ASSEMBLY TRANSPORTATION COMMITTEE

In re: E-ZPass

TRANSCRIPT OF PROCEEDINGS

______________________:

MAY 2, 2002

BEFORE:

Chairman John S. Wisniewski
Vice-Chairman Reed Gusciora
Assemblyman John J. Burzichelli
Assemblyman Anthony Impreveduto
Assemblyman Gordon M. Johnson
Assemblywoman Linda Stender
Assemblyman Francis L. Bodine
Assemblyman Paul D'Amato

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commencing at 10:10 in the forenoon.
ASSEMBLY TRANSPORTATION COMMITTEE

THURSDAY, MAY 2, 2002

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

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

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

Secondly, we have a transcript being made of today's proceedings, and we have a reporter doing the transcription. And she has made just one request, that we speak clearly and one at a time so that she is able to accurately transcribe what we say. So if we would all just extend each other the courtesy
to complete our sentences before we cut in,
that would make the proceedings go much more
smoothly.

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

MS. LIPPER: Assemblyman Bodine.

ASSEMBLYMAN BODINE: Here.

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

ASSEMBLYMAN D'AMATO: Here.

MS. LIPPER: Assemblyman
Johnson.

ASSEMBLYMAN JOHNSON: Here.

MS. LIPPER: Assemblyman
Burzichelli.

Assemblywoman Stender.

ASSEMBLYWOMAN STENDER: Here.

MS. LIPPER: Assemblyman
Impreveduto.

ASSEMBLYMAN GUSCIORA.

ASSEMBLYMAN GUSCIORA: Here.

MS. LIPPER: Chairman
Wisniewski.

CHAIRMAN WISNIEWSKI: Here.

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

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

MR. GROSS: Can everyone hear me?

CHAIRMAN WISNIEWSKI: Yes.

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

In the fall of 1995 Governor Whitman announced the formation of a consortium
of toll roads for the purpose of providing
electronic toll collection for the New Jersey
toll facilities; that is, the New Jersey
Turnpike, the New Jersey Highway Authority,
also known as the Garden State Parkway, and the
South Jersey Transportation Authority, also
known as the Atlantic City Expressway.

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

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

The Executive Council directed
the formation of a Review Committee in order to proceed with the procurement. The chair of the Review Committee was Tom Margo, then Chief Engineer of the New Jersey Turnpike. Each member agency designated a Review Committee member at the chief engineer level or equivalent senior manager.

In early 1996 the New Jersey Turnpike, with the unanimous approval of all members, released a Request for Qualifications. Proposals were submitted to the Review Committee, and four companies were qualified through this process as prime contractor candidates. They were: Lockheed Martin, MFS Network Technologies -- which hereinafter I will just refer to as "MFS" -- Chase Manhattan Bank, and Valley National Bank.

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

In July of 1996 two prime contractor candidates submitted proposals. The two proposals were received from Lockheed Martin and MFS. Chase Manhattan Bank elected
to join with MFS as its principal subcontractor, and Valley National Bank withdrew from the process.

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

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

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

All litigation resulted in the dismissal of the Lockheed objections. However, the litigation period caused a significant
delay in executing the contract with MFS. The contract signed with MFS occurred in March 1998.

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

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

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

MFS agreed to arrange private financing to meet the consortium's preference.
The MFS proposal led to the development of a base case financial model prepared by MFS. The principal revenue forecasts in the model consisted of violation revenue and fiber revenue, both of which were proposed by MFS. The violation revenue relied upon assessment and collection of a $25 fee from motorists who traveled through a toll booth without E-ZPass and did not pay their toll. The projection of violation revenue collected over eight operating years was prepared by MFS.

In summary, the model estimated that the average violation rate over eight operating years would be 8/10ths of 1 percent, or slightly less than ten million motorists annually out of one billion motorists using the five toll facilities. The model discarded 50 percent of the violators based upon nonreadable plate images, equipment failures, and public error. Finally, the model projected that 50 percent of the remaining 4.5 million violators would pay the $25 fee as a result of letter notifications, collection agency pursuit, and
municipal court action. Thus, the 2.25 million violations at $25 per violation would generate about 50 million dollars annually.
The model actually projected a higher violation rate in the earlier years of operation, and a gradually lower rate as motorists recognized that the collection process would result in more serious consequences and began paying tolls.
The fiber revenue was based on the capacity of the fiber network to be constructed on the right-of-ways of the member agencies, with the exception of the Port Authority, and MFS's assessment of market demand. MFS projected 210 million dollars of fiber revenue collected over 20 years.
All member agencies finance personnel reviewed the projected revenue, and adjustments were made based upon dialogue between the member agencies and MFS.
I believe MFS's projected violation revenue was based in part on the violation rate on the Garden State Parkway pre-E-ZPass and the experience of other toll
facilities operating with and without electronic toll collection.

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

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

The project cost for construction was approximately 210 million dollars to outfit more than 700 toll lanes. The estimated operating cost for eight years was approximately 300 million dollars based upon an estimated E-ZPass user rate -- and we commonly refer to that and you will hear it referred to as a penetration rate -- of 35 percent of all motorists.
These costs were, and continue to be, the obligation of the member agencies. It is no different than a toll agency paying for the cost of a new bridge or an additional highway lane.

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

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

Furthermore, the contract documents required the member agencies, with the assistance of a financial advisor, to revise the base case model on an annual basis. And if a balance due were projected in 2008,
each agency was obligated to reserve their share annually.

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

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

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

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

The operation of the violation
processing center and lane equipment failures
has caused many critics to conclude the system, and its projected revenue generation, a
failure. I disagree.

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

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

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

In my opinion, it remains too early in the operation of E-ZPass to reject violation revenue as a means of paying for a portion of the project.
In November 2001 the base case model was revised, and it was projected that in 2008 a balance of 161 million dollars would be outstanding and due from the member agencies. The revised model was approved by all member agencies. Some earlier drafts of the revised model showed both a lower and a higher balance due in 2008.

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

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

The 2001 model contemplated that with the passage of time resulting in the improved performance of the violation processing center and lane equipment, along with support from a collection agency and municipal court activity, the violation revenue would materially improve. The 2001 model also assumed the rebound in the telecommunication
industry in 2003 with new fiber leases generating revenue.

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

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

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

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

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

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

Four, opening the violation processing center in 1999.

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


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

As of January 2002 there remained work to be completed in software development to provide for mixed-mode lane operation on the Garden State Parkway and the New Jersey Turnpike. Mixed-mode means a lane that can simultaneously collect manually and electronically or by coin-deposit and electronically. Lane equipment performance and violation processing center operation also required improvement.
All of this work is important, but it is far from impossible to achieve. The contractor is responsible for successful completion of the project and retainage of about 12 million dollars which was being held in the project as of January 2002, along with performance bonds.

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

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

In 2001 the New Jersey Turnpike commissioned Wilber Smith Associates to perform a study on time and fuel savings by motorists as a result of using E-ZPass on the New Jersey Turnpike. The study showed that motorists saved in time and fuel annually an estimated 27 million dollars.
As a result of E-ZPass, the New Jersey Turnpike toll collection workforce has been reduced from approximately 800 full-time collectors to about 475 collectors, representing approximately 10 million dollars in annual savings, all accomplished without any layoffs.

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

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

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

I would like to start off the questioning and take the prerogative of the
The single greatest question that this committee has had since we started looking at E-ZPass is where did the notion that E-ZPass could be a self-financed system come from?

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

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

MR. GROSS: I am going to do my very best to answer the question. But, Mr. Chairman, I must say in preface to answering that question that I did not participate in the original design that led to
the base case model.

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

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

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

So the best I can say to you is that the origin and idea came from the group that was reviewing the procurements, and I would assume -- I am assuming now -- the input from the competitors who were generating
projected violation revenue and fiber revenue.

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

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

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

I recall conversations where the
Garden State Parkway expressed an inability to pay for the system with the normal use of capital, and was looking to the state through the Commissioner of Transportation for support.

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

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

But there was always an understanding -- and I can tell you this from personal knowledge because my participation grew dramatically after the Lockheed protest, and then the negotiations for the terms of the contract -- I can tell you without any
qualifications that each member agency
recognized, clearly recognized their obligation
to pay for the system. And that if the
revenues that were being forecast were not
generated either in kind or in time, that there
would be an obligation of the agencies to raise
capital for the purpose of paying whatever
balance was due.

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

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

MR. GROSS: It was never said to
me. That doesn't mean there weren't
conversations. But it was never said to me,
either by Commissioner Wilson, Tom Margo, or
anyone from Governor Whitman's staff.
CHAIRMAN WISNIEWSKI: I just want to follow up. Because it seems that your testimony is that the two competitors who were responding to the request for a best and final offer were, in a sense, part of the origin of the self-financing scheme.

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

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

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

Can you explain the difference between those two positions?
In the document in front of you it's the third full paragraph down.

MR. GROSS: They appear somewhat on their face to be inconsistent. However, I think that this document represents a period that was very fluid in the discussions between the Review Committee and MFS and leading to the base case model.

And I know that when I became actively involved, MFS was a strong proponent of violation revenue, and actually believed that the violation revenue over time, when the system was fully operating, would be greater than what the initial base case model showed.

Now, what I see here in this statement is that they were a little concerned about the violation rates.

Now, violation rates are an integral part of the formula that gives rise to ultimately violation revenue. Because theoretically, if everyone using the toll facility didn't violate, you couldn't have any violation revenue.

So what percentage of the motoring public would be violators was a
critical component of determining or projecting your violation rate.

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

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

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

So it's that very issue which I think doesn't necessarily make the third paragraph in this BAFO clarification totally inconsistent with ultimately what was projected in the base case model prepared by MFS.
But the best I can say to you is
that I think MFS was initially asserting a
legitimate concern about violation rates.

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

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

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

That was always clear, that this
was an effort to generate some additional revenue aside from toll -- traditional toll revenue to help pay for the system.

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

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

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

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

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

I think like in any new endeavor
when you are putting together projections and
you have no historic experience, you should be
more conservative in how you express yourself
based upon those projections.

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

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

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

CHAIRMAN WISNIEWSKI: So at some
point in time after the award of the contract,
perhaps after the March 11, 1998 press release,
there was a realization that this could not literally be a self-financing system?

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

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

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

CHAIRMAN WISNIEWSKI: Were those damages collected?

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

The contract specs called for it
to be up and running with meeting performance criteria by November of '98.

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

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

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

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

But that didn't mean that you couldn't collect the revenue. That meant that
the timing -- you would be pushing out your
violation revenue collection based upon the
time it would take for the processing center to
be operating in accordance with the contract
terms.

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

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

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

You still need the collection
techniques and a good performing violation
processing center before you can actually
conclude that you can't collect the violation
revenue as projected or you can.

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

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

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

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

MR. GROSS: Absolutely.

CHAIRMAN WISNIEWSKI: So that is
another event of default?

MR. GROSS: Yes.

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

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

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

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

If you can imagine, you are talking about thousands and thousands of notices going out on a daily basis for violations. So there has to be a system where
you could satisfy the court that you actually
mailed the document or letter in the event that
the defendant challenged and said, I never
received it.

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

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

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

CHAIRMAN WISNIEWSKI: When you
take all these issues together, you come back
to the proposition that in order to have any
reasonable expectation that this would be
self-financing, you have to be able to collect
a hundred percent of what you anticipated the
violation revenue to be, in order to do that,
you need an ability to go to court, in order to
do that, you need the evidence package, in
order to do that, you need the infrastructure
behind that in order to have the proper
documentation, none of which happened,
including which the violation processing center
did not open in a timely fashion.
So it seems, at least from my
perspective, abundantly clear that from a
fairly early stage, 1998, that this was not
likely to work out as planned.
Why didn't somebody then raise
their hand and say, we've got to drastically
change our expectations?
Because sitting as a member of
the Transportation Committee, as late as 2000 I
kept hearing reports that this would be
self-financing. And clearly, as we look at the
Star-Ledger today and we see reports and
references that I believe even you made,
Mr. Gross, that there is going to be a deficit.
How do we reconcile that?
MR. GROSS: Well, as I was
saying -- but I don't think I did a very good
job, Mr. Chairman -- in November of '98, which
was the date that the violation processing
center was supposed to open, it didn't open.
And the consortium authorized it opening in
July of '99, and we assessed liquidated
damages.
Now, when it opened in July of '99, it still was not performing in accordance with the contract specs. But that in itself would not lead to the conclusion that you couldn't collect the revenue.

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

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

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

By pushing it out into a later period, you're believing that you can correct the operations of the violation processing center, you can hire a collection agency, you
can get to municipal court, you could ask the
motor vehicle director to suspend the
registration of the most egregious violators.

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

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

MR. GROSS: Yes.

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

But it seems to me, and many
members of this committee, that virtually every
benchmark that was established failed to be
met. And at a certain point in time someone
should have said, this isn't working as
planned, and this is not going to pay under the
model.
Now, you know, outside the model, 10 years down the road, maybe there might be revenue, maybe not. But we are talking about the model that said, this is going to be a self-financing plan running through 2008. It certainly was clear as early as '98 that it wasn't going to happen that way.

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

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

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

What I am saying, that the point of view that the member agencies took -- and I believe correct -- and I took, both in 2000 and
2001, was that the performance requirements of
the violation processing center were all
correctable and all the responsibility of the
contractor.

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

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

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

So that's the way the member
agencies proceeded.

Now, I have said in connection with the November revised model that the year beginning December 1, 2001 through the end of November of 2002 was very critical. Because if you didn't have the -- during that period of time you would have a collection agency, you would be in municipal court, and the consortium and the contractor are on the eve of doing those things at the end of November of 2001. And you would have a better performing violation processing center. Then you would be in a position with the next revised model to be able to determine if your revenue forecasts were going to be reasonably accurate or not.

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

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

ASSEMBLYMAN GUSCIORA: Thank you, Mr. Chairman.
Mr. Gross, thank you for coming.

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

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

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

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

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

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

MR. GROSS: Lockheed had alleged that there was not a level playing field. That
the consortium was materially changing the
terms of the procurement, and they were
changing it more favorably to MFS and against
the interests of Lockheed. That was --

ASSEMBLYMAN GUSCIORA: And you
were the hearing officer for this protest?
MR. GROSS: I was.

ASSEMBLYMAN GUSCIORA: It's like
the fox guarding the chicken coop.
And ultimately, this hearing
officer was the one that awarded it to MFS?
MR. GROSS: No.

ASSEMBLYMAN GUSCIORA: You
awarded it to WorldCom?
MR. GROSS: No. The contract
was -- the contract was signed by MFS Network.
But when I said no, I was the
hearing officer in the Lockheed protest, which
was appealed to court. And Lockheed's actions
were all dismissed.

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

The Review Committee then
recommended it to the Executive Council, and
then the Executive Council proceeded to
recommend it to all the boards of the member
agencies.

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

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

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

ASSEMBLYMAN GUSCIORA: I am just
looking at your testimony.

It says, I believe MFS's
projected violation revenue was based upon the
violation rate on a New Jersey Highway
Administration pre-E-ZPass and the experience
of other toll facilities operating with and
without electronic toll collection.

Is that MFS's experience?

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

As I said earlier --

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

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

ASSEMBLYMAN GUSCIORA: Yeah.

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

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

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

ASSEMBLYMAN GUSCIORA: But you are the Executive Director; is that correct?
MR. GROSS: I was the Acting Executive Director. It was --

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

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

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

MR. GROSS: I am.

ASSEMBLYMAN GUSCIORA: So you are able to read contracts.

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

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

ASSEMBLYMAN GUSCIORA: No.

Before 1995 what did you do? Were you in state government before 1995?

MR. GROSS: I was the Deputy Commissioner of Insurance for one year. And before that I was the county counsel in Middlesex County.
ASSEMBLYMAN GUSCIORA: And as the county counsel of Middlesex County, outside of the Turnpike going through Middlesex County, what experience did you have with the Turnpike in Middlesex County?

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

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

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

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

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

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

ASSEMBLYMAN GUSCIORA: The other
thing is that you also state in your testimony, the model that you accepted with MFS discarded 50 percent of the violators based upon nonreadable plate images, equipment failures, and public error.

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

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

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

It also took into account, you know -- for example, I'll give you an illustration. When you buy a car in New Jersey, the dealer gives you a temporary
registration, and I believe puts it on the rear windshield where the camera won't pick that up.

ASSEMBLYMAN GUSCIORA: Great.

But you knew at least 50 percent of the reads were going to be unreadable?

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

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

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

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

MR. GROSS: They weren't --

ASSEMBLYMAN GUSCIORA: How is that a sound approach?

ASSEMBLYMAN D'AMATO:

Mr. Chairman, can the witness be permitted to answer the question?

CHAIRMAN WISNIEWSKI: Yes. I
also think it will cause a problem with our transcription. So please allow him to answer. Thanks.

MR. GROSS: Thank you.

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

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

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

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

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

ASSEMBLYMAN GUSCIORA: So that
if anything -- if the contract had to be
canceled or something was seriously wrong, a
performance bond would reimburse the taxpayers
for the failure of the system?
MR. GROSS: There are
currently -- or certainly when I left, there
was performance bonds that covered the
construction and operation of the --
ASSEMBLYMAN GUSCIORA: And also,
the consortium set penalties of $5,000 a day
plus $500 per day for each of the 700 toll
booths that were not completed in time. Is
that correct?
MR. GROSS: I don't remember the
precise amounts, but it certainly is correct
that there were liquidated damage provisions.
ASSEMBLYMAN GUSCIORA: And that,
in fact, it was about $355,000 per day that the
consortium could have assessed against
WorldCom?
MR. GROSS: Any assessment of
liquidated damages would be against the
contractor, not against WorldCom.
ASSEMBLYMAN GUSCIORA: Or the
contractor, right?
MR. GROSS: I didn't do the calculations that you may have done. But potentially there was an opportunity for sizeable liquidated damages. As I said earlier --

ASSEMBLYMAN GUSCIORA: But they were never charged, though?

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

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

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

And in addition to that, there was about seven million dollars, approximately,
of monies otherwise due the contractor that was
not paid because of a high percentage of
E-ZPass customers that were being reported as
violators.

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

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

Is that correct?

MR. GROSS: That's correct.

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

Did this set off any flags or
any concern to you that this -- MFS would not
be able to fulfill the expectations of the
State of New Jersey?

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

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

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

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

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

So WorldCom financially supported MFS. And it was for that reason that the consortium wanted WorldCom as part of the transaction, and they guaranteed the
performance bonds.

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

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

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

As you --

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

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

ASSEMBLYMAN GUSCIORA: And you
were supposed to be notified of those personnel
changes, isn't that correct, as part of the
contract?

MR. GROSS: I was trying to
finish -- I was trying to finish the historic
relationship of changes in contractors.
Do you want me to go to the
other question? What do you want me to do?

ASSEMBLYMAN GUSCIORA: Go ahead.

Go right ahead, sir.

MR. GROSS: Thank you.

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

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

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

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

Able Telecom is a public
compny. We looked at the financial statements
of Able, and they were small in relationship to
MFS, and certainly a very, very small entity in
relationship to WorldCom.

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

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

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

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

There were critical periods in
the contract where there were intense meetings
with MFS -- I don't remember if they changed
their name then or later, but they did change
their name to Adesta, but that was MFS.
We were hearing complaints from subcontractors who were not getting paid timely.

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

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

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

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

And then Able actually sold itself to a company in Canada called Bracknell, which at the time looked like a very positive development. Because when you looked at
Bracknell's financial statement, it was far better -- far more attractive, I should say, than Able's.

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

And they made a commitment to put money into Adesta -- Adesta was MFS -- to support it. And I believe they did do that.

And then Bracknell had financial problems.

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

ASSEMBLYMAN GUSCIORA: Thank you.

Mr. Chairman, this is actually the last question. And I guess it's why I am operating at a loss. That you have full knowledge of the operation of these companies, and you may have left out a few things, that MFS was two years behind on a 30 million dollar project in California, was 18 months behind on the Atlantic City Expressway. Able, when they
took over, had massive personnel changes that
were supposed to notify you under the contract,
and you were supposed to approve those
personnel changes.

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

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

Why you never at one point
instead -- I don't know who was asleep at the
switch, but it seems all these things were
going on, but yet there was no response from
the consortium or the Turnpike authority.

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

ASSEMBLYMAN GUSCIORA: And you never --

CHAIRMAN WISNIEWSKI: Let him finish.

ASSEMBLYMAN GUSCIORA: I don't mean to interrupt.

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

ASSEMBLYMAN GUSCIORA: Because I am not getting the answers.

CHAIRMAN WISNIEWSKI: Let him finish.

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

MR. GROSS: There were many, many sessions over a number of years that
related to the company's financial condition,
their not paying their subcontractors timely,
public information concerning other contracts
that you mentioned, sir, that were outstanding.
They were never taken lightly.

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

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

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

CHAIRMAN WISNIEWSKI:

Assemblyman Impreveduto.

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

ASSEMBLYMAN IMPREVEDUTO: Sure.

Absolutely.

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

This is an important issue to the taxpayers. It's something that -- I am an E-ZPass user, and many people that I know are, and it's a great thing to have. When it works properly and done the proper way, it's a good thing.
And the reason that we are here, obviously, is because there are problems with it. And certainly any time there is a major construction with something, I suspect there are going to be some problems. And we all understand and know that. This somehow or other has gone beyond that. And I think that's what may cause some of the frustrations of my good friend here, Assemblyman Gusciora.

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

MR. GROSS: I was the Acting Executive.

ASSEMBLYMAN IMPREVEDUTO: In 1996?

MR. GROSS: Yes, sir.

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

MR. GROSS: As I said in my opening remarks, I did not play any significant role in the review process.
As the Executive Director, my first serious contact with this project was when Lockheed filed the protest. And from that point on I was very much involved in the process.

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

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

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

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

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

ASSEMBLYMAN IMPREVEDUTO: And
that's fine.

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

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

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

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

They agreed in responding to the request for a best and final offer to provide private placement financing to achieve the objective that was set forth as a preference by
the consortium members.

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

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

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

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

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

In connection with fiber, they had a vast amount of experience.
were a fiber company.

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

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

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

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

There were a few people in that group that had some experience with fiber. The Garden State Parkway had some modest amount of
fiber on their right-of-way before that and was
in a marketing mode. So they understood the
code words and they understood the concepts
better than the other agencies.

There was some experience in
Delaware, as well.

But the driver was MFS, and
their experience.

Now, let's get to the violation
revenue.

ASSEMBLYMAN IMPREVEDUTO: There
you go.

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

ASSEMBLYMAN IMPREVEDUTO: Which
agencies?

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

ASSEMBLYMAN IMPREVEDUTO: Our
agencies?

MR. GROSS: Right. Right. They
gave them some information -- I think it was
more difficult with the Turnpike because until
E-ZPass, the Turnpike -- virtually every lane
had a toll collector, and there was hardly any violations at all. More difficult to blow a lane with a person in a booth.

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

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

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

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

You know, when I was in
college -- and you are an attorney, and I am
sure you've studied the Uniform Commercial
Code -- the law professor once said, if
something looks too good to be true -- this is
for consumers -- it probably is.

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

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

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

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

Was that question ever asked?
MR. GROSS: There was hours and
hours and days and days of dialogue in
connection with the assumptions that were set
forth in the base case model. And the dialogue
was the member agencies and their staff, their
finance people, MFS, Newcourt Capital.
I mean, there were extensive
meetings on the subject. There was extensive
testing of what assumptions were being used in
the model and why. This was not a 24-hour
self-creation.

Every toll agency that operates
electronically has one or two things: Either
gates or camera equipment and detection of
violations. There is no other option. Because
the third option is to abandon your basic core
toll revenue, you have no means whatsoever of
trying to reduce the violations.
So gates are the less popular of
the two options. And you could probably
understand why because they are at least
conceptually inconsistent with free flow
through a toll booth.
So every agency collects some
violation revenue. Now, more so today than in
'97 and '98 when this was being put together. But there is some experience around the country as to collections. Some are better than others.

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

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

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

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

When you are looking at something that there is no experience on, that no one has done it before, and we are saying, we can pay for this without putting a penny out
of our pockets because the violators are going
to do it. It's not being done anywhere else,
so don't ask me to show it to you, but believe
me.

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

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

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

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

I said in answer to the Chairman
honestly, and I think forthrightly, that the
level of expectations that were raised in '98
were wrong. It wasn't marketed well. And
anything short of what was originally projected
was deemed to be a failure.

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

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

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

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

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

There is nothing wrong with it.
ASSEMBLYMAN IMPREVEDUTO:
Absolutely nothing. I agree with you.

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

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

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

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

If you pay for it in a traditional way, traditional way is -- I mean, just generally speaking, you went out and, you know, you issued bonds, and you either raised your tolls or you had -- if you had adequate revenue to support the bonds you didn't raise
tolls then, and you just paid off the bonds. And you took the money and you paid for the construction and the operation based on the traditional way.

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

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

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

I think the construction of the system is something we need to look at. Was there, for lack of a better term, a clerk of the works of this issue? Who is the overseer to make sure that the contractor was performing properly during this time period?
MR. GROSS: There were a lot of
levels, sir. The first that comes to mind was
the outside engineering firm that was hired to
be the project manager, I guess, is as good a
word I can think of, Parsons Brinckerhoff.

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

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

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

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

ASSEMBLYMAN IMPREVEDUTO: Please
excuse me.

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

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

Parsons Brinckerhoff was awarded
the contract through the consortium to do
supervision of construction of the violation
processing center and the customer service.

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

MR. GROSS: I believe that's correct.

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

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

ASSEMBLYMAN IMPREVEDUTO: Yeah, probably.

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

The chief engineer of each facility was a responsible person in connection
with approving plans.

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

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

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

ASSEMBLYMAN IMPREVEDUTO: There were people overseeing --

MR. GROSS: There were a lot of people.

ASSEMBLYMAN IMPREVEDUTO: The
reason that I ask the question, I had an
opportunity to speak to the folks that had the
contract with the transponders.

MR. GROSS: Mark IV.

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

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

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

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

Like, generally they would
provide the equipment and install the
equipment. However, in this particular case, the contractor wanted to install the equipment in order to save money. Or the equipment was installed improperly in most cases.

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

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

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

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

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

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

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

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

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

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

MR. GROSS: I appreciate some of the assumptions that you made that are part of
But the manufacturer of the E-ZPass technology was an integral part of the construction process. I am talking about Mark IV, who manufactures and supplies transponders that you put in the car, the readers that you install in the toll lane, and the antenna.

Those are the three components that create the signal that moves the data information to the customer service center so that your account can be debited through E-ZPass.

To the best of my knowledge, they tested every piece of equipment in the field before a lane became operational. I don't know how much access they had to the plans because I really didn't get to that level, you know. But I assume that they had access to the plans that showed the location of the antenna and the reader, that they provided comment. And I don't know what that comment was because I didn't sit in technology meetings.

But I can assure you that there
was a regular and fairly continuous dialogue
between Mark IV, the consortium technology
people, and the contractor.

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

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

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

Now, no matter how much you
test, it's not the same as the kind of volume
that gets thrown at a lane in real operation. And remember, you have weather that affects components that are working on a 7/24 basis. So your test results may deteriorate over a period of time.

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

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

This contractor has the capacity to see something going down faster than the employees of the toll roads have. And to have a lane operating or not operating well for five days or four days before that is communicated -- I am not talking about a lane that's obvious, it has half of its equipment laying on the ground. I am just saying
something in the software is not working
properly or an antenna is broken, or something
that is not necessarily self-evident by looking
at it, but it's generating bad reads.

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

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

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

Probably for financial reasons
since they were having some financial
difficulty, they were looking to save a few
bucks and do the installation themselves. They
were inept in doing that installation, is my
I honestly believe that after speaking to those folks -- and they tell me that if they go in now they will find many things that are not connected that should have been connected, or connected improperly, and are the cause of the major problems with the system, problems that are affecting every motorist who chooses to use E-ZPass.

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

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

And with that, thank you.

CHAIRMAN WISNIEWSKI: Thank you, Assemblyman.
I know Assemblyman D'Amato has questions.

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

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

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

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

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

Those projections, that 1 percent, had nothing to do with monies
collected. That just simply was a projection or a historical reference point on the number of vehicles that had violated toll barriers and could be expected in the future; correct?

MR. GROSS: Road violations.

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

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

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

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

CHAIRMAN WISNIEWSKI: Let me
That was never viewed as a revenue source, that was simply a way of enforcing the tolls?

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

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

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

CHAIRMAN WISNIEWSKI: So though they could estimate that 1 percent of the vehicles may violate the toll barriers, there really was no basis of estimating how much money would come out of that, that was really a
shot in the dark?

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

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

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

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

MR. GROSS: That's correct.

CHAIRMAN WISNIEWSKI: Assemblyman D'Amato.

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

Mr. Gross, it is my understanding that sometime in 1994 or 1995,
the then-Commissioner of Transportation, Frank Wilson, testified before this committee that the State of New Jersey was losing approximately $25,000 a day in toll cheats for perhaps -- if my math is right -- about nine million dollars a year.

Did you ever hear that statistic?

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

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

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

MR. GROSS: No.

ASSEMBLYMAN D'AMATO: And explain why not.

MR. GROSS: The driving force for electronic toll collection was to improve
the efficiency of the trip on a toll facility.

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

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

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

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

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

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

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

You can't do value or variable pricing without electronic toll collection.

You can't do it manually.

So there are so many laudable reasons to deliver E-ZPass. And, of course, you know, the region had already -- including New Jersey had already embraced E-ZPass as a concept back in 1991 and '92.
ASSEMBLYMAN D'AMATO: Even if it was absolutely clear to the members of the consortium that the self-financed concept would not work, would we still have gone ahead with the installation of the E-ZPass system?

MR. GROSS: In my opinion, absolutely.

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

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

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

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

MR. GROSS: Yes. You said March
of '97. The contract was signed with MFS in March of '98.

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

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

ASSEMBLYMAN D'AMATO: You are correct.

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

MR. GROSS: Yes.

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

MR. GROSS: I don't know.

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

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

ASSEMBLYMAN D'AMATO: Would you agree that the financing of the E-ZPass system was something that was discussed on a regular
basis at these meetings?

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

ASSEMBLYMAN D'AMATO: Was it discussed?

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

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

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

Could you try it again for me?

ASSEMBLYMAN D'AMATO: Sure. I am trying to go back in time and trying to appreciate what the various members in
attendance at these Executive Council meetings were being told about the likelihood of success versus failure of the self-financing concept. And to be fair to them, I am trying to learn, did they say to themselves, we are going to try this but there is a real chance it is not going to work? Or were they saying, oh, this is definitely going to work based upon what we are told?

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

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

What I recall at the Executive Council level was discussions fairly frequently by the Garden State Parkway that they didn't have the capital to spend at that time on this project. And that Commissioner Wilson said, we will deal with that issue. And the Commissioner trying to keep the consortium together, to move on with the objective of
getting electronic toll collection on the
New Jersey toll facilities.

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

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

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

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

MR. GROSS: I can answer that
for me personally. I really can't tell you
what was in the minds of the Review Committee
as they assessed and scored the contractor.
But Chase Manhattan Bank was very important to me. The operation of the customer service center is a back office operation, something that Chase Manhattan Bank had experience in and was considered one of the finest in the world.

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

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

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

Why did you do that?

MR. GROSS: The New Jersey
Turnpike was the lead agency for the procurement. So from the standpoint of the law, it was the regulations and law associated with administrative hearings that would prevail.

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

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

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

ASSEMBLYMAN D'AMATO: And the
New Jersey Supreme Court decided not to even hear the appeal from Lockheed after that; is that correct?

MR. GROSS: That is correct.

ASSEMBLYMAN D'AMATO: I have one final question.

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

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

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

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

CHAIRMAN WISNIEWSKI: Those are
all people who have gotten APR's.

MR. GROSS: Can I go down with you?

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

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

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

And without that common technology, you would not have a successful
E-ZPass system.

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

ASSEMBLYMAN D'AMATO: I apologize for the interruption.

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

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

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

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

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

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

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

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

And I think that the experience that we had with contractors having cash flow
problems, going out of business, issues in
connection with construction that were brought
up during today's discussions, you reduce your
risk if you have multiple contractors.

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

So I think that would have been
beneficial as well.

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

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

If you have a failure on entry,
you have a problem in matching, or if you have
a failure on exit. It's much more complicated software. It has resulted in some software redesign issues. It's more difficult to deliver that system.

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

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

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

Even though there is good reason to consider the consolidation -- because you save money, there is no question about it. The
costs for a customer service center if you look historically around the country are far less because of the volume that was delivered. But I think the detriments outweigh the benefit. So I would keep them separate.

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

Thank you, Mr. Chairman.

CHAIRMAN WISNIEWSKI: Thank you.

Assemblywoman Stender has some questions.

ASSEMBLYWOMAN STENDER: Thank you, Mr. Chairman.

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

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

ASSEMBLYWOMAN STENDER: And having served previously as freeholder from Union County, the RFP process is what we would
go through in the county.

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

MR. GROSS: Correct.

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

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

Is that correct?

MR. GROSS: I think you are
right. I think it would -- one would say this
was a performance driven RFP where the
consortium expressed in terms of results and let the competitors say, we'll tell you how you get there.

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

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

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

MR. GROSS: Well, you know, most
I respectfully, that is a very broad statement, I'd say. Because it's so broad I would say no, that's not the case.

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

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

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

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

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

In your opening statements you
referred to a firm called Phoenix Consulting as
an outside firm that I guess helped define this
at the beginning in terms of working with the
consortium. And Lord knows, we have a lot of
information, but Phoenix Consulting is a new
one on me.

Where did they come from or who
are they?

MR. GROSS: I think I have the
name correctly.

As I indicated, I did not spend
a great deal of my time in connection with the
review process, and they principally worked
during that period of time.

I think I have the name right.

I think they are a consulting firm out of I
believe Virginia. And I -- my general
recollection is that they were procured in a
normal fashion of sending out requests for
proposals, and an award was made to them.

ASSEMBLYWOMAN STENDER: And they
were there really to just help define the
process or help design the system as it was
being proposed?

MR. GROSS: I think they were
principally there to help the consortium
finance people go through the base case model
and ask questions and lead dialogue and
discussions.

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

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

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

MR. GROSS: Well, the State of
New Jersey is not responsible for the bonds
that were issued through the EDA. They were
issued to a relatively small number of private
investors that are banks and insurance
companies.

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

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

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

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

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

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

ASSEMBLYWOMAN STENDER: But yet they were designed -- I mean, the intent here was not have the agencies pay those bonds, it
was to have -- it was to be paid by these revenue stream calculations; correct?

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

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

So, I mean, I have said now for the third time that when the publicity was being generated about the contract, that there was -- the expectations were raised far too high. And a lot of people, including the media that had picked up on this issue a long time
ago, said, well, you are not generating the
revenue you projected, you're wrong, you
failed.

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

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

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

And that's what they are.

That's all they are is -- hopefully they were intelligently made with good common sense and a
basis for the assumptions, but they don't
necessarily reflect that it will actually
happen.

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

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

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

But you never filed an objection
to that final bankruptcy order. So it would be
questionable whether New Jersey would ever be
able to call that performance bond that it
probably would have been entitled to as part of
this.
MR. GROSS: I spent a great deal of time over the years that this contract was in various different stages to protect the performance bond because I consider the performance bond and WorldCom's indemnity to the surety of vital importance to the project.

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

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

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

ASSEMBLYWOMAN STENDER: Me, too.

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

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

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

And the fact that they were willing to bring management, engineers, finance people, money to this contract and get complete and get out was to me the best of any alternative to have the contract perform in accordance with its terms, deliver E-ZPass, that was good and reliable, and have a reasonable opportunity to collect violation revenue.
ASSEMBLYWOMAN STENDER: So you didn't file any objections to the bankruptcy order as it was done at the time?

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

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

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

My objective as the Executive Director was to have WorldCom take over the contract and finish it. And I had absolutely no intention of releasing WorldCom from any of its responsibilities or liabilities under the contract. Although I was aware that WorldCom
once it took assignment of the contract wanted
to sit down and negotiate with the consortium,
which would be understandable, things had to
be -- certain terms had to be changed in order
to step in and finish the contract terms. So I
expected negotiations.

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

ASSEMBLYWOMAN STENDER: I have
another little different question here.
When you talk about the
financing and the base case financial model
that was done, on which the premise of all this
was done, and we have a letter from you from
March 10th where you -- it is to Mr. Thomas
Simmons. You say, prior to the commencement of
the operations that a base case financial model
would be prepared by the consortium based upon
the actual notice to proceed date --

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

ASSEMBLYWOMAN STENDER: I am
It is a letter from you from March of '98 where you note that prior to the commencement of operations that there would be a base case financial model. And you've referred to that model a couple of times in terms of the projections of the revenues from the violations and from the fiber optic stream.

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

Are you familiar with that issue or --

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

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

The reason I ask about that is follow-up reports from Public Resources
Advisory Group -- and that I guess is the agency that was creating this model. Are you familiar with that?

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

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

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

MR. GROSS: MFS prepared that.

CHAIRMAN WISNIEWSKI: MFS prepared the model?

MR. GROSS: The one that became -- the one that I've referred to as the
base case dated March 10, 1998. MFS.

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

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

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

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

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

ASSEMBLYWOMAN STENDER: So the model would have been -- was in the contract,
and I guess is similar to the financing, if you will, that was part of the best and final offer summary where you are explaining where the revenues are going to come from on the toll side and where they are going to come from on the fiber side; is that correct?

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

Does that answer your question?

ASSEMBLYWOMAN STENDER: I guess.

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

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

So we will reconvene at 1:30,
and continue that line of questioning that we have been engaged in. Thank you all.

(Lunch break taken.)

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

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

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

ASSEMBLYWOMAN STENDER: Thank you, Mr. Chairman.

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

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

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

So could you just explain what that is referring to? I mean, I would think
that the base fiber is what was being laid
down, and expanded is that there would be an
expectation that there would be additional
fiber at some point.

Is that correct?

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

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

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

ASSEMBLYWOMAN STENDER: Sure.

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

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

ASSEMBLYWOMAN STENDER: As a
whole?

MR. GROSS: Yeah.

Now, they may be
referring -- you know, the fiber network was
originally designed and proposed to provide the
most reliable communication system for E-ZPass
operation, which is essential in order to
protect the base core total revenue facilities.

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

ASSEMBLYWOMAN STENDER: Okay.

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

ASSEMBLYWOMAN STENDER: Okay.

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

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

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

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

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

MR. GROSS: The answer is yes. But if I can go further with
that, as I recall it, the Review Committee's
collective scores for Lockheed and MFS for
technical confidence, to construct the system,
operate the system, were separated by so few
points as to effectively say they were equal to
each other.

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

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

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

As we have all been discussing,
very grave concerns about the ability for that
ever to have occurred, but be that as it may, I
understand what you are saying on that.

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

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

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

Are you with me on that?

MR. GROSS: I think I am
following you.

ASSEMBLYWOMAN STENDER: Okay.

That was at the foundation of
the financing. Yet we've heard from other people who have been here in front of us that the typical experience is at 2 percent. So you built in a financing mode that was lower than what experience even would have suggested would have worked. Did nobody ever check with other E-ZPass systems to see how they worked around the country for efficiency?

MR. GROSS: Well, the original model had a violation rate that gradually turned downward. It began well above 2 percent on average. And as the system matured and the public became acquainted with it, it went down to a half of 1 percent. And the average over eight years was 8/10ths of 1 percent. And, you know, my recollection is that the consortium was most satisfied with that. And if you look at the document that you were kind enough to furnish to me a few minutes ago, you can see that the violation fees projected by Lockheed and MFS were about the same.

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

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

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

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

ASSEMBLYWOMAN STENDER: I agree with what you are saying. But the projections were just so far way out of whack with what
reality was, I think that's the frustration
with reviewing all of this.

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

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

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

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

At the end of that two years, it
was eight years with all agencies operating at
what's called a hundred percent. It was during
those eight years that it was projected that
there would be a gross recovery of about 400
and something million dollars of violation
revenue.
Now, since the Turnpike, the Garden State Parkway is not complete, mixed-mode is not yet in operation, and there isn't final system acceptance, you don't have the beginning of the eight-year period.

ASSEMBLYWOMAN STENDER: Okay.

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

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

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

ASSEMBLYWOMAN STENDER: I understand.

CHAIRMAN WISNIEWSKI: Mr. Gross, if I could just interject on that line of
questioning. Certainly appreciate the fact that there is no enforcement mechanism currently other than the issuance of APR's, so it's almost an honor system. If you pay the APR, there is enforcement. If you don't, there is no municipal court mechanism. That's correct?
MR. GROSS: That's correct.
CHAIRMAN WISNIEWSKI: There is a cost associated with establishing that municipal court collection system. And somebody has got to go to court and prosecute the case. MR. GROSS: It's the obligation of the contractor under the contract. CHAIRMAN WISNIEWSKI: After eight years, somebody is still going to have to go and prosecute those cases, and it's going to cost money. MR. GROSS: That is true after eight years. But if I may -- can I contribute something further? CHAIRMAN WISNIEWSKI: Let me just finish the question I had, and then you
can contribute it.

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

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

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

Isn't that correct?

MR. GROSS: After the expiration of the eight operating years, which is the term of the contract with the contractor, you are
absolutely right. During that eight-year period, the contractor's responsible for generating the steps necessary to go to court. The collection agency is an obligation of the consortium, if it elects to use that. And the 2001 model showed collection agency expenses.

But I was going to contribute something even beyond that.

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

CHAIRMAN WISNIEWSKI: Exactly.

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

And it is projected, if I may, that similar to parking tickets, that a very
large percentage of the suits filed in
municipal court will not result in a court
hearing but will be paid through the violation
bureau rates.

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

MR. GROSS: That's correct.

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

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

MR. GROSS: That is true. The
municipal prosecutor will prosecute the case.

But that is true. But that is because your
illustration fell through the crack, so to
CHAIRMAN WISNIEWSKI: Let me just stop you at that point. Because you say the municipal prosecutor will prosecute the case. I've spoken to municipal prosecutors, I am not familiar with many who are anxious to add to their duties prosecution of toll violation cases for which the revenue is going to the toll road.

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

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

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

If you are the subject of a complaint for failure to pay your tolls, you go to court, you contest it, you lose. The judge under the law has discretion to fine you
somewhere between $50 and $200 plus court

costs.

Let's assume you're fined $100

plus $30 court costs. That $130 is divided in

some formula -- and I don't know the precise

formula -- between a municipality and the State

of New Jersey. None of it goes to the toll

authority where the violation occurred.

The judge in addition under the

law has a discretion over and above what I've

just described to assess the $25 fine and the

unpaid toll against the violator.

If the judge does that, then the

violation fee and the unpaid toll goes to the
toll agency.

So the revenue stream to the

municipality and the state is precisely the

same as the revenue stream in a parking

violation or any other municipal action that

leads to a fine.

CHAIRMAN WISNIEWSKI: But there

is the possibility, then, under that scenario

that toll violations that proceed in municipal
court could result in the toll agency receiving

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

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

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

I am not so certain or confident that should we get enforcement mechanism in the municipal court that as a matter of course toll agencies will necessarily receive the violation money that is anticipated.
It's possible, but human nature being what it is, I am not sure that municipal courts are going to view their first responsibility to raise revenue for a toll agency.

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

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

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

MR. GROSS: What I mean by that -- and I say that respectfully -- is that if you get a notice that you drove on the Garden State Parkway, you went through a toll booth and you didn't pay your toll, and you owe the consortium $25.35, and you are an E-ZPass member, you are going to take the
time -- although you are going to be annoyed
that you got the notice -- you are going to
take the time on the back of that form to say,
I have an E-ZPass account, here's my account,
and you are going to put it in the mail.

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

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

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

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

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

MR. GROSS: I understand that.

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

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

CHAIRMAN WISNIEWSKI: We will
have to agree to disagree on that point.
Assemblywoman Stender, did you have further questions?

ASSEMBLYWOMAN STENDER: Yes.

Thank you, Mr. Chairman.

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

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

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

ASSEMBLYWOMAN STENDER: Okay.

MR. GROSS: The system needs improvement. There are lanes on both the Garden State Parkway and the Turnpike, at least as of the end of the year, that were generating much too high a percentage of what we
call -- what was called false violations. And
that is what you are referring to. And it has
to be improved.

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

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

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

Let me give you -- and let me
also say to you that those that are riding the
toll facilities every day and have no problems
are much less likely to call public officials
and commissioners and executive directors.
Because people tend to complain, they normally
don't commend. It's just human nature.
Nothing bad about human beings, but that's the way we behave. I behave that way, too.

Let me give you an illustration.

This doesn't mean this is the way it happens all the time, but I think it drives home the fact that not all of these false violations are generated by lane failures, something wrong with these violation processing center operations.

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

So he would -- he complained.

And ultimately, the consortium placed his transponder, asked him probing questions, where do you locate your transponder? Do you have your license plate on file? Yes, I have my license plate on file. Kind of mysterious.

He got very angry. He wrote to the governor. He wrote to his public officials. He actually made an appearance
before the Board of Commissioners on the Garden State Parkway. And he was going to -- he threatened suit. This went on for months.

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

Do you know what the problem was?

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

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

Now, I am not saying that's why we have false violations regularly. But what I am saying to you, it's not that simple. It's
not that every complaint is justified.

It's a system that needs to be refined on a regular basis. The public needs to be more responsive than they are as to mounting. And there will be errors by the public and by the operators of the customer service center and the VPC. It's not perfect. But I have to tell you, there is a million and a quarter transactions a day, and at least 96 or 97 percent of them have no complaints.

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

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

You talked about the license plates. Isn't it correct that the application that you fill out for the E-ZPass account, when you get to the part of your license plate, it says it's optional whether you put that down?
That's what we've been told in the past.

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

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

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

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

CHAIRMAN WISNIEWSKI: That would be beneficial.

Assemblyman Johnson, I know you had some questions.
ASSEMBLYMAN JOHNSON: Thank you, Mr. Chairman.

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

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

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

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

ASSEMBLYMAN JOHNSON: Is that disorderly, do we know?

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

CHAIRMAN WISNIEWSKI: Title 39 violation.

ASSEMBLYMAN JOHNSON: Motor vehicle violation. Okay.

So let's say that you have some violators up at exit 18 on the Turnpike and you have -- 18 is Ridgefield Park, 16 is maybe
Secaucus, you have different exits. Each municipal court is going to entertain these complaints?

MR. GROSS: The answer would be yes.

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

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

MR. GROSS: The answer is yes. An expert -- it took a while, you know -- I said earlier that it's much too long for the evidence package to have been generated. And that is a correct statement. But part of the delay was finding an expert that the consortium reasonably believed would be persuasive in the municipal court system in going through the technology.

Just like 25 years ago one had to prove the reliability of radar. Well, it will be a requirement when in municipal court
to prove the reliability of the operation of
the lane and the violation processing center so
that the court is satisfied that in fact the
person before them is the person that went
through the toll lane and didn't pay their
toll.

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

There is a process where you can
ask the court system to take judicial notice of
the reliability of the system.

And if that is done and judicial
notice is taken, then the amount of time you
are really going to have to go to court and
prosecute these cases should be relatively
small. Because if you screen out -- if the
system operates satisfactorily, it's going to
screen out those that have legitimate defenses.

And most of the violators are
going to not contest the matter because the
consequences are so great.

But to answer your question, the
operator of the system is required to provide
both the lay and expert witnesses to testify in
municipal court under the contract.

ASSEMBLYMAN JOHNSON: Even in radar cases, let's say, where it's accepted by the court that this type of instrument is approved and is reliable, the defendant or the violator in this case has the right to face his or her accuser. In this case, it would be this consortium. So someone would have to be there, I take it, to present your side of the case before the prosecutor.

MR. GROSS: You are right. All I was saying, Assemblyman, is that the number of times you are required to do that should be relatively small in relationship to volume. Because a person is less likely to contest a charge against them when they know they are in violation. And when they lose, they are going to be paying so much more in fines than they would if they didn't contest it.

ASSEMBLYMAN JOHNSON: I understand.

Has the collection agency collected any money? Is there a collection agency on board yet?
As of the time I left the Turnpike, the answer is no. There was an RFP. There was a company that consortium members selected as the most desirable. There were contract negotiations and draft contracts prepared. And work started to have communications between the violation processing center and that company. That's as far as it went when I left.

Chairman: As the chairman said before, it's kind of on the honor system right now.

MR. GROSS: Well, the honor system is not good.

ASSEMBLYMAN JOHNSON: No.

MR. GROSS: It's not good because all you need to do is look at the experience on the Garden State Parkway who before E-ZPass, 70 percent of their lanes were automatic baskets where you threw your coins in and -- I believe this is a correct number -- nearly or about 28,000 violations a day.

So there will be a very higher
percentage of violations if the violators believe they can get away with it.

ASSEMBLYMAN JOHNSON: That's all I have.

CHAIRMAN WISNIEWSKI: Senator Burzichelli.

ASSEMBLYMAN BURZICHELLI: Thank you, Mr. Chairman.

Thank you, Mr. Gross, for your patience, forthright discussion with this committee.

I only have a few short things. Have you seen today's Star-Ledger in your travels today?

THE WITNESS: No, I haven't.

ASSEMBLYMAN BURZICHELLI: The heading is "E-ZPass deficit is ballooning, Revenue projected to fall 469 million dollars short."

And listening to you today and the details discussed, I don't think for a moment that this is the legacy that you wanted to leave or be associated with. And I believe that.

I happen to in our packet of
information, happen to have had a chance to
read a chapter from the book called "Sold
Short." I am certain you glanced that. It's
called "Gross Mismanagement."

MR. GROSS: Yes, I've read the
chapter.

ASSEMBLYMAN BURZICHELLI: Do you
care to offer us your critique of this
individual's assessment of the events
surrounding the system?

MR. GROSS: I believe the author
of that book is a Mr. Asensio, if I have it
right. I may not be pronouncing it correctly.

This gentleman contacted --
tried to contact me soon after, I believe, Able
acquired this contract with WorldCom.

My recollection is I spoke to
him once, and after that was advised by the
consortium counsel not to engage in
conversation.

This gentleman was selling short
the stock of Able to Telecom, and was doing so,
I believe, much before Able acquired MFS from
WorldCom. And he was driven by a motive other
than the proper performance of a contract. He
was driven by his own business intentions.

And he regularly tried to speak to me. And I didn't speak to him because Able was a public company, and I was not going to provide any information to him that -- in connection with what the consortium was doing, how it was negotiating with the company, et cetera.

And that was, in my judgment, the genesis of his writing a book with a chapter about E-ZPass.

He then -- for about nine months we didn't hear from him. And then he wrote a letter to me and said, I am writing a book, and here is a list of questions that I will give you an opportunity to answer.

And they were all loaded questions. And we were still dealing with Able at the time.

So at the advice of counsel I wrote back to him and said, if you write your book, send me a draft before you send it to the printer and I will give you my comments. And he never did that.

ASSEMBLYMAN BURZICHELLI: Would
you consider any of his conclusions or
allegations to be actionable with regards to
what is directed at you?

MR. GROSS: The article is very
inaccurate as to me. And I asked counsel for
their opinion in connection with a suit. And
they advised that as a public official, the
opportunity of successfully prosecuting a suit
was minuscule.

ASSEMBLYMAN BURZICHELLI: I
raised the same question to the director of my
political campaign last year and got a similar
answer. I am familiar with those frustrations.
If I can ask one more question.

We've heard a lot of testimony
prior to your arrival between the Parsons
people and the relationships, the availability
of information, and how the project seemed to
be being managed internally. And frankly, for
a project so large, we all were very concerned
and somewhat surprised.

And I ask this, and I don't mean
to be harsh in this question, but I need to ask
this question. We don't know one another
personally, so I don't have a sense of how you
handle certain things.

But considering you were
involved in arbitrating, making a decision as
to whether or not the other contractor had a
valid claim when that issue came about, and
then later -- and you chose the other people
who eventually had the contract. And through
this process it became very clear that it just
got deeper and deeper, that the performance
wasn't as certain as you hoped it would have
been, but you had to make a decision as to
whether to stay with them or not stay with
them, when do you cut bait, when do you leave,
when do you start again.

I heard you say today, we made
the decision because we thought if we stayed a
little longer, with the influx of money, with
them being propped up, we could get through
this, and it made more sense to do that rather
than stop that, bring in insurance companies,
and start again.

Were you comfortable that you
could be unbiased, after having chosen these
people in legal proceedings, to then walk away
from them halfway through? Did you feel any --
I don't want to say pressure, but did you have an alliance, de facto alliance with the people you chose to do this job?

Did it benefit you -- I don't mean benefit financially, but since you chose them, did you feel you had to support them other than based on their performance?

MR. GROSS: Absolutely not.

My objective, and I believe the objective of all consortium members at all times, was what is in the best interest of the public in connection with being able to deliver an E-ZPass system to the public that was timely.

Each time that there was -- I think it's fair to say a crisis with the contractor, and there were numerous ones, there were extensive meetings, both with the contractor and with the consortium members separate from the contractor.

And the unanimous decision of the consortium -- even though the Turnpike was the lead agency, the Turnpike never made any significant decisions on its own. It was always a collective decision of all the
agencies, and sometimes, with the participation
of the Commissioner of Transportation.

And each time we had a
crisis -- and there was probably at least four
of them, there was a number of amendments,
there were a number of times we assessed
liquidated damages. There was -- each time
there was always dialogue about should we end
it now? Should we just, you know, call in the
bonding company?

And each time we tried to
balance that. And the contractor came through
with either a few new managers, more money,
either from Able or WorldCom. The ultimate
conclusion -- and I am simplifying it -- was
that it was in the best interests of the public
who we were serving to continue with the
contractor than not.

But it was always based upon
what is in the best interest of the public.

ASSEMBLYMAN BURZICHELLI:
Mr. Gross, one last question. Almost a
philosophical question.

But at this point, who do the
people in New Jersey say about the 469 million
in default? You are no longer there. Are we
to be satisfied because you are no longer there
that the pound of flesh has been extracted from
really what has turned out to be a project that
was not favorable, with all good intentions?

It seemed to be working
elsewhere, not working here. Lot of
frustrations, lot of layers. This committee is
having difficulty cutting through the layers.

Here you speak of management
that has layers as deeply as difficult.

Who do we say?

MR. GROSS: Well, as you would
expect, A, I haven't read the Star-Ledger
article, and I certainly haven't read the
report. So I don't know what the assumptions
in the report are that leads to the conclusion
that there would be a balance due of 469
million dollars in March of 2008.

What I can only speak to is what
I signed off on in the end of November of 2001
when -- based on that date, based upon
everything that we knew and what we believed to
be reasonable projections, that the balance
would be 161 million.
But we also knew that if certain things didn't fall into place promptly, which were part of the assumptions in November of 2001, that number could get much larger.

Now, having said all that, I'll say hypothetically whatever the number is, it's still something less than a hundred percent of the cost of construction and operations. There is already 100 million dollars in fiber leases revenue -- I shouldn't say that.

There is about 80 million dollars -- I am speaking again from the time I left, I don't know what happened in the past four months. 80 of the 100 million dollars in fiber revenue was prepaid. So the consortium has that money. There is 100 million dollars in fiber leases. That is 100 million dollars less than what would otherwise have to be paid for the system.

And, you know, it's all according to how you look at the violation revenue.

If you look at performance to date and say, you are never going to collect anything, and then you revise your model and
you take out 200, 300 or 400 million dollars,
you are going to be building up a potential
number in March of 2008 that is fairly
significant.

If you believe that there has
not been an adequate testing of the collection
of the violation revenue, then you are not
going to project such a large number until the
testing occurs.

So it’s hard for me to tell what
is the makeup of that 469 million dollars.

There is one other point that we
should all be aware of as we go through this
exercise. And that is that when the original
forecast occurred, the operating expenses,
which are the transaction expenses -- every
time you go through a toll booth, every time
you use the road which uses a transponder, that
is called a transaction.

And Chase Manhattan Bank
receives a little more than 4 cents for
processing that. In addition, every time your
credit card is charged there is a bank charge.

92 or 93 percent of the public that is an
E-ZPass member uses a credit card. And a
family, a noncommercial family, can get up to
four transponders without payment.
Transponders cost $22 and change apiece.

Originally it was projected that
35 percent on average of the motorists using
the five toll facilities would become E-ZPass
members, and the other 65 percent would pay as
they previously had paid, by cash or throwing a
coin in or buying a token on the Garden State
Parkway.

That 35 percent, when I left,
was up to 55 percent. The difference between
35 and 55 percent of E-ZPass users is a couple
hundred million dollars in additional good
expenses.

Because it is to me -- you say,
what do you want to leave with? It is a good
feeling, it is a warm feeling to know that
E-ZPass has been accepted as the premiere
method of collecting tolls, and that now 55
percent of the public that is traveling on
these toll roads that form the consortium are
using it. But it costs more money to do that.

So when you are looking at what
is the balance due in 2008, you need to take
that into account.

ASSEMBLYMAN BURZICHELLI: All

that being said, hindsight being 20/20, you

having sat through the decision-making process

between the two potential vendors, would

Lockheed have been a better choice?

MR. GROSS: I didn't sit through

that. I was not part of the Review Committee.

ASSEMBLYMAN BURZICHELLI: I
don't mean the review. I mean the

administrative law that took place when they

did the protest.

MR. GROSS: I was the hearing

officer.

Let me say this without in any

way denigrating Lockheed or anyone else. There

are relatively fewer number entities that hold

themselves out legitimately as being in this

industry that will design and construct an

electronic toll system.

There is not one toll agency

that I know of as of the time that I was with

the Turnpike that had a deliverable on time,

that worked in accordance with the contract.

This is a very tough assignment
for anybody to do. And the entities that went
into this business initially all believed it
was easy. They all believed that since the
technology was shelf technology, this was a
good way to expand their business potentially.

And they all found as they got
into it and were implementing the programs that
even though it's shelf technology, it's very
complex. Because you are dealing with millions
of transactions in weather conditions, and you
are dealing with them at about one-thousandth
of a second.

And there has been significant
problems that all over time have been resolved
by every one of the companies that hold
themselves out in this industry.

Some of the companies would not
have had the cash flow problems that this
contractor had throughout the years that caused
an incredible amount of problems for the
consortium. So from that standpoint, others in
the field would have avoided that problem.

But from the standpoint of
technical issues, it's hard to say that one
would find themselves with significantly
different resources to date.

    As I said earlier -- I am sorry
to be long-winded -- the Garden State Parkway
and the Turnpike are more difficult to have a
well operating E-ZPass system than most other
roads in the country for the reasons I
described earlier.

    ASSEMBLYMAN BURZICHELLI: Very
good. Thank you, Mr. Gross.

    CHAIRMAN WISNIEWSKI:
Assemblywoman Stender.

    ASSEMBLYWOMAN STENDER: Thank
you.

    Just to follow up on a couple
other things that I was speaking to before.
We were talking about the
violations processing center. The original
contract called for an integrated system. So
there would be one center that would send out
the violations and then process them, the
customer service and the violations. But in
the end, you allowed the contract to be amended
into two separate centers.

    Could you speak to that?

    MR. GROSS: Yes, I can. And you
are right.
The contract only has one section. It's called a customer service center. I don't know what it's captioned. But the contract reads that the customer service functions and the violation processing functions are really united in their operation. Chase Manhattan Bank elected not to do the violation processing. And I don't know really to this day the precise reasons. That was between negotiations between MFS and Chase. And --

ASSEMBLYWOMAN STENDER: I am sorry. Wasn't that part of the contract? If that was part of the contract, they were supposed to do the whole thing.

MR. GROSS: MFS is responsible for everything under the contract. The consortium has no direct contractual arrangement with any subcontractor. The consortium approves the major subcontractors under the contract, but it has no contract with them. The entire contract is with the prime contractor, MFS.

MFS under the contract is
obligated to build and operate both the
customer service center and the violation
processing center.

It was initially contemplated
that both those functions would be served by
Chase Manhattan Bank. But they weren't. Chase
decided to operate the violation processing
center. And what I was saying is I don't know
the precise reasons that caused Chase not to
operate the violation processing center. I
trust they were as a result of not reaching
agreement with MFS.

So Chase became the customer
service center operator. And MFS proposed
another entity, whose name escapes me, as the
violation processing center operator.

And the consortium reviewed the
credentials of this entity -- and, I am sorry,
I just can't remember the name, it had initials
in it -- and was satisfied that this entity had
both the requisite experience and skill to run
a violation processing center, to design it and
to run it.

MFS had a dispute with that
entity. It came to the consortium in the
summer of '98 and said that -- it offered a second entity to build and operate the VPC. And that is why, if you remember, I said to you, liquidated damages were assessed early in the contract. They were supposed to have a violation processing center operating in November. Well, in the end of August, they still didn't have a contract. They ultimately in either September or in that time frame advised the consortium that they were going to operate it themselves. And they submitted a proposal. They were going to build it. They were going to do the software for it and operate it themselves.

And the consortium was very upset with that because MFS had absolutely no experience in operating a violation processing center. However, counsel advised us that the prime contractor under the contract could perform any aspect of the contract. And that's how MFS came to be the VPC operator.

ASSEMBLYWOMAN STENDER: So you didn't have to amend the contract to allow that, that was just something they could do
under the contract?

MR. GROSS: If we had to give consent, we would not have consented to that. MFS had absolutely no experience in operating a back office.

And I remember a meeting with them in September, September of 1998. And I looked -- we were critiquing their proposal to build and operate the center. And I said to them, you will regret this because you will fail.

ASSEMBLYWOMAN STENDER: Well, apparently they have.

Earlier when we had talked about the base financial model, and you said that was in the contract. In the documents we have it is not in the contract. And your letter in fact said that that was going to be provided for the consortium.

I understand that you probably can't provide better information at this point in time, but we are still looking for that base financial model because we don't have it. And that is sort of part and parcel of what we are trying to gather here.
Because I think that is important for us to understand as we try to put this puzzle together, which doesn't seem to be going together.

MR. GROSS: I read the letter over the lunch period, and it does say that. But again, I say this to you and I ask you to ask the Turnpike. On the contract signing date, which I believe is March 10, 1998, the base case model was made an exhibit of the contract. There are a whole variety of exhibits, and the model was one of them.

But the Turnpike certainly has that model. That model was put out. It was given to the press when we had the press conference after the execution. It's been distributed and discussed with the media hundreds of times. And it certainly is available to you. But I don't have access to it.

CHAIRMAN WISNIEWSKI: Just for point of clarification, I think, Assemblywoman, we have a copy provided to us by the Turnpike of the contract documents. And not included with the -- I mean, as of a month ago, not
included with those documents, not appended, not indexed, is the base case -- it's not there.

So while we will certainly take your word that it should be, as we speak today it's still not part of the documents. And that I guess -- perhaps it's entirely innocent. But certainly it creates more suspicions on the part of this committee as to the underpinnings of the finances where a document is supposed to be there but it's not.

I am sorry to interrupt.

MR. GROSS: May I address the chairman for a moment?

Do you have the revised model dated November 2000?

CHAIRMAN WISNIEWSKI: Yes, we do.

MR. GROSS: As an exhibit to that revised model is the original model. Because the first revision referred to the original model of March 10th.

So indirectly you've got it. You should have gotten it differently, but you do have it.
CHAIRMAN WISNIEWSKI: So it's appended as an exhibit to the revised model.

MR. GROSS: To the 2000 revised model.

CHAIRMAN WISNIEWSKI: The November 2000 report should be in everybody's packet. I would imagine appended to that would be that document then.

MR. GROSS: Yeah. Not the 2001. The 2001 revised the 2000. But the 2000 revised the original model. And that is an exhibit to that report.

CHAIRMAN WISNIEWSKI: Thank you.

ASSEMBLYWOMAN STENDER: As a final point, you've referred often to the fact that as part of the MFS contract that Chase Bank was essential in your mind to it being successful.

If Lockheed had been the contractor, what bank would have been involved? Do you know?

MR. GROSS: Lockheed runs its own customer service.

ASSEMBLYWOMAN STENDER: So they would not have been involved, Chase Manhattan,
MR. GROSS: Chase was not on the Lockheed team.

ASSEMBLYWOMAN STENDER: I think that really concludes my questions.

I believe, Mr. Gross, that in your heart of hearts you believe that the problems that we have here are really in large part, especially with the violations, individual problems. And I guess while I really appreciate your being here and answering our questions, I just couldn't disagree with you more.

What you call creative I find to be incredibly -- I don't know whether it's delusional or incompetent. But the system is a disaster. And the more questions that we ask, the more questions that we have.

And we've spent a lot of time today going through a lot of details. And as yet, it makes not a lot of sense to me how you can represent -- and I believe you believe this -- that all of these decisions were made with informed judgment. It just seems like an oxymoron to me, and it's a disgrace.
Thank you.

Thank you, Mr. Chairman.

CHAIRMAN WISNIEWSKI: Thank you.

Assemblyman Gusciora.

ASSEMBLYMAN GUSCIORA: Thank you.

I will conclude my remarks. I also apologize for my impatience. However, I think after five hours I don't think we are any closer to a resolution of this matter or getting to really the essence of what went wrong, how did it go wrong, and what could we do for the future.

What really struck me is just the tone of indifference. And I think maybe that is indicative of the entire Whitman Administration. It's no wonder why we are facing a six billion dollar deficit. It's almost as if it's other people's money.

You brought up one example of one car owner who -- one clerical error on his license plate. We have trucking companies who testified before us that have canceled their E-ZPass because they don't have the resources to deal with the false violations.
Wakefern Foods, one of the biggest food distributors in the country, testified that they have two full-time persons just to go through the monthly bills to straighten them out, but yet we don't have an answer for that.

We also have the violation processing center itself, missed deadlines after deadlines, still not fully running. We don't have a collection agency.

We have Arthur Andersen, who did the audit of Able, and yet somebody allowed Able to continue grossly underfinanced, mismanaged, and yet the agency not once bothered to step in. And we had the ability to say -- to force WorldCom to continue the contract, we allowed -- because we've contracted WorldCom.

We didn't contract with Able or Adesta or the other alphabet soup companies that were in here. But yet there was no oversight, no invoking of the provisions that would have canceled the contract, that we could have gone after the performance bond.

And in the end, we find out in
the final bankruptcy order we may never be able
to collect any money because we did not even
protest the final bankruptcy order that
said -- that wiped out all these old debts.

And then finally, we get a
figure that's 700 million dollars off. Today
in the Star-Ledger it says we are 469 million
dollars in the hole, and you guys projected
that we'd be 488 million dollars in the black.

I don't know why there is such
indifference or there is not some explanation,
no apology, no nothing, no admission of error.
It's just this indifference that we've gotten
for the last five hours. And yet we are not
any closer to what went wrong, why it went
wrong, and what could we do in the future.

Thank you, Mr. Chairman.

CHAIRMAN WISNIEWSKI: Thank you.

Assemblyman D'Amato.

ASSEMBLYMAN D'AMATO: Thank you,

Mr. Chairman.

Mr. Gross, you became the
Executive Director at what point?

MR. GROSS: The Executive
Director in February of 1997. But I was Acting
Executive Director since October of '95.

ASSEMBLYMAN D'AMATO: And you left in January 2002?

MR. GROSS: That's correct.

ASSEMBLYMAN D'AMATO: From '95 to 2002, where was your office located?

Physically located?

MR. GROSS: Administration Building, which is right off Interchange 9 in New Brunswick.

ASSEMBLYMAN D'AMATO: Of the New Jersey Turnpike Authority?

MR. GROSS: Correct.

ASSEMBLYMAN D'AMATO: Give me an average of how many employees were there during your administration, if you will.

MR. GROSS: In the building or in the workforce?

ASSEMBLYMAN D'AMATO: In the workforce.

MR. GROSS: On average, full-time employees, about 1,600. There was also part-timers, about 600, and about 400 temporaries.

ASSEMBLYMAN D'AMATO: Was there
a record retention policy relative to
correspondence, memos, e-mails, minutes of
meetings during that time?

MR. GROSS: Yes.

ASSEMBLYMAN D'AMATO: And what
was that policy?

MR. GROSS: Well, preserve and
file.

ASSEMBLYMAN D'AMATO: For how
long?

MR. GROSS: I don't recall what
the State law is, if it's three or seven years.
But in accordance with law.

ASSEMBLYMAN D'AMATO: Every time
the consortium met were you present?

MR. GROSS: No.

ASSEMBLYMAN D'AMATO: Why not?

MR. GROSS: Well, take the
construction phase. There was a project
manager. There were leaders in the area of
finance, in the area of technology, in the area
of actual construction.

These groups -- and we are
talking about 40, 50, 60 people from all the
agencies -- would meet on a regular basis,
daily, weekly, and all report their meetings to
the project manager, who would attend some of
the sub-meetings based upon the subjects being
discussed.

I would attend a weekly meeting
on occasion based on the agenda item, and then
would meet with the chief engineers and the
project manager and the deputy manager on a
fairly frequent basis to get a sense of issues,
and then, from time to time, meet with the
contractor.

And, of course, when things
became a crisis -- and it happened at least a
half dozen times during the period -- I became
directly involved.

ASSEMBLYMAN D'AMATO: You are
telling us that there was a printed agenda for
some of these meetings that you just
referenced?

MR. GROSS: Some of the
meetings, again, many of which I wouldn't
attend, had agendas, yes.

ASSEMBLYMAN D'AMATO: If we
wanted to look at those printed agendas over
the years, would they be located in some room
in the New Jersey Turnpike Authority?

MR. GROSS: Yes. The E-ZPass operation had a section, physical section, where a number of employees worked, you know, on Monday through Friday, and records were retained there. Minutes and e-mails all were retained there or under the jurisdiction of some of the various technical leaders of the project.

ASSEMBLYMAN D'AMATO: Mr. Gross, when you left who was the person or persons in charge of that section where they retained all these documents that you just mentioned?

THE WITNESS: I really don't know if there was one person that was totally responsible. But I would think that either Carol Hollows or Steve Beunte -- Steve Beunte is a senior engineer at the Turnpike and was assigned to the engineering responsibilities of the project -- would certainly be able to secure for you and the committee all of the areas that we spoke to.

ASSEMBLYMAN D'AMATO: Thank you, Mr. Gross.

And thank you, Mr. Chairman.
CHAIRMAN WISNIEWSKI: Mr. Gross,

I just wanted to followed up on a couple of various issues that were raised during your testimony.

The first, going back to your opening statement, one of the things you had said was that -- talking about the delays in the implementation of E-ZPass, you said, however, the principal but not exclusive cause of delay was the Lockheed litigation.

My records show that the Supreme Court denied cert on that litigation in July of 97, and the contract wasn't signed until March of '98. So approximately nine months after the end of the litigation.

What was the cause of the delay after the litigation ended before the contract was signed?

MR. GROSS: I am sorry. I had my date wrong. That statement was done from memory, so I apologize if I was wrong with the date of the Supreme Court decision.

At the direction of counsel, the consortium was instructed not to meet with MFS and advance the terms of the contract until the
Lockheed litigation was concluded.

So once we were given the green light to proceed, it took a considerable period of time to complete a contract. And I think you and your staff have seen, it's fairly extensive. Some of the exhibits to the contract are just as extensive as the contract itself.

CHAIRMAN WISNIEWSKI: Just to summarize, I guess, your answer is that the reason it took nine months between the conclusion of the Lockheed litigation and the signing of the contract is that was the period of time in which negotiations on exact terms were carried out?

MR. GROSS: That is correct.

In addition to that, the negotiations on the private lending also took place during the period we just described. And that took a considerable amount of time as well.

CHAIRMAN WISNIEWSKI: The private lending you are talking about is the lending that financed the construction and the operation of the service center and the
violation center per the contract?

THE WITNESS: Right.

CHAIRMAN WISNIEWSKI: That is financing that came through EDA but was privately placed?

THE WITNESS: Correct.

And there was one other thing -- you are sugaring my recollection. There is one other thing that took place during this period of time, and that was the enforcement legislation that was required in order for the project to work.

And that also happened in that time frame that we just discussed.

CHAIRMAN WISNIEWSKI: I wanted to go back to an issue that seems to be the central focus, and quite honestly, I would agree with that, and that is where did the notion of self-financing come from?

And we've heard testimony from you today that this was a contractor response to a best and final offer. Is that correct?

THE WITNESS: That's correct.

CHAIRMAN WISNIEWSKI: I understand that you came on board in late '95,
early '96 as acting Executive Director. Is that correct?

MR. GROSS: October of '95.

CHAIRMAN WISNIEWSKI: I just wanted to point out for you the Request for Proposal issued by the consortium. And my aide is going to show you the page.

On a page called "Proposal Procedures," 1.0, requirements and conditions for the proposals, there is a lot of language there, but in its pertinent part it says, Furthermore, the procurement process will include the valuation and negotiation of proposed financial and work scope options. And it goes on to say, these options can take the form of added-value, revenue that offsets capital and operation costs associated with the service and materials provided under this contract.

And I wanted to show this language to you because my understanding of this is this is where the respondents to the request for proposal came up with the notion of revenue generation. It came from the Request 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.
This document that you are referring to, the RFP, didn't create violation revenue.

As I said earlier, there is only one or two ways you can build an electronic toll collection system; either put gates in the toll lanes or have a camera system and attempt to identify the violators.

CHAIRMAN WISNIEWSKI: There is another way of paying for it, and that is simply viewing it as an infrastructure cost without regard to violation revenue and paying for it that way.

MR. GROSS: I am not talking about how you finance it or what you rely upon. I am saying, when you construct an E-ZPass system, physically, just picture a lane, a toll lane, and you either have to put a gate there so as to prevent the violator from passing through or we have to have a camera system to identify the violator.

You can't have an unmanned electronic toll system operating in a lane without one or the other or you are not going to collect your toll revenues.
CHAIRMAN WISNIEWSKI: I understand your point.

MR. GROSS: So what I am saying to you -- excuse me, Mr. Chairman.

What I was saying was that once you recognize that you have to have a camera system, assuming you reject gates, you know you are going to generate violation revenue. The question is, to what extent, and how you use it.

So this paragraph in the RFP was not created for the first time for violation revenue. It was asking the proposals to be creative.

CHAIRMAN WISNIEWSKI: With the violation revenue?

MR. GROSS: Right.

CHAIRMAN WISNIEWSKI: When you boil it down, that's where the notion of self-financing first started in the RFP.

MR. GROSS: Yeah. I would say you are right. But again -- I am not trying to cop out on you, but again, I didn't prepare this and I didn't really participate in it.

But reading this, I agree with you.
CHAIRMAN WISNIEWSKI: Thank you.

One of the things I believe you said, Mr. Gross, was that the reason why we are having difficulties with E-ZPass system was -- perhaps this is not exactly what you said -- its unexpected popularity. That because there are so many users, it's run into problems in terms of the cost of the transponders, so on and so forth.

Is that an accurate representation of what you said?

MR. GROSS: I think so, except I didn't say it was a problem. I think it is a good thing, but it just costs more to be able to service a higher percentage of the motorists with E-ZPass.

CHAIRMAN WISNIEWSKI: Problems in terms of the financing, in terms of the financial picture, it is certainly costing more than was anticipated.

MR. GROSS: That is correct.

CHAIRMAN WISNIEWSKI: I wanted to draw your attention to an MFS document that has attached as an exhibit the consortium income payment matrix.
This is a document -- it was part of their October 10, 1996 best and final offer. And I wanted to just draw your attention to it. And Nancy is going to show you the document.

But in 1996 it seems that if you accept the 50 percent collection rate, and you accept the 1 percent on average violation rate -- and I understand it starts higher and goes down lower, but assume 1 percent -- that at 35 percent penetration, 35 percent users, you have a break-even case. But as the penetration goes up, as it becomes more popular, you create a deficit.

And I wanted to understand whether this was something that you as Executive Director were aware of, or the consortium was aware of, that there was a potential built in in 1996 that as this became more popular, as the penetration rate increased, it was going to lose more money.

MR. GROSS: There is no question, if anyone thought about it in that period of '96 to '98 that with more motorists using E-ZPass it would be more expensive, and
it would not -- it would generate more expenses
than the projected revenues. There is no doubt
about it.

But I've got to take you back to
this period of '96 to '98. E-ZPass was still
very new. There were members of the consortium
that believed 35 percent was way overstated.

I will take you back to the
early '90s when the inter-agency group -- which
is a regional group that was formed at least to
create uniform technology so you can have an
E-ZPass system -- they believed that when the
system was totally mature and in the entire
eastern area, which took up -- included
New Jersey and New York, which is the bulk,
there would be a million transponders in
circulation. There is more than seven million
today.

They believed early in the '90s,
which belief continued through the mid-'90s,
that you had to motivate the public to become
members of E-ZPass or they wouldn't buy into
it. That asking a motorist to put up some
money up front, even on a charge card that they
don't pay right away, was a burden that they
wouldn't accept. That E-ZPass potentially
developed more information about a motorist
than otherwise if they paid manually, and that
that would be a detriment as well.
So when we talk about the time
frame of '96 to '98, we talk about members of
this consortium that legitimately believed
wouldn't even reach 35 percent.
So you are right, 40 and 45 and
50 and 55 generates more expenses. But the
group collectively felt 35 percent was a pretty
impressive percentage as a goal.
CHAIRMAN WISNIEWSKI: And
perhaps at that point in time that may have
been legitimate thinking. Obviously today,
with the benefit of hindsight, we see
penetration at 40 and almost 50 percent in some
cases, we know that doesn't work.
But what is -- perhaps "amazing"
is the word -- that this was a business plan
that we were looking at, the state, the
agencies were looking at, in 1996, this was a
business plan for a new venture. And the
business plan for the new venture said that as
this becomes more popular, we start to lose
money.

And it just seems -- and this is not so much a question as a statement, but tell me if you agree, that it seems somewhat ironic or perhaps unbelievable that we would embrace the concept of self-financing under the assumption that if it does better than we think, we are going to do worse than we expected.

MR. GROSS: We didn't enter into this venture to make money or necessarily just to break even.

The E-ZPass electronic toll project was a material improvement that we owed to the motoring public that used the toll facilities in New Jersey, Delaware and the Port Authority.

CHAIRMAN WISNIEWSKI: Nobody disagrees with you.

MR. GROSS: And therefore, we never looked at it as money making or will we break even because we are going to generate revenue.

It happened that we used the projected violation revenue and the fiber
revenue as a dedicated means to pay cost, and
that was a concept that we believed in then.

But as somebody asked me, one of
the committee members asked me earlier, what
was the objective in entering into this
project? Was it to generate violation revenue?
Absolutely not.

The objective was to improve
trips for motorists on the New Jersey Turnpike
and Garden State Parkway, Atlantic City
Expressway, et cetera. Something vitally
needed over a long period of time if we are
going to have a transportation artery that's
considered tops in the United States.

So E-ZPass was an improvement
that had to be done, like building a bridge or
adding a lane to a highway.

CHAIRMAN WISNIEWSKI: Mr. Gross,
I don't think anybody here is questioning
whether or not E-ZPass should have been
installed.

I think the question is that the
representations made, and, therefore, the
expectations of legislators and administrators
and the public, was that, as many of the press
releases said, this was a system that was going
to be installed at no cost to the public. And
clearly by your own testimony today that is not
how it's working out. And that may have been
because of incorrect assumptions, misguided
assumptions.

But that's the basis of the
problem we face today. That there was an
expectation -- right or wrong, there was an
expectation generated by the agencies, by the
government, that this was going to be a
self-funded operation, and it's not. And that
is why everybody is scratching their heads
today.

If you could, Mr. Gross, in the
folder, there is the Regional Consortium
Project Recalculation, the document you pointed
out to us that has the base case financial
model in it. And I think it may be folded open
for you there.

It says -- the top of the
document says, "ETC Regional Consortium Base
Case Financial Model."

Could you tell me who prepared
this? Was this prepared by the same
organization that prepared the subsequent
revisions?

MR. GROSS: Is your question who
prepared the revision dated November 30, 2000?

CHAIRMAN WISNIEWSKI: Who
prepared the original base case that was
appended to this document which is a
recalculation dated November 30?

MR. GROSS: The March '98
document?

CHAIRMAN WISNIEWSKI: Yes.

MR. GROSS: That was prepared by
MFS, and input from the consortium members.

CHAIRMAN WISNIEWSKI: Subsequent
to that, that was revised by the company called
Public Resources Advisory Group?

MR. GROSS: They were the
financial advisors. And they structured the
revisions. The consortium members provided the
input, agreed upon the assumptions, and signed
off on the revisions.

CHAIRMAN WISNIEWSKI: Can you
answer how much did the falloff in anticipated
fiber optic revenues affect the financial
model? Leave apart and outside the answer
those concerning toll violation revenues.

My understanding is that when the model was prepared, there was an expectation of a certain lease rate for fiber optic. For whatever reasons in the market, that did not happen.

Can you answer or address the issue of how much less was collected? What was the shortfall, if you will?

MR. GROSS: Well, as of the end of 2001, about 100 million dollars is under lease. About 80 million of that is already paid. And these leases are 20-year leases.

Most of the leases that the consortium secured are for ducts, very small portion are fiber strands.

The original model called for about 210 or 215 million dollars in fiber revenue generated over 20 years, with most of the marketing completed by now. So one could say that there is about 100 million dollars in less -- 100 million dollars short in fiber revenue.

However, the fiber network built under this project is very desirable. It's in
a very demanding area of the United States. It's right -- sandwiched right between New York and Washington, D.C. And when the industry begins to rebound, there is a reasonable expectation in the minds of those that understand the industry that marketing of available capacity will resume.

Having said that, the most recent model, the November 2001 model, pushes out the fiber revenue slightly, but doesn't change the end result that in 20 years, either 210 or 215 -- I don't remember exactly the number -- of revenue generated.

CHAIRMAN WISNIEWSKI: The 100 million that has been generated represents what percentage of the overall fiber capacity?

MR. GROSS: My recollection is that about 75 percent of the duct capacity has been leased, and a very small percentage of the fiber capacity. And small being less than a quarter of the fiber has been leased.

CHAIRMAN WISNIEWSKI: So it's a combination of 25 percent of the duct capacity and 75 percent of the fiber capacity over the 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.
MR. GROSS: If I may say to you, Mr. Chairman, when the industry was doing well, the execution of fiber leases was ahead of the curve. And there was a point that the consortium members met with the advice and recommendations of MFS that was marketing the available fiber and actually raised the mileage charges. And it didn't hurt the potential sales until the industry actually fell apart.

CHAIRMAN WISNIEWSKI: And the question remains as to whether the industry will get back together, whether the capacity will ever be sufficient to drive up the prices. I want to go back to the implementation of the contract. The best and final offer contemplated a simultaneous implementation of E-ZPass, but that was at some point modified to a phased implementation. Correct?

MR. GROSS: The contract called for the construction of both dedicated and mixed-mode at the same time.

CHAIRMAN WISNIEWSKI: And at some point that was changed to be a phased installation?
THE WITNESS: That is correct.

CHAIRMAN WISNIEWSKI: Who made that decision to make that change?

MR. GROSS: The consortium reached the conclusion that the construction of the fiber network and the construction of the 700 plus lanes and the development of the software could not be achieved under the original schedule. That it was not -- A, the schedule wasn't realistic, and the contractor was not performing as well as the consortium wanted it.

And the decision to separate the ETC construction and concentrate first on dedicated lanes, putting in operation, and then going back and doing the mixed-mode was a consortium decision.

Mr. Chairman, I can tell you that there are some agencies that only have dedicated lanes. It's either dedicated E-ZPass or manual. There are agencies that operate very successfully, an E-ZPass system or electronic toll system, with no mixed-mode.

CHAIRMAN WISNIEWSKI: The act of changing the implementation to one of a phased
implementation wound up costing additional revenue, costing more money to implement.

MR. GROSS: I don't think so. My recollection is that the consortium did not pay the contractor any additional money for phasing in the project as described.

There were other change orders over time, none of which in their total exceeded the contingency that was projected at the inception of the contract.

CHAIRMAN WISNIEWSKI: The contingency was some 30 million dollars?

MR. GROSS: I think it was less. I think it was like 22 million dollars plus a reserve for additional transponders.

But I don't look at the transponders as part of the construction. I think the construction was somewhere in the area of 10 percent of the original contract, about 21 or 22 million.

CHAIRMAN WISNIEWSKI: For these changes, whether it be from the phased -- the simultaneous deployment to the phased deployment or for the change orders implemented by the contractor and presented to the
consortium, was there a need for the consortium
to go back to its individual constituent
members and seek approval?

THE WITNESS: That's the only
way this project operated from the inception.

CHAIRMAN WISNIEWSKI: So for any
of the changes -- for instance, you were the
Executive Director of the Turnpike Authority,
and there was some change that came to the
consortium, and the consortium went to the
constituent agencies. So at some board meeting
of the New Jersey Turnpike Authority there was
a decision made to approve the change?

MR. GROSS: True. But the last
part of it is not correct. Any change order
required the sign-off of every agency, but it
did not require the additional approval of the
Board of Commissioners.

CHAIRMAN WISNIEWSKI: Is it
true, then, that what the Board of
Commissioners did was to delegate the authority
for those change orders to you as Executive
Director or to in other agencies some other
person?

MR. GROSS: That is true.
The concept of change orders within the confines of the contract, that is that 20 some odd million dollars, was already part of the anticipation as it is with other contracts. All change orders don't go back to the boards. So there was delegation within the Authority.

CHAIRMAN WISNIEWSKI: I wanted to follow up on one of the statements you made that I personally found somewhat interesting. You had said in the answer to I think the question asked by Assemblywoman Stender that this was viewed as an easy project by the contractors.

Not to mix the pun of E-ZPass, but that it was not viewed as a particularly unusual or burdensome type of project.

THE WITNESS: I didn't intend to say that, if I did. What I thought I was trying to say -- I guess I wasn't very articulate -- was that when this industry was forming, those that decided to become implementors --

CHAIRMAN WISNIEWSKI: WorldCom, for instance, or MFS.
MR. GROSS: MFS, Lockheed,
Transworld, in my opinion, they all believed
that it was a relatively easy jump. And that
therefore, they embarked upon this industry
thinking that it was all within the scope of
their expertise, and they could make money, and
they all got surprised.

CHAIRMAN WISNIEWSKI: Why was
that? Did they bite off more than they could
counterpoint?

MR. GROSS: Well, as I said
earlier -- and didn't say it very well -- the
technology itself is on the shelf. But when
you put it all together and you have to make it
work in hundreds of lanes 7/24, and really work
in one-thousandth of a second, and just
continuous -- you look at the traffic on the
Garden State Parkway, just continuous beating
on the system, and weather, et cetera,
et cetera, it just meant -- it's a far more
complex and far greater challenge than those
that went into the industry originally
believed. That is what I was intending to say.

Nobody ever believed that the
contract that is the focus of this hearing was
easy. Actually, the consortium contract came
after many, many contracts, and a lot of
contractors hadn't worked on implementation at
other toll agencies. And there was a fair
recollection -- a fair understanding that it
was not easy.

But in itself, this was a very
complex contract.

CHAIRMAN WISNIEWSKI: You had
mentioned in your opening statement that the
chair of the Review Committee was Tom Margo,
the Chief Engineer of the Turnpike Authority.
And my understanding of your testimony was that
he was an individual who was prior to your
arrival as Executive Director and assumption of
the responsibilities of that office, was
chiefly responsible for the birthing of this
project.

Is that correct?

MR. GROSS: Well, Mr. Margo
joined the Turnpike after I did.

CHAIRMAN WISNIEWSKI: Would that
be Mr. Carras then?

MR. GROSS: Paul Carras was
involved in the project. But when -- I don't
remember the exact date Mr. Margo had joined.

But he was there from the inception of the
creation of the Request for Qualifications.

CHAIRMAN WISNIEWSKI: Who are
you talking about?

MR. GROSS: Margo.

CHAIRMAN WISNIEWSKI: I want to
draw your attention to the March 20, 1997 memo
that my aide just put in front of you, which is
a memo to you as Executive Director. And it
says, Re: Recommendation to Award Contract,
the Consortium Regional Electronic Toll
Collections Implementation Program.

This is a memorandum signed by
Paul Carras as the ETC program manager, and
signed by William Wolf, counsel for the
consortium, and Edward Gross, yourself, as the
Executive Director.

Was not there a signature line
on this memo at one point in time for the
comptroller of the Turnpike Authority, a
Catherine Schladebeck, to sign it?

THE WITNESS: Yeah. An earlier
draft had that on there because virtually -- I
shouldn't say all, but most of the agenda
items -- the Turnpike called them agenda items, you may more commonly refer to them as resolutions -- had a signature line that provided funds available by the comptroller, and an original signature line in the first draft. And it's not uncommon to have numbers of drafts of these agenda items when they are finalized have that signature.

CHAIRMAN WISNIEWSKI: Would you then disagree with the statement that's been represented to members of this committee that her name was removed from this document when she refused to sign it?

MR. GROSS: She said it was inappropriate for her to sign it because she wasn't certifying funds available, that the funding was coming from the bond issue and projected from the violation revenue and the fiber revenue.

I considered her position to be sound.

CHAIRMAN WISNIEWSKI: So would you disagree, then, that she refused to sign it because she was unable to reconcile the numbers that were presented to her in terms of the
projected revenues from toll violations and
fiber optic, that she had a fundamental
disagreement with what was being projected and
what she was able to justify for her own
numbers?

MR. GROSS: At that time in
March of '97 she advised me that she and her
staff had not fully reviewed all of the
assumptions and projections of the fiber
revenue and the violation revenue. That is
ture. She did do that.

But between March of 1997 and
the contract signing on March 10, 1998 the
finance department of the Turnpike had fully
reviewed and critiqued and signed off on the
projections.

CHAIRMAN WISNIEWSKI: Did the
comptroller sign off on it?

MR. GROSS: The department
signed off on it. I assume if someone else
signed off on it they didn't do it without the
approval the comptroller. I can't -- unless
you show me a document, I can't remember whose
signature.

CHAIRMAN WISNIEWSKI: So you
would disagree with the representation that the reason her signature is not on here is that she had a problem with what was being proposed?

Your testimony is that there was not an adequate review of the information presented?

MR. GROSS: My testimony is two-fold. Number one, she shouldn't have been asked to have a signature line in the first place because the comptroller of the Turnpike certifies funds available, and this was a project where the Turnpike didn't have funds available, the funds were generated off the Turnpike in the manner that I just described to you.

B, in addition, she indicated that she had not fully reviewed, signed off on the revenue projections, and her staff was still working on it, and they were having some difficulty getting some of the underlying worksheets, which ultimately was straightened out.

And as I said, over a period of time the Turnpike's finance department did all of their due diligence and signed off on it.

CHAIRMAN WISNIEWSKI: But you
are not certain whether the comptroller herself
signed off or someone else signed off in her
place?

MR. GROSS: I am certain to this
extent, that there was a senior person in the
comptroller's office that worked on the
project. I just don't remember at this point
who signed off. But I am certain that whoever
signed off, if it wasn't the comptroller, it
was -- received the comptroller's approval.

CHAIRMAN WISNIEWSKI: I am just
trying to understand the nature of it. Because
you said there were no funds available because
it came from outside. But didn't the funds to
implement E-ZPass come from the proceeds of the
bond sale?

MR. GROSS: In March of '97 that
wasn't yet generated. There was not
negotiations with the private group. That was
generated sometime thereafter. It was only an
expectation.

CHAIRMAN WISNIEWSKI: Mr. Gross,
I wanted to fast forward now to December 2001.
At that point in time you were the Executive
Director of the Turnpike Authority, and at some
point in time you were made aware of the fact
that Adesta, which started out as MFS, was
filing for bankruptcy protection. Is that
correct?

MR. GROSS: I became well aware
of that, they filed Chapter 11 proceedings.

CHAIRMAN WISNIEWSKI: Were you
made aware of that because the Turnpike
Authority was served with papers as a creditor
of Adesta?

MR. GROSS: No. My personal
awareness was, I think, a telephone call from
WorldCom advising me of that event.

The background was that Adesta
had come to the Turnpike about a month before
that, maybe even six weeks before that, and
said it's going to run out of money, and asked
the consortium to take -- to reverse their
position on the number of items that would
generate revenue to Adesta. And based upon
that, Adesta said they could continue to
perform under the contract.

And the consortium members
unanimously rejected the proposal of Adesta.

What happened at that point was
that the consortium wanted a transition plan to
take over the operation, and at the same time,
asked WorldCom if they were willing to step in
to take over the contract.

CHAIRMAN WISNIEWSKI: Who asked
WorldCom? The consortium?

MR. GROSS: Yeah. I think
WorldCom was -- on the demand of the
consortium, I believe WorldCom was present at
one or two of the meetings at which Adesta
advised the consortium that they were running
out of money.

CHAIRMAN WISNIEWSKI: They were
running out of money because they weren't being
paid under the E-ZPass contract or they were
running out of money just generally because
their corporate situation had changed?

MR. GROSS: From the standpoint
of the consortium, we were paying them what
they were entitled to receive. From their
standpoint, we were holding back money that
they should have received.

CHAIRMAN WISNIEWSKI: This was
the penalties that you had mentioned earlier,
some five million dollars --
MR. GROSS: They never really raised the liquidated damages, but they regularly wanted the consortium to pay them for the monthly payments we held back for VPC operations, which amounted to about four million dollars, and for deductions that the consortium was making on monthly VPC payments based upon an excessive amount of false reads. They wanted that money back.

CHAIRMAN WISNIEWSKI: Adesta wanted to be paid, and the consortium was saying, no, we've got problems, and we are not going to pay?

MR. GROSS: Correct.

CHAIRMAN WISNIEWSKI: Was there any consideration by the consortium at that point in time by not making the payments that it would put Adesta into bankruptcy?

CHAIRMAN WISNIEWSKI: The consortium members took the position privately and with Adesta and WorldCom that if need be, the consortium would take over the contract. We are not going to make payments that we could not justify.

CHAIRMAN WISNIEWSKI: But the
consortium never took over the contract. Instead, discussions were held with WorldCom to step in and acquire that through bankruptcy. MR. GROSS: It didn't happen just that way. The consortium began to develop a transition plan to take over the project. The consortium's view, and I think correctly, was that we could not allow Adesta to shut their doors and not have access to the software, the source codes, the machinery, the personnel, the leases, the licenses. In essence, the first time there was a major problem with the software, you could actually shut the whole system down. That the consortium had to be in a position to maintain at least a system that was working today. WorldCom was not committing to step in and take over the contract. So the consortium created a task force to begin transition. And there was some difficulties with cooperation from the contractor. But the consortium was moving in that direction. At the same time, the consortium
made it well known to WorldCom that if they
came in and provided the technical skill and
the cash that were necessary for the contractor
to finish, that would be more than
satisfactory. It would be a better result than
the consortium taking over the contract
obligations.

CHAIRMAN WISNIEWSKI: And that's
ultimately what happened?

MR. GROSS: Ultimately WorldCom
advised me via letter that they had made an
agreement in principle with the parent of
Adesta, whose name is Bracknell, to assume the
contract, and they have to document that.

And they had already produced a
fairly impressive team of managers that were at
the Adesta facilities reviewing the status of
the contract and the issues.

So the consortium was reasonably
satisfied at that point that WorldCom would
proceed as they had noted.

And they also represented they
would advance some money so that some of the
subcontractors that were threatening to stop
work would get partial payments.
CHAIRMAN WISNIEWSKI: Did they do that? Did they advance money?
MR. GROSS: I don't think they did that. I don't think they did that for some period of time. They did it ultimately, but they didn't do it in the time frame that they had indicated to the consortium.
CHAIRMAN WISNIEWSKI: Was there any understanding on the part of the consortium that WorldCom obviously would have to seek bankruptcy court permission to acquire the assets of Adesta, including the contract, and that in doing so the order approving that would cure all defaults and conditions of default that had existed up until the date of that order?
MR. GROSS: Absolutely not.
CHAIRMAN WISNIEWSKI: That came as a surprise?
MR. GROSS: You are jumping ahead. But that's okay, because that is your question. There were steps that intervened. But there was never any conversation with WorldCom to release Adesta or them from their responsibilities under the
contract to date, except to say to you that
there was the development of an agenda of
issues to discuss between the consortium and
WorldCom. And it clearly was the objective of
the consortium at that time to negotiate an
amendment to the contract with WorldCom. Not
to assess penalties against them, but to move
the contract forward and get it done, have
final system acceptance.

That was the state of mind and
intent of the consortium. Not to assess
further liquidated damages for either delays or
nonperformance. To get talented people into
the contract, to improve the performance of the
violation processing center, to correct lane
deficiencies, to better communicate, to finish
whatever construction was required to get the
lanes commissioned and finish the project.
That's where the consortium was going with
WorldCom.

And if those negotiations had
taken place -- which they really didn't take
place -- but if they had taken place and they
were successful, there would have been another
amendment to the contract with a typical
provision that would have released the
contractor from all claims up to that date.

CHAIRMAN WISNIEWSKI: So that
would have been part of a revised contract?

MR. GROSS: If it were
negotiated. It didn't happen.

CHAIRMAN WISNIEWSKI: It
happened with a Court order, at any rate.

MR. GROSS: But it wasn't
negotiated with WorldCom.

CHAIRMAN WISNIEWSKI: Right.
The down side to that Court order is there is
no reciprocal protection if the contractor
wants to seek claims against the consortium.

MR. GROSS: It was never the
intention of the consortium to unilaterally
release WorldCom from any responsibilities as
the guarantor of the surety bond.

On the contrary, there was an
effort on my part to secure a letter from the
surety and from WorldCom with representations
that would give the consortium comfort.

And I advised WorldCom that
without a letter from the surety and without
their letter representing that they were going
to put adequate funds in to be able to meet the
cash needs under the contract, that we were
going to file an objection in the bankruptcy
court.

And ultimately, before the
bankruptcy court hearing, I received letters
that were satisfactory.

CHAIRMAN WISNIEWSKI: So there
was no objection filed before the bankruptcy
court in the proceedings which approved the
assignments?

MR. GROSS: That is correct.

CHAIRMAN WISNIEWSKI: And that
was because of the letters that were received?

MR. GROSS: That's correct.

CHAIRMAN WISNIEWSKI: And you
felt that those letters provided adequate
assurance from WorldCom that notwithstanding
whatever was in the order, that the consortium
would be in no worse position after the
assignment than it was before?

MR. GROSS: It was not
notwithstanding what was in the order. I did
not approve the form of that order.

CHAIRMAN WISNIEWSKI: Did
counsel, I believe Mr. Wolf, have an
opportunity to approve that?

MR. GROSS: I don't know. I
don't know if he saw it in advance or not. The
terms of that order were not either negotiated
with me or pointed out to me.

If they were pointed out to me, Mr. Chairman, I would have objected to a couple
provisions that I saw for the first time about
a week ago, because they were not provisions
that were negotiated with WorldCom.

CHAIRMAN WISNIEWSKI: Was the
consortium noticed or invited to participate in
the bankruptcy hearing which resulted in that
order?

MR. GROSS: I would imagine the
consortium through counsel received some
notice. I don't have a recall of seeing or
reading any notice document.

But I would imagine -- we
were -- the consortium was active in connection
with the bankruptcy. Because the bankruptcy
was a further delay to negotiating an extension
with WorldCom to move forward and complete this
project.
So the consortium was active.

But I don't recall seeing any of the forms. I was only really interested in the bankruptcy court approving the purchase of the contract by WorldCom, which I considered to be a major positive step.

CHAIRMAN WISNIEWSKI: Thank you.

Do any of our members have any follow-up questions for Mr. Gross?

ASSEMBLYMAN JOHNSON: Thank you, Mr. Chairman.

Was there a process in place with the municipal courts to collect these or start the process of charging these violators when you were there? Was that process actually moved forward?

MR. GROSS: It moved forward, but it wasn't concluded in volume. The only way that it can be done in volume -- because you are talking about potentially thousands on a daily or weekly basis -- is electronically.

And the contractor had an obligation to develop the interface with the court system. And as of the time I left, that was not completed.
What was nearly done was the completion of the evidence package with the expert to select about a dozen cases throughout the state and do test cases. But the volume -- the volume of complaints that would be filed in the normal course required an interface with the system. It couldn't be done any other way.

ASSEMBLYMAN JOHNSON: So the test cases have not been done yet, either?

MR. GROSS: Not as of the time I left.

ASSEMBLYMAN JOHNSON: That was my only question. Thank you.

CHAIRMAN WISNIEWSKI: Mr. Gross, I want to thank you for your patience and cooperation today. It's been a long day. I think the committee has touched upon all of the issues that we collectively can think of.

I do wish to make one request of you. That there may come a time in the future where we have additional questions, and that you might make yourself available at some future date if the need arises.

MR. GROSS: The answer,
Mr. Chairman, is yes. Just as you have done
for this hearing, just give me as much advance
notice as possible.

CHAIRMAN WISNIEWSKI: We will do
that. Again, thank you, Mr. Gross.

And this session of the
Transportation Committee stands adjourned.

(Time noted: 3:54 p.m.)
CERTIFICATE

I, SEVA FLICSTEIN, a Certified Shorthand Reporter and Notary Public of the States of New Jersey and California, do hereby certify that prior to the commencement of the examination the witness was sworn by me to testify the truth, the whole truth and nothing but the truth.

I do further certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither of counsel nor attorney for any party in this action and that I am not interested in the event nor outcome of this litigation.

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