construction was required to get the
18 lanes commissioned and finish the project.
19 That's where the consortium was going with
20 WorldCom.

21 And if those negotiations had
22 taken place -- which they really didn't take
23 place -- but if they had taken place and they
24 were successful, there would have been another
25 amendment to the contract with a typical

1 provision that would have released the
2 contractor from all claims up to that date.

3 CHAIRMAN WISNIEWSKI: So that
4 would have been part of a revised contract?

5 MR. GROSS: If it were
6 negotiated. It didn't happen.

7 CHAIRMAN WISNIEWSKI: It
8 happened with a Court order, at any rate.

9 MR. GROSS: But it wasn't
10 negotiated with WorldCom.

11 CHAIRMAN WISNIEWSKI: Right.
12 The down side to that Court order is there is
13 no reciprocal protection if the contractor
14 wants to seek claims against the consortium.

15 MR. GROSS: It was never the
16 intention of the consortium to unilaterally
17 release WorldCom from any responsibilities as
18 the guarantor of the surety bond.

19 On the contrary, there was an
20 effort on my part to secure a letter from the
21 surety and from WorldCom with representations
22 that would give the consortium comfort.

23 And I advised WorldCom that
24 without a letter from the surety and without
25 their letter representing that they were going

1 to put adequate funds in to be able to meet the
2 cash needs under the contract, that we were
3 going to file an objection in the bankruptcy
4 court.

5 And ultimately, before the
6 bankruptcy court hearing, I received letters
7 that were satisfactory.

8 CHAIRMAN WISNIEWSKI: So there
9 was no objection filed before the bankruptcy
10 court in the proceedings which approved the
11 assignments?

12 MR. GROSS: That is correct.

13 CHAIRMAN WISNIEWSKI: And that
14 was because of the letters that were received?

15 MR. GROSS: That's correct.

16 CHAIRMAN WISNIEWSKI: And you
17 felt that those letters provided adequate
18 assurance from WorldCom that notwithstanding
19 whatever was in the order, that the consortium
20 would be in no worse position after the
21 assignment than it was before?

22 MR. GROSS: It was not
23 notwithstanding what was in the order. I did
24 not approve the form of that order.

25 CHAIRMAN WISNIEWSKI: Did

1 counsel, I believe Mr. Wolf, have an
2 opportunity to approve that?

3 MR. GROSS: I don't know. I
4 don't know if he saw it in advance or not. The
5 terms of that order were not either negotiated
6 with me or pointed out to me.

7 If they were pointed out to me,
8 Mr. Chairman, I would have objected to a couple
9 provisions that I saw for the first time about
10 a week ago, because they were not provisions
11 that were negotiated with WorldCom.

12 CHAIRMAN WISNIEWSKI: Was the
13 consortium noticed or invited to participate in
14 the bankruptcy hearing which resulted in that
15 order?

16 MR. GROSS: I would imagine the
17 consortium through counsel received some
18 notice. I don't have a recall of seeing or
19 reading any notice document.

20 But I would imagine -- we
21 were -- the consortium was active in connection
22 with the bankruptcy. Because the bankruptcy
23 was a further delay to negotiating an extension
24 with WorldCom to move forward and complete this
25 project.

1 So the consortium was active.
2 But I don't recall seeing any of the forms. I
3 was only really interested in the bankruptcy
4 court approving the purchase of the contract by
5 WorldCom, which I considered to be a major
6 positive step.

7 CHAIRMAN WISNIEWSKI: Thank you.
8 Do any of our members have any
9 follow-up questions for Mr. Gross?

10 ASSEMBLYMAN JOHNSON: Thank you,
11 Mr. Chairman.

12 Was there a process in place
13 with the municipal courts to collect these or
14 start the process of charging these violators
15 when you were there? Was that process actually
16 moved forward?

17 MR. GROSS: It moved forward,
18 but it wasn't concluded in volume. The only
19 way that it can be done in volume -- because
20 you are talking about potentially thousands on
21 a daily or weekly basis -- is electronically.

22 And the contractor had an
23 obligation to develop the interface with the
24 court system. And as of the time I left, that
25 was not completed.

1 What was nearly done was the
2 completion of the evidence package with the
3 expert to select about a dozen cases throughout
4 the state and do test cases. But the
5 volume -- the volume of complaints that would
6 be filed in the normal course required an
7 interface with the system. It couldn't be done
8 any other way.

9 ASSEMBLYMAN JOHNSON: So the
10 test cases have not been done yet, either?

11 MR. GROSS: Not as of the time I
12 left.

13 ASSEMBLYMAN JOHNSON: That was
14 my only question. Thank you.

15 CHAIRMAN WISNIEWSKI: Mr. Gross,
16 I want to thank you for your patience and
17 cooperation today. It's been a long day. I
18 think the committee has touched upon all of the
19 issues that we collectively can think of.

20 I do wish to make one request of
21 you. That there may come a time in the future
22 where we have additional questions, and that
23 you might make yourself available at some
24 future date if the need arises.

25 MR. GROSS: The answer,

1 Mr. Chairman, is yes. Just as you have done
2 for this hearing, just give me as much advance
3 notice as possible.

4 CHAIRMAN WISNIEWSKI: We will do
5 that. Again, thank you, Mr. Gross.

6 And this session of the
7 Transportation Committee stands adjourned.

8 (Time noted: 3:54 p.m.)

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1 C E R T I F I C A T E

2

3 I, SEVA FLICSTEIN, a Certified
4 Shorthand Reporter and Notary Public of the
5 States of New Jersey and California, do hereby
6 certify that prior to the commencement of the
7 examination the witness was sworn by me to
8 testify the truth, the whole truth and nothing
9 but the truth.

10 I do further certify that the
11 foregoing is a true and accurate transcript of
12 the testimony as taken stenographically by and
13 before me at the time, place and on the date
14 hereinbefore set forth.

15 I do further certify that I am
16 neither of counsel nor attorney for any party
17 in this action and that I am not interested in
18 the event nor outcome of this litigation.

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