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In the Matter of :
:
BUNKER RAMO CORPORATION, :
GTE INFORMATION SYSTEMS INCORPORATED, : File No. 4-280
and :
OPTIONS PRICE REPORTING AUTHORITY :
:
-----X

Hearing Room 776, Securities and
Exchange Commission, 500 N. Cap-
itol Street, N.W.
Washington, D.C.
Tuesday, June 20, 1978

The above-entitled matter came on for public
hearing, pursuant to notice, at 1:10 a.m.

BEFORE:

SHELDON RAPPAPORT, Hearing Officer.

PRESENT:

COMMISSIONER ROBERTA KARMEL

ALSO PRESENT:

MURRAY SUMNER, Bunker Ramo Corporation and
PETER B. ARCHIE, ESQ., and ROBERT N. JENSEN, ESQ.
(Peabody, Rivlin, Lambert & Meyers), 1150 Con-
necticut Avenue, N.W., Washington, D.C. Counsel.

JOSEPH DUHAMEL, Director, Business Services Planning,
Financial Services Division, and
GEORGE W. HERNAN, Vice President, Manufacturing/Engin-
eering Liaison, Financial Services Division, GTE
Information Systems, Incorporated, East Park Drive,
Mt. Laurel, N.J. 08057; and

ALLEN R. FRISCHKORN, JR., Staff Attorney, General
Telephone & Electronics Corporation, 1120 Connecticut
Avenue, N.W., Washington, D.C. 20026.

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PRESENT: (continued)

RICHARD J. COWLES, Senior Vice President, The Options Exchange, LaSalle at Jackson, Chicago, Illinois, 60604;

DR. STEPHEN L. WILLIAMS, Vice President, Planning Division American Stock Exchange, Inc. 96 Trinity Place, New York, N.Y. 10006; and

MICHAEL L. MEYER, ESQ., and MARK C. ZAANDER, ESQ. (Schiff, Hardin & Waite) 7200 Sears Tower, 233 South Wacker Drive, Chicago, Ill, 60606, Counsel for The Options Exchange.

THEODOR URBAN, ESQ., Counsel; JEFFREY STEELE, ESQ., Special Counsel, Office of chief Counsel, Division of Market-Regulatory, NANCY WOJTAS, Division of Market Regulation, Securities and Exchange Commission.

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C O N T E N T S

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TESTIMONY OF

P a g e

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Murray Sumner,

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On behalf of Bunker-Ramo Corporation

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Allen R. Frischkorn, Jr.

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On behalf of GTE Information Systems, Inc.

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Richard J. Cowles,

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On behalf of the Options Exchange

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Peter B. Archie

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On behalf of Bunker-Ramo Corporation

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Exhibits

IdentifiedIn Evidence

15

Bunker Ramo

16

No. 1

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No. 2

15 (Reserved)

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Sheldon Rappaport *D.J. Urban* *Statement*
3
initiating
Substantive
Settlement

1 MR. RAPPAPORT: Good afternoon. The public hearings
2 in the Matter of Bunker Ramo Corporation, GTE Information
3 Systems Incorporated, and Options Price Reporting Authority,
4 will come to order.

5 I am Sheldon Rappaport. And I have been designated
6 by the Commission as Presiding Officer of these hearings.
7 I am pleased to introduce Commissioner Roberta Karmel, who
8 is with us now. Commissioner Karmel is not certain how
9 long she will be able to stay. But I would like to, on
10 behalf of the Commission, assure those who are here to
11 testify today that the transcript of these proceedings
12 will be reviewed by each of the Commissioner and so you
13 should not take the presence or absence or perhaps the neces-
14 sary departure later on of Commissioner Karmel as of any
15 significance.

16 I would also like to introduce Theodore W. Urban, counsel
17 for this hearing, to the Commission.

18 Mr. Urban, will you introduce your associates?

19 MR. URBAN: On my right is Nancy Wojtas, Member of
20 the Staff of the Division of Market Regulations. On my
21 left is Jeffrey Steele, Special Counsel in the Office of
22 Chief Counsel, also with the Division of Market Regulations.

23 MR. RAPPAPORT: Thank you.

24 On May 10, 1978, the Commission announced it
25 was initiating a review pursuant to Section 11A of the

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1 Securities and Exchange Act of 1934 of the dispute between
2 the Options Price Reporting Authority which I will refer to
3 hereafter as OPRA and two vendors, Bunker Ramo Corporation,
4 GTE Information Systems Incorporated. This
5 dispute arose when OPRA, having developed the capability
6 for a single consolidated high speed transmission of
7 Options has sale reports from the Central Processor to
8 Vendors and other subscribers, determined that the cost
9 of the Central Processor in operating the system would be
10 charged in the form of an access fee to vendors and those
11 other subscribers who were granted access to the high speed
12 transmission.

13 Further, OPRA decided that it would no longer pay the
14 vendors line costs from the central processor to each
15 vendor.

16 To implement these new policies OPRA notified each
17 vendor that the 1975 OPRA-vendor agreement would be
18 terminated as of the date upon which the new consolidated
19 high speed line would be available from the Central Processor.
20 Under the 1975 OPRA Vendor agreement, Options last sale
21 reports were furnished directly by each exchange to
22 vendors without charge, and OPRA agreed to assume the
23 first 100 miles of line costs between New York City and
24 the Vendors' premises.

25 Bunker Ramo and GTE petitioned the Commission to

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stay OPRA's actions which would be necessary to implement the proposed policies and to inform OPRA it may not implement these changes. The Commission held these petitions in abeyance pending the outcome of the negotiations between the parties. The negotiations, however, have not settled the dispute, and the Commission now believes it is necessary to review the issues raised by the earlier petitions of Bunker-Ramo and GTE. The Commission has stated, however, that this review currently is limited to three issues. First, whether OPRA, as an exclusive security information processor registered pursuant to Section 1(A) (b) (3) of the Act, may charge an access fee to recipients of Options last sale transaction reports.

Second, whether OPRA, irrespective of whether it may charge an access fee, may terminate the 1975 OPRA-Vendor agreement.

Third, whether OPRA may discontinue providing vendors with the communications circuit which links vendors to OPRA's central processor and enables the vendors to receive the Options last sale transaction reports without paying line charges within 100 miles of New York City. The purpose of this public hearing is to receive data, views and information on those three issues. I would like now to point out several procedural matters.

This hearing is being conducted pursuant to Section 11 A(b) (5) of the Securities Exchange Act of 1934.

1

respective

1 That section requires the Commission to afford notice
 2 and opportunity for a hearing in any proceeding to review
 3 the prohibition or limitation of any person to respective
 4 access to services offered by a registered securities
 5 information processor. Notice of this proceeding and the
 6 public hearing commencing today was provided by order of
 7 the Commission in Securities Exchange Act Release No. 14784
 8 dated May 19, 1978. Section 11A(b) (5) (B) of the Securities
 9 and Exchange Act of 1934 does not require that this proceed-
 10 ing be conducted as an administrative adjudication on
 11 the record.

12 Accordingly, the requirements in the Administrative
 13 Procedure Act for Adjudications on the record do not apply
 14 to this proceeding.

15 Nevertheless, the Commission has determined in its
 16 discretion to keep a transcript of all oral presentations
 17 made today and to require that all oral statements from
 18 witnesses be taken under oath or affirmation.

19 I will oversee the conduct of the hearings and resolve
 20 any disputes or other matters requiring a ruling presented
 21 during the course of the hearing. And I may require the
 22 production of any books, papers and other records deemed
 23 relevant or material and may compel the attendance of the
 24 witnesses. As hearing officer, I will also administer the
 25 oath or affirmation to each witness.

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1 As we have indicated, persons appearing at these
2 hearings may give a brief statement not to exceed fifteen
3 minutes pertaining to the three issues involved and the
4 Commissioners attending the hearings and counsel of the
5 Commission as well as myself may question witnesses regard-
6 ing their testimony or other matters.

7 In addition, any person may submit written questions
8 and request that counsel to the Commission for this hearing,
9 Mr. Urban, ask them of a particular witness or group of
10 witnesses. But Mr. Urban and his colleagues will determine
11 whether and to what extent the questions will be directed
12 to any witness. Any person submitting questions should
13 indicate his name, and if he represents an organization, its
14 name.

15 The witnesses should respond to any inquiries from
16 Commissioners, counsel or the hearing officer and we are
17 now, I believe, ready to proceed.

18 Mr. Urban, will you call the first witness.

19 MR. URBAN: The first witness in this proceeding
20 is Bunker-Ramo Corporation. At this time I will call upon
21 the spokesman for Bunker-Ramo to introduce himself and his
22 associates and to proceed with this presentation.

23 MR. SUMNER: Good afternoon, Commissioner Karmel,
24 Mr. Rappaport, Mr. Urban. My name is Murray Sumner. I
25 am Security Industry Liaison for the Bunker Rama Corporation.

1 With me today on my right is our counsel, Peter B.
2 Archie, Esq., of Peabody, Rivlin, Lambert & Meyers and on my
3 left Mr. Robert Jensen of the same firm.

4 MR. RAPPAPORT: At this time, Mr. Sumner, I
5 am going to administer an oath or affirmation to any of
6 you who may be offering testimony here today. Will each
7 of you, therefore raise your hand and I will administer
8 the oath.

9
10 Thereupon

11 MURRAY SUMNER, PETER B. ARCHIE and
12 ROBERT JENSEN

13 were called as witnesses and were duly sworn by Mr. Rappaport.

14 TESTIMONY OF MURRAY SUMNER
15 ON BEHALF OF BUNKER RAMO CORPORATION.

16 MR. SUMNER: We have filed for the record a statement
17 in file No. 4-280 of our position on the matter being examined
18 here today. Rather than read the entire statement, I ask
19 that it be made a part of the record.

20 MR. RAPPAPORT: May we have that statement marked as
21 Bunker Ramo Exhibit 1.

22 (Bunker Ramo Exhibit No. 1
23 was marked for identification.)

24 MR. RAPPAPORT: It is admitted into evidence.

25 (Bunker Ramo Exhibit No. 1
was received in evidence.)

1 MR. SUMNER: I would, however, like to make a brief
2 summary of our statement, after which I would be pleased to
3 answer questions.

4 With respect to access fees, we believe that the
5 exchanges should not be permitted to impose access fees
6 on vendors. Last sale reports are used primarily by broker-
7 dealers who are OPRAS subscribers and who pay fees
8 directly to OPRA to conduct exchange business, that is,
9 the purchase and sale of stock options.

10 Bunker-Ramo serves OPRA as a conduit to contribute
11 last sale information to OPRA subscribers and we do
12 not realize a specific problem for carrying OPRA's last
13 sale information to those subscribers.

14 Our fees are based primarily on the amount and type
15 of service equipment that we provide and maintain in a sub-
16 scriber's location, not on the amount or frequency of usage
17 or the type of data that we distribute.

18 Expenses for collecting last sale reports
19 and their availability for distribution has traditionally
20 been the responsibility of exchanges. This was the case
21 before the OPRA high speed line was developed, and
22 we believe that the high speed line is an extension of
23 those facilities, benefiting primarily the Options exchanges.
24 If access charges are permitted, we believe this will
25 encourage the exchanges to seek to have a greater amount

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1 of their collection and distribution expenses to be covered
2 by the vendor access fees. If access fees are permitted,
3 we believe that some definition and standards will have to
4 be established in order to determine that they will, in
5 fact be reasonable. If it is determined that access fees
6 are called for, we believe that fair and equitable terms
7 should recognize that Bunker-Ramo currently provides
8 under the 1975 agreement a valuable service to OPRA.

9 Bunker-Ramo was obligated under that agreement
10 to maintain records and submit periodic reports to OPRA
11 of subscribers who receive Options data and who, therefore
12 pay OPRA's subscribers' fees. The cost of fulfilling that
13 obligation is an expense that Bunker-Ramo bears as part of its
14 business expense along with other expenses of providing
15 its interrogation services, and for which it is not reim-
16 bursed by OPRA. We believe that each party should pay
17 its own business expenses, and that the demarcation of where
18 these business expenses begin and end should be determined
19 as being the telephone company's line connections.

20 With respect to the determination of the 1975 vendor
21 agreement, we believe that OPRA should not be permitted
22 to terminate that agreement. The agreement provides that
23 OPRA would furnish Option's data at no charge to vendor.
24 It also contemplated that with the development of the high
25 speed line, the data would continue to be made available

1 at no charge. With the design of the high speed line Bunker-
2 Ramo's managed to modify its own processing system at
3 its own expense in order to receive the high speed line.
4 With the advent of the design effort to receive the high
5 speed line, OPRA then acted to terminate the 1975 agreement,
6 and we believe that a primary purpose of that action was
7 to retreat from its stated intention to continue to provide
8 Options data at no charge.

9 In our view OPRA's actions should be governed
10 by public interest considerations because it is an exclusive
11 processor of Options information that is necessary for con-
12 ducting the Options market. In our view OPRA has misused
13 the termination provision of the 1975 agreement. There may
14 be just causes for terminating the agreement, such as, if
15 either party discontinued its business activity for which
16 the contract is required, or if it was determined that
17 Bunker-Ramo was not performing its distribution of Options
18 data in a proper manner.

19 In that case OPRA could assert that its termination
20 of the agreement was in the public interest. But none of
21 these situations applies in this case.

22 As OPRA concedes on page 13 of its statement, there
23 has been no termination of the OPRA vendor relationship.
24 Instead, OPRA's action is more a modification of the
25 agreement in order to impose access fees. We submit that the

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1 1975 agreement provided for its modification, and that the
2 use of the termination provision is therefore not suitable
3 for the purpose of achieving a modification.

4 That is the end of my statement. And I will answer
5 any questions you may have.

6 MR. RAPPAPORT: Thank you, Mr. Sumner.

7 Mr. Urban.

8 MR. URBAN: Mr. Sumner, could we explore just a
9 little bit the nature of Bunker-Ramo's business and who
10 those subscribers are. You mentioned that the primary sub-
11 scribers to the Options last sale report service are broker-
12 dealers. Are they the exclusive subscribers to the service?
13 Who else may subscribe to the service?

14 MR. SUMNER: The only parties that may subscribe
15 to the service are those who are approved by OPRA itself
16 in order to receive Option's data, the subscriber must file
17 an application with OPRA. And OPRA then has the option of
18 approving or disapproving that potential subscriber's
19 application.

20 If a subscriber is approved, then he can apply to
21 us as one of the vendors to receive OPRA data.

22 MR. URBAN: You would be aware of anyone using your
23 equipment to subscribe to the service which is approved
24 by OPRA?

25 MR. SUMNER: That is correct.

1 MR. URBAN: Are you aware of any current subscribers
2 who are other than broker-dealers?

3 MR. SUMNER: I am not aware of any.

4 MR. URBAN: The service and equipment and facilities
5 which you provide, how does Bunker-Ramo derive its revenues
6 from those subscribers, and what revenue does it derive?
7 What charges are assessed upon the subscribers by Bunker-
8 Ramo?

9 MR. SUMNER: The charges are assessed on the basis
10 of the equipment that is installed in the subscriber's office.
11 For example, there generally is a control unit, what is
12 termed a control unit; which controls the operations of
13 a number of desk top inquiry terminals. And it is the number
14 of those terminations, along with the controller, along
15 with perhaps some optional features that determines the
16 charges that a subscriber pays.

17 MR. RAPPAPORT: Mr. Urban, did Mr. Sumner indicate
18 in response to your initial series of questions what the
19 proportion of the subscribers are, for example, members of
20 the Exchanges which control OPRA as opposed to entities
21 which are either broker-dealers or are not members of such
22 Exchanges or institutions or other types of customers, other
23 categories of customers?

24 MR. URBAN: No, I don't believe he broke it down
25 in that manner.

1 Are you able to break down among the broker-dealers
2 who do subscribe, the membership in a particular exchange?

3 MR. SUMNER: No, I am not.

4 MR. URBAN: Are you yourself aware of the nature
5 of the business of those broker-dealers in terms of
6 institutional business, retail business?

7 MR. SUMNER: No, I am not. I would only be con-
8 jecturing if I answered that.

9 MR. URBAN: You are responding --

10 MR. RAPPAPORT: May I interrupt again, Mr. Urban.

11 MR. URBAN: Sure.

12 MR. RAPPAPORT: How about subscribers that are other
13 than broker-dealers, do you have any idea of what porportion
14 roughly of your subscribers are not broker-dealers?

15 MR. SUMNER: No, Mr. Rappaport, I don't have that
16 information. I will try to explain the manner in which we
17 are made aware of who is eligible to receive OPRA data.

18 That is a list that is prepared by OPRA of names
19 of individuals or companies. And I do not believe that there
20 is any breakdown as to the business affiliation of those
21 individuals or companies.

22 MR. RAPPAPORT: And your organization for mer-
23 chandising or any other purposes has no idea as to whether
24 a subscriber is a broker-dealer or an institution or somebody
25 who is just interested in having the information?

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MR. SUMNER: I would expect that that information is known by someone in our organization. I do not happen to know the breakdown of the percentages --

MR. RAPPAPORT: Would you be able to supply that information?

MR. SUMNER: I will attempt to.

MR. RAPPAPORT: Could we reserve Bunker-Ramo Exhibit 2 for that information, please.

(Bunker-Ramo Exhibit No. 2 Reserved.)

MR. ARCHIE: It may be, Mr. Rappaport, that OPRA has it already, and it is more readily available from that source. Can we keep that alternative open?

MR. RAPPAPORT: Certainly.

Mr. Urban.

MR. URBAN: You indicated that the nature of the fees received by Bunker-Ramo came from the rental of equipment and the availability of particular formats for the receipt of information. Does the equipment or the format have any inherent value or worth absent the ability of that equipment and format to present information which Bunker-Ramo acts as the conduit for?

MR. SUMNER: We operate a variety of classes of equipment. And in some cases the answer to your question would be no.

1 Certain of our equipment would not have an inherent
2 or intrinsic value outside of its function of posting options
3 data or quotations data, and certain other equipment would
4 have.

5 MR. URBAN: Mr. Sumner, on page 4 of your statement
6 that was entered as Exhibit 1 you state that: "Bunker Ramo
7 does not exact any surcharge for its basic quotation services
8 either in terms of the amount or frequency of usage, or of
9 the type of data which a user requests. In particular it
10 does not identify separate charges for, or realize a
11 specific profit on, the dissemination of options last sale
12 information."

13 Does the dissemination of options last sale
14 information contribute to whatever profit Bunker Ramo may make
15 for the provision of the services?

16 MR. SUMNER: In my judgment it is the situation
17 where Bunker Ramo is a competitor among a number of vendor
18 companies, and the options information is an available
19 service to certain of our subscribers. And we would be at
20 a competitive disadvantage, I believe, if we did not carry
21 that information for the use of those subscribers.

22 MR. URBAN: Does the statement on page 4 then
23 reflect the inability of Bunker Ramo to allocate its profits
24 among the various information services which it provides?

25 MR. SUMNER: It is not so much an inability, it is

1 a competitive situation. And we choose not to bill our clients
2 specifically for particular sets of data.

3 MR. URBAN: Section 11A.(b) (5) of the Act under which
4 this proceeding is brought requires the Commission --
5 let me read it: "If the Commission finds after notice and
6 opportunity for hearing that such prohibition or limitation
7 on access is consistent with the provisions of this title
8 and rules and regulations thereunder, and that such person
9 has not been discriminated against unfairly, the Commission
10 by order shall dismiss the proceeding."

11 Could you address or have your counsel address the
12 particular provisions of the Act which you contend the
13 termination of the vendor agreement and OPRA's proposed
14 assessment of an access fee are consistent with?

15 MR. ARCHIE: We have set forth in our statement,
16 Mr. Urban, the argument that because OPRA is a group of
17 exchanges, and OPRA in effect, for the first time has set an
18 access fee, that action, aside from the exchange act, would
19 raise problems under the antitrust laws.

20 It is our view that for a finding that access fees
21 are consistent with the Act, it requires a look at how the
22 Supreme Court has instructed that the antitrust laws be
23 interpreted in the context of the Exchange Act. It is our
24 view that there must be a finding that access fees are
25 required to make the Exchange Act work.

1 We conclude that the best evidence that access fees
2 are not necessary is that the Exchange Act worked extremely
3 well in 1975 and 1976 when there were no access fees.

4 The second part of our argument again set forth
5 in the statement -- I won't go over it line by line -- is
6 that where capital costs are incurred and passed on to a
7 party which has no input in the incurring of those costs,
8 there is no built in restraint on OPRA for the exchanges
9 to, in effect, keep their pencil sharp, as we say, and impose
10 a lid on those costs.

11 If the members of OPRA, the Exchanges, have to
12 bear the cost, they have a builtin incentive to keep the
13 cost low to cut a hard bargain when they sit down with
14 SIAC.

15 Our conclusion is that it is in the interest of
16 investors to have the exchanges bear the cost, because we
17 conclude that in the end, in all likelihood, it is the
18 investors which underwrite these costs. If the costs are
19 not controlled by the exchanges, they are likely to be higher,
20 the investor ends up paying a higher fee indirectly.

21 MR.URBAN: Can you relate the antitrust position
22 in the second argument which you have made to particular
23 provisions of the Act in terms of our, the Commission's,
24 ability to find that such charges would be inconsistent with
25 the Act?

1 MR. ARCHIE: I believe they are inconsistent for
2 the reasons I stated a moment ago, that aside from the
3 Exchange Act they raise antitrust problems. To find that
4 they are consistent with the Act, there has to be finding
5 that access fees are required to make the Exchange Act work.
6 And absent that finding, the kind of a decision that has
7 been made here by Exchanges which have decided as a group
8 to fix a fee, it is impossible to have a finding in my
9 judgment, that access fees are reasonable and in line with
10 Section 11A of the Act.

11 MR. URBAN: On page 8 of your statement you list
12 certain factors which you state allow OPRA members to re-
13 capture the costs which you believe are reflected in the
14 access fee. Would any of those factors also increase to
15 permit Bunker Ramo to also increase its profits on the
16 services which it provides?

17 MR. SUMNER: I am sorry, Mr. Urban, I think you
18 indicated that those items permitted vendors to recapture
19 some of their costs. I am not sure that that is the
20 case.

21 MR. URBAN: If I said it that way that isn't
22 accurate. You state on page 8 that these factors permit
23 OPRA's members to recapture the costs.

24 MR. SUMNER: Yes.

25 MR. URBAN: My question is whether these same

1 factors also increase the potential of Bunker Ramo to
2 derive profits or revenues from the provision of the
3 information service?

4 MR. SUMNER: In my judgment these factors have no
5 bearing on the profit ability of the vendors, other than
6 perhaps if there is a large increase in the number of
7 subscribers, there is a potential increased business.

8 MR. ARCHIE: Let me add to that, Mr. Urban, if
9 I may. Because the equipment is installed, in offices already
10 if there is an increased demand for OPRA last sale reports,
11 the fees received would not increase -- the subscriber fees
12 would increase, but the fees received on the equipment would
13 increase.

14 Now, in the long run if exchange volume goes up,
15 a number of member firms open new offices, our client, of
16 course, has a right to compete for that business. There
17 is no assurance that it will get it.

18 MR. URBAN: One of the antitrust considerations
19 under the Act which may be related to your antitrust claim
20 is whether the assessment of an access fee imposes a burden
21 on competition. Could you address how the assessment of
22 this access fee does impact your ability to compete with
23 other vendors or subscribers?

24 MR. ARCHIE: Obviously, if all subscribers
25 pay the same access fee we are all in the same boat. Now,

1 some access fees -- some vendors may have additional greater
2 number of subscribers than others. If that is the case, that
3 particular vendor could spread the fixed cost over a larger
4 number of units. That is the only way I see it.

5 MR. SUMNER: That is about the size of it as far
6 as I can see. Of course, the corollary of that is true also.
7 If a vendor has fewer subscribers and pays the same access
8 fees, then of course, its profitability is tending to go
9 downward, simply because of the access fees.

10 MR. URBAN: Mr. Archie, do you contest the ability
11 of the exchanges in this instance to combine for the purposes
12 of offering Options Last Sale Reports on a consolidated
13 basis?

14 MR. ARCHIE: I do not.

15 MR. URBAN: Does the legislation under Section
16 11A reflect an understanding of Congress that these exchanges
17 would operate as monopolists?

18 MR. ARCHIE: That is certainly my understanding.
19 If they were an excluded information processor, there are
20 a number of references in the history, both the Senate side
21 and the House side, which refers to them as a public utility
22 type which I would construe as being in fact monopolists.
23 But that does not mean that you will impose restraints across
24 the board.

25 The intent, and again I believe it is both on the

1 Senate side and the House side, is to the effect that if
2 restraints are imposed, those restraints should be as
3 small as required. Our view is that access fees are not
4 required.

5 MR. URBAN: At this point I will turn the microphone
6 over to Nancy Wojtas.

7 MS. WOJTAS: Mr. Sumner, what if any, changes
8 were you required to make at Bunker Ramo in order to receive
9 the consolidated high speed transmission line from SIAC?

10 MR. SUMNER: We had to effectively design a new
11 processing function in our central data processor to receive
12 the single line, as compared with the individual communication
13 service from the different options exchanges.

14 MS. WOJTAS: That was the only change you had
15 to make?

16 MR. SUMNER: That is the most apparent change. I
17 am not sure whether it was the only change.

18 MS. WOJTAS: When were you notified by OPRA that
19 you would have to make this change?

20 MR. SUMNER: I don't have the exact date of that
21 notification. It would be in, I believe, the second half
22 of 1977.

23 MS. WOJTAS: Was this notification made at the
24 same time as the notice to terminate the old 1975 vendor
25 agreement?

1 MR. SUMNER: Could you repeat that, please?

2 MS. WOJTAS: Was the notification to make the
3 changes at Bunker Ramo received at the same time that you
4 were notified that the 1975 vendor agreement would be
5 terminated by OPRA?

6 MR. SUMNER: To make the changes to prepare to
7 receive the high speed line?

8 MS. WOJTAS: Yes.

9 MR. SUMNER: I believe that the high speed line,
10 we were notified of the design of the high speed line prior
11 to the notice of termination of the 1975 agreement.

12 MS. WOJTAS: Perhaps this should be addressed to
13 Mr. Archie. This is in reference to the 1975 vendor agreement
14 Section 16 of the agreement provides, "Upon changes with any
15 applicable requirements of the Securities Exchange Act of
16 1934, including any affirmative action by the SEC as required
17 either the vendor or the participants may terminate this
18 agreement on not less than 30 days prior written notice to
19 the other."

20 Now, does this section impose any limitation on
21 either of the parties with respect to terminating this 1975
22 agreement?

23 MR. ARCHIE: Let me make a speech on that.

24 I am glad you asked the question.

25 In common law any time a contract is amended or

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1 modified, it is regarded as a new contract, and a termination
2 of the old contract.

3 The 1975 indoor agreement included an addition to
4 paragraph 16 which you have read. Another paragraph I believe,
5 is number 22, which is to the effect -- I don't have it in
6 front of me -- that the parties may amend or modify the
7 contract by agreement. Such an amendment in my judgment,
8 would end the old contract and form a new contract as a
9 matter of common law. Then you redetermine the contract.

10 What did that mean?

11 Why would they put in a termination clause and an
12 amendment clause?

13 Our conclusion is that paragraph 16, which alludes
14 to termination, had in mind the situation where either the
15 vendors or one of the exchanges decided to go out of business.

16 Obviously, if OPRA went out of business and the
17 Options Exchanges have not succeeded, it would make sense
18 to have the contract terminated. Here it is clear that there
19 was no intent by executing the proposed 1977 agreement to
20 end the longstanding relationship between OPRA and the vendors
21 That relationship continues. It continues on substantially
22 the same terms as the 1975 agreement with several major
23 exceptions.

24 The first major exception is that access fees were
25 imposed. It is our view that where a relationship continues

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1 between the parties, that constitute an amendment, or perhaps
2 a modification, and not a termination. I believe that OPRA
3 conceded in the statement it filed in this proceeding, page
4 13, that the relationship between OPRA and the vendors would
5 not end if the 1977 contract was signed.

6 Accordingly, it is our view that if OPRA and the
7 vendors are to amend or modify the document that governed
8 their relationship, it has to be by agreement of both parties
9 and that a modification would not be imposed by a single
10 party.

11 - MR. URBAN: What would be the remedy of either
12 party if a mutual agreement upon a modification could not
13 be reached?

14 MR. ARCHIE: Here we are. I don't know, Mr. Urban.
15 I don't mean to be flipant. I haven't read the terms of the
16 contract with that particular problem in mind.

17 MR. URBAN: Are you or Mr. Sumner aware of any
18 previous modifications in the agreement?

19 MR. ARCHIE: I am not.

20 MR. SUMNER: I am not aware of any modifications
21 to the agreement per se. I am aware, however, that one of
22 OPRA's policies have been changed with respect to the re-
23 transmission or the creation of a display type of ticker
24 tape which was expressly ruled out in the agreement itself;
25 but subsequently there was a policy change. And the effect

1 of that may constitute a modification of the agreement.
2 But other than that I am not aware of any.

3 MR. URBAN: In your submission, Mr. Sumner, or
4 Mr. Archie, you seem to state that the Commission should
5 look toward equity and good conscience in terms of the
6 termination clause, whether that termination clause itself
7 has any limitations upon itself or not. You cite two cases
8 in support of your view that we should look to the equity.

9 The contract appears to stipulate that New York
10 law confines any agreement hereunder -- the Gaines case
11 that you cite was determined under South Carolina law, and
12 apparently the South Carolina law is the minority position
13 in terms of whatever considerations can be given to equity.

14 What further support do you proffer for our
15 looking to the equity of this situation in terms of the contract
16 itself?

17 MR. ARCHIE: The historical background relationship
18 between the parties, I believe, should be taken into account

19 In 1975 I would make the argument -- my worthy
20 colleagues may disagree -- that the Options exchanges at
21 that time were not as large or as widespread as they are now
22 and at that point in time the exchanges needed our client
23 and the other vendors to get the information out to investors.

24 Since 1975 options trading has increased in volume.
25 Certainly it has increased in popularity. In 1975 the

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1 bargaining power between the parties was about equal, I would
2 assume, certainly more equal than it is now.

3 In 1978 we find that there are additional options
4 exchanges. And we also find that the options exchanges have
5 in effect, banded together and are bargaining under a single
6 name, OPRA. The options exchanges under that single banner
7 can go out and negotiate individually with each vendor.
8 If the vendor is determined that they would join together,
9 it would violate the antitrust laws. And you have a substanti
10 unequal bargaining power at this time. And we see the results
11 of that unequal bargaining power.

12 It is the party with the clout, shall we say,
13 seeking to impose on the parties that are standing individual
14 an access fee. That is the kind of argument that the courts
15 took into account in the two cases which we cite. And I
16 think that is the kind of argument and the kind of factors
17 which should be taken into account in coming to a position.

18 MR. URBAN: One of the other modifications in the
19 provisions of the new agreement is that there is no longer
20 a prohibition against vendors retransmitting any tape format
21 options last sale reports. Is the elimination of that pro-
22 hibition of any economic benefit to Bunker Ramo?

23 Has Bunker Ramo taken advantage of the elimination
24 of that prohibition?

25 MR. SUMNER: In my judgment, it is not an advantage

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1 And the reason is that last sales tape did not fly when
2 the OPRA participants attempted to market it. There are
3 inherent deficiencies in creating a last sale tape that
4 is used for display purposes for options data. And we have
5 no plans at this time to create such a tape.

6 MR. URBAN: One final question.

7 The third issue that the Commission posed in this
8 proceeding was the question of whether a vendor should be
9 required to pay the communications line cost within a 100
10 mile radius of New York City. What is Bunker Ramo's position
11 on that issue?

12 MR. SUMNER: Our position is that those lines
13 charges are a part of the 1975 agreement itself. And I
14 believe that that is a negotiable item.

15 MR. URBAN: Mr. Steele will question.

16 MR. STEELE: Could you supply us with the amount
17 of your gross revenues that you derived over the past calendar
18 year in connection with options information services.

19 MR. ARCHIE: Mr. Sumner testified earlier that
20 the comp: does not identify revenue on the basis of the
21 options data or stock data that the client receives. So there
22 is no way of knowing what the answer is, what the numbers
23 are.

24 MR. STEELE: Could you provide us with the total
25 amount and make an estimate as to what part of it could be

1 allocated to options information.

2 MR. ARCHIE: No, he said; it is a very subjective
3 matter. And the key issue in my judgment is, what accounts
4 would you lose if you didn't supply the options information.

5 The chances are that you would lose some. But who
6 knows.

7 MR. SUMNER: May I just add one thought to that.
8 That kind of information conceivably could be identified
9 if there were an instance where a subscriber was only receiving
10 options data and not other data. When a subscriber rents
11 our equipment, if he is approved to receive OPRA data and
12 New York Stock Consolidated Tape Association data, we have
13 no way of knowing how he is using that equipment. And we
14 cannot identify that he is only using it for options, and
15 that but for the lack of options he wouldn't be our subscriber

16 MR. STEELE: Could you tell us how many of your
17 subscribers subscribe only to options information?

18 MR. SUMNER: I didn't hear the question.

19 MR. STEELE: Could you tell us how many of your
20 subscribers only subscribe to options?

21 MR. SUMNER: I cannot. But I can give a best guess,
22 that there are very few, if any.

23 MR. URBAN: Mr. Rappaport, that concludes our
24 questioning.

25 MR. RAPPAPORT: I just wanted to get back to one

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1 thing.

2 At the bottom of page 4 of your statement you note
3 that there is an OPRA requirement that vendors must maintain
4 records and report periodically to OPRA the identity of
5 those to whom OPRA's data is being disseminated. And I was
6 wondering, in response to my request for information, about the
7 general distribution of your subscribers as between broker-
8 dealers and exchange members of the OPRA membership. And
9 another question is, whether you would have that information.
10 We have an exhibit reserved for that. If you do supply the
11 identity of subscribers to OPRA, are you telling us that you
12 are not sure whether you have any information in your
13 organization as to the affiliations of those subscribers, or
14 registration of those subscribers?

15 MR. SUMNER: No. The list of our subscribers, our
16 users, is not broken down in terms of what their business
17 affiliation is or how they use the data itself is concerned.
18 I am not sure, absent a reference to a security dealers
19 handbook, that I can identify the particular subscriber and
20 tell you what his usage of the data might be.

21 MR. RAPPAPORT: I guess I wasn't really asking about
22 usage, but just their identification. And I wasn't really
23 asking about the identification by name of the subscriber.

24 MR. SUMNER: I understand.

25 MR. RAPPAPORT: You have indicated that you will

1 supply that information if you must by resort to the security
2 dealers handbook unless OPRA can supply that to us. And
3 we will leave that reserved for the time being.

4 Thank you.

5 If there are no further questions, the witnesses
6 will be excused, with thanks from the Commission and the
7 Staff.

8 MR. SUMNER: Thank you.

9 MR. RAPPAPORT: Mr. Urban.

10 MR. URBAN: The next witnesses in this proceeding
11 are the representatives of GTE Information Systems, Inc.

12 Would the spokesman for GTE introduce himself and
13 his associates and proceed with his information.

14 MR. FRISCHKORN: My name is Allen Frischkorn.
15 I am counsel for GTE Information Systems.

16 Here with me today are Joe Duhamel on my right,
17 and George Hernan on my left, the Financial Services Division
18 of GTE Information Systems.

19 MR. RAPPAPORT: At this time I would ask those
20 who are going to testify on behalf of GTE this afternoon to
21 raise your hands and I will administer the oath.

22 Thereupon,

23 JOSEPH DUHAMEL, GEORGE HERNAN, ALLEN R. FRISCHKORN, JR.
24 were called as witnesses and were duly sworn by
25 Mr. Rappaport.

1 MR. RAPPAPORT: You may proceed.

2 TESTIMONY OF ALLEN R. FRISCHKORN, JR.,
3 ON BEHALF OF GTE INFORMATION SYSTEMS, INC.

4 MR. FRISCHKORN: Mr. Rappaport, Commissioner Karmel
5 Mr. Urban, and members of the Staff, I am pleased to be
6 here this afternoon to present the position of GTE Informatic
7 Systems on the question of whether OPRA should be permitted
8 to impose a charge for access to options transactions
9 information on the vendors of market information. Our
10 position in this matter is stated at length in the grievance
11 that we filed with the Securities and Exchange Commission
12 on December 15, which I believe, is part of the record in
13 this proceeding.

14 However, I would like to briefly touch upon some
15 of the high points in our position in the 15 minutes available
16 to me.

17 If Mr. Rappaport or the Staff have any questions
18 at any time about anything I say I will be happy to answer
19 them. Please feel free to interrupt me. If I cannot answer
20 the question I will direct it to Mr. Duhamel or Mr. Hernan.

21 Initially, I would like to take a look at the
22 Commission's jurisdiction in this matter. We believe that
23 there are two independent bases under which the Commission
24 may act to prohibit OPRA from imposing a fee upon the vendors
25 Clearly under Section 11A(b)(5) of the Act the SEC has
jurisdiction over a prohibition or limitation of access by

1 exclusive processor.

2 The question comes to mind I guess initially, is
3 the mere imposition of a fee, a prohibition on limitation
4 of access.

5 We believe that it is. When an exclusive processor
6 imposes upon a vendor, as they have, and which OPRA is
7 attempting to here, an unjustified fee for access to options
8 transaction information, the processor is in effect, using
9 its monopoly power to limit the access of vendor to the
10 transactions information. We have no other source of options
11 transaction information than from OPRA, the exclusive processor

12 There is another independent basis under which we
13 feel the Commission can act in this matter. Under the Securities
14 Act amendments of 1975 the SEC was given pervasive jurisdiction
15 over the activities of an exclusive securities information
16 processor, partly for the reason that such processor as
17 Congress realized, has a monopoly situation.

18 Under that pervasive jurisdiction we believe that
19 the Commission could determine, contrary to the public
20 interest, contrary to the Commission's role in fostering
21 maximum availability of the market information to the public,
22 to permit the imposition of fees by exclusive processors
23 on vendors.

24 Turning now to the specific questions addressed
25 by the Commission in its order of May 19, the first question

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1 was whether OPRA is an exclusive securities information
2 processor registered pursuant to Section 11A(b)(3) of the
3 Act may charge vendors an access fee for the receipt of
4 options last sale transactions reports.

5 Looking at the subject one must first take a look
6 at the legislative history to see what is provided. While
7 the legislative history of the Securities Act amendments of
8 1975 is somewhat ambiguous -- perhaps that is an understatement
9 on the question of whether an exclusive processor may charge
10 vendors for securities transaction information, there is
11 at least some evidence in the legislative history that vendors
12 were not intended to bear those costs.

13 For example -- and this point is discussed in some
14 detail in our grievance -- there is no express provision
15 whatsoever that would require -- that would permit the
16 charging by an exclusive processor vendors for access to
17 market information.

18 Secondly, there is some language in the House
19 report on the legislation that suggests that the costs of
20 dissemination of market information should be born by the
21 exchanges, associations, and broker-dealers. While we admit
22 that the House version of the legislation was ultimately
23 enacted into law, nevertheless in not enacting the House
24 provision of allocation of dissemination clause, Congress
25 evidenced no intent to expand the category of persons who

1 should be required to bear such dissemination costs. In
2 any event, the SEC has authority clearly under legislative
3 history to determine the reasonableness of the charges
4 that are imposed by an exclusive processor. And we believe
5 that the authority of the Commission in that regard also
6 includes the authority to determine whether any charge by
7 an exclusive processor to a vendor for access to information
8 is reasonable.

9 Now, there are a great number of reasons why it is not
10 reasonable or appropriate for OPRA or any exclusive processor
11 to charge vendors for access to information that the exclusive
12 processor is required by law to make available to the public.

13 First of all, in carrying option transaction
14 information to OPRA subscribers, vendors provide a valuable
15 service to OPRA and to the investing public. The vendors,
16 while making information available to the financial community
17 and the investment public, enhance the value of OPRA
18 information. If the vendors did not exist, and OPRA still
19 wanted to disseminate its information to the investing
20 public, it would have to incur considerable capital cost,
21 duplicating essentially the vendor networks that now exist.

22 Moreover, back in 1974 and 1975 when OPRA came
23 to us to carry OPRA information, we incurred a considerable
24 cost in modifying our terminals. I understand that the costs
25 are somewhere in the nature of many hundreds of thousands of

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1 dollars to carry OPRA information.

2 Furthermore, the costs that OPRA has incurred in
3 connection with implementation of the high speed transmission
4 directly benefit OPRA and its participants and not the
5 vendors. We receive absolutely no benefit from the high
6 speed line. But OPRA participants receive many benefits.

7 For example, they don't have the additional line
8 costs that they had in returning separate lines to the
9 vendor's premises. The vendors have no control over OPRA
10 costs. And this is a point that I believe that Bunker Ramo
11 brought out earlier. Requiring OPRA to recover its costs from
12 the subscribers will cost efficiencies in OPRA's operation.
13 The vendor must bear their own cost in improving their
14 systems consistent with the Commission's desire to facilitate
15 the creation of a national market system.

16 Vendors have in the past and will in the future
17 incur considerable cost in modifying this terminal in software
18 to facilitate the bringing about of an international marketing
19 system. We are quite content to bear this cost. However,
20 we don't feel that we should bear the costs that OPRA incurs
21 in modifying its system for its own benefit.

22 OPRA has the mechanism already in place to recover
23 the costs that it incurred in bringing about the high speed
24 transmission. It has subscribers. Why put the vendor in the
25 middle? Why not pass on this cost directly to the OPRA

1 subscribers?

2 If we are caught in the middle we are going to incur
3 administrative costs in passing on the OPRA costs. Moreover,
4 because of the way that we bill for our service, we are not
5 going to be able to buy OPRA costs to only those people that
6 have OPRA information. We will have to bill them across
7 our entire subscriber lists.

8 If OPRA is allowed to absorb to vendors the cost
9 of high speed line and other innovations through its system,
10 it is going to reduce the amount of capital that we have
11 available to put into improvements in our system. Again,
12 such improvements are going to have to come about in
13 connection with the international marketing system.

14 MR. RAPPAPORT: You invited interruptions, and I
15 would like to take you up on that.

16 MR. FRISCHKORN: Fine.

17 MR. RAPPAPORT: You said a moment ago that because
18 of the way you bill your subscribers you would be unable
19 to impose an extra charge on those who were using or receiving
20 I am not sure which you said.

21 MR. FRISCHKORN: Receiving OPRA information.
22 We do not charge more to subscribers that receive OPRA
23 information as opposed to subscribers who do not. Therefore --

24 MR. RAPPAPORT: Why is that?

25 MR. FRISCHKORN: I will defer to one of my technical

1 experts.

2 MR. RAPPAPORT: The reason I ask that is, you were
3 indicating something that seemed to be in the nature of an
4 impossibility. And now I am not so sure that it is impossible.

5 MR. FRISCHKORN: Mr. Hernan will answer that question

6 MR. RAPPAPORT: Thank you.

7 MR. HERNAN: There is a long history in back of
8 the relationship of vendors, exchanges and the general
9 brokerage. At one time there was only one information that
10 was of value to the industry, and that was the New York
11 Stock Exchange Last Sales Information. As a consequence,
12 the early vendor systems did not charge for information
13 content per se, they charged for the delivery of information.

14 As the business of presenting this information
15 grew, and more and more sources of data became available,
16 the competitive atmosphere of one vendor vis-a-vis another
17 led to each vendor adding to their data base other data as
18 it became available. And we are today in the stance where
19 the vendor charges are based upon a level of service that
20 is provided, and not upon the information content of those
21 services.

22 MR. RAPPAPORT: Does that mean that if I am a
23 subscriber to a service, that I could insist upon receiving
24 OPRA last sales reporting information, or conversely, I could
25 say, block that out so that I wouldn't be able to receive it?

1 Do you do that?

2 MR. HERNAN: That is the situation.

3 MR. RAPPAPORT: But you don't charge me any
4 differently if it is blocked out.

5 MR. HERNAN: That is correct. We do not. An additional
6 reason for this pricing posture is that we cannot deliver
7 the information to whomever we choose. An individual, to
8 receive OPRA information, must be approved by OPRA. As a
9 consequence, if we charged on the basis of information
10 delivered, our revenues would not be totally under our control

11 MR. RAPPAPORT: So you must be able to block me
12 out if, for example, I have not been approved by OPRA?

13 MR. HERNAN: That is correct.

14 MR. RAPPAPORT: But if I have been approved by
15 OPRA, I may still be blocked out? I don't know if the factual
16 situation would arise, because the approval I assume is
17 by request.

18 MR. HERNAN: If the services indicate the type of
19 information which they wish to receive, if we have not receive
20 prior notification from OPRA that this particular individual
21 is authorized to receive OPRA information, they must make
22 application to OPRA, and if OPRA notifies us that they are
23 entitled to receive this information, we will then enable
24 them to receive this information.

25 MR. RAPPAPORT: I guess I am a little thick, because

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1 now I don't understand why the non-approved, non-OPRA
2 approved subscriber pays the same fee or is charged the same
3 fee as one who has been approved.

4 MR. HERNAN: Our cost -- in business there is
5 always an attempt to relate revenue to cost. The cost of
6 operating our system with respect to a particular customer
7 is not a function of what information he inquires for from
8 our data base. It costs us no more or no less to process
9 two entries from the New York Stock Exchange last sale
10 information than it would cost to process one inquiry from
11 the New York Stock Exchange and one inquiry for OPRA
12 information.

13 MR. RAPPAPORT: You have made an allocation decision
14 then, that you are going to allocate all the costs among
15 all your subscribers rather than to allocate costs on the
16 basis of what information they may inquire?

17 MR. HERNAN: Not all subscribers pay us the same
18 revenues. We try to make our revenues match our cost structure
19 where it is identifiable. Access fees just happened to be
20 not one we are concerned with. Some customers have more desk
21 units than other customers, and they pay us more money. Some
22 customers have no displays, and as a consequence they make
23 a greater demand on our system and pay us more money.

24 MR. RAPPAPORT: Thank you.

25 MR. FRISCHKORN: What is our chief concern here?

1 We are arguing over what appears to be a \$500 fee. That is
2 fairly insignificant, I guess, by most business standards
3 nowadays. It is not the fee. It is the principle that is
4 at stake here. Our chief concern is the cumulative effect
5 of access charges on the vendors. Even though this \$500 fee
6 may not be significant, if the precedent of the fee is
7 approved, he may be subject to much higher fees on a long
8 term basis from many other entities than OPRA.

9 Of course, the cumulative effect on us of having
10 to pay those fees will act as a disincentive for the vendors
11 staying in the business that they are in.

12 Finally, I guess, the conclusion on this point of
13 why it is inappropriate to charge vendors, the vendors are
14 burdened by fees from OPRA and others, they are going to be
15 inclined to look elsewhere for investment of their capital
16 than in the business of disseminating information. Thus by
17 prohibiting OPRA from imposing an access charge upon vendors,
18 the Commission will facilitate Congress's laws of maximizing
19 the availability fo marketing information to the investing
20 public.

21 On the Commission's second question, whether
22 OPRA, irrespective of whether it may charge an access fee
23 to terminate the 1975 vendors agreement, the optional plan
24 over which the SEC has continuing jurisdiction does not provid
25 for recovery of OPRA's costs through fees imposed upon the

1 vendor.

2 We believe that before our OPRA may impose such
3 fees among the vendors it must amend its plan. Until such
4 an amendment is filed and approved by the Commission, OPRA
5 should not be permitted to terminate the 1975 vendor agreement
6 particularly since it does not give the vendor an opportunity
7 to enter into a new agreement.

8 The only agreement which OPRA has presented us
9 with so far contains what we believe to be an illegal
10 application which would require us to pay for access to
11 options transactions information. While OPRA may terminate
12 the agreement on 30 days notice, we believe it may only
13 terminate the agreement for a legitimate purpose. Requiring
14 us to pay a fee that we are not otherwise liable for legally
15 we believe is obnoxious to the Commission and should not
16 be tolerated.

17 And finally, concerning the Commission's third
18 and final question presented in its order of May 19, that is,
19 whether OPRA may discontinue providing vendors the communi-
20 cations circuit which links the vendor to OPRA's central
21 processor, the current OPRA vendor agreement provides that
22 OPRA shall pay the costs of the communications circuit
23 between SIAC, the central processor and the vendors premises
24 within 100 miles of New York. Since we don't believe that
25 OPRA should be permitted by the Commission to terminate the

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1. current vendor agreement until it gives vendors at least
2 an opportunity to enter into a revised agreement with terms
3 consistent with the OPRA plan, OPRA must continue to provide
4 the communications circuit until that time.

5 I guess in conclusion we would like to request
6 that the Commission view OPRA's imposition of a fee upon
7 the vendors as a limitation of the vendor access to the
8 information that OPRA is required by law to disclose to the
9 public, and prohibit such a limitation.

10 Alternatively, if the Commission does not view
11 OPRA's action as a limitation of access as that term is
12 used in the Securities Act amendments, we believe that there
13 are public interest reasons why the application should
14 proceed by rule making under other sections of the Securities
15 Act amendments to preclude exclusive processors from imposing
16 access fees on vendors market information.

17 Thank you. And I am now prepared to take any
18 questions.

19 MR. RAPPAPORT: Mr. Urban.

20 MR. URBAN: Mr. Frischkorn, could you give us a
21 little description of who your subscribers are, again along
22 the same lines that the question was asked of Bunker Ramo?
23 Are they broker-dealers? Are there any parties other than
24 broker-dealers?

25 If so, what is the nature of their business?

1 MR. FRISCHKORN, Mr. Duhamel will answer that
2 question.

3 MR. DUHAMEL: Our customers are primarily broker-
4 dealers. There are a number of institutions, and there are
5 a number of other entities. However, none of our customers
6 can access data except as they have signed subscriber
7 agreements and have met conditions either by the exchanges
8 or by OPRA, or other associations. Our customer list is
9 available to the Commission should it be necessary, but in
10 the instance of this particular hearing the people who are
11 authorized to receive this data are the ones who are authorized
12 by OPRA, and we concur with Bunker Ramo that it is OPRA
13 who is best suitable to identify them and describe
14 them as it may be necessary.

15 MR. URBAN: Are you aware of any potential customers
16 or subscribers who have ever been precluded from access to
17 your services by OPRA's actions?

18 MR. DUHAMEL: I believe there have been instances
19 where customers have requested such service, and have been
20 denied access until they fulfilled a subscription agreement.
21 Specifically, I do not have in my own memory any individual
22 cases.

23 MR. URBAN: What is the nature of the fees that
24 you do collect from your subscribers? Can you relate those
25 fees to any particular service which you provide to them?

1 MR. DUHAMEL: We charge primarily a dissemination
2 fee. We are a communications organization. We communicate
3 information that we receive. The data is paid for, but it
4 is not paid for to us. It is paid for to the original owner
5 or gatherer of that data. So, for instance, in this instance
6 OPRA subscribers pay for the data to OPRA. They pay us
7 only for the delivery presentation of that data, including
8 communications facilities, terminal equipment, and in some
9 instances formatting.

10 MR. URBAN: Do you allocate the payment of the
11 equipment and the particular information service which a
12 subscriber received depending upon the nature of that service
13 or the format in which he receives it?

14 MR. DUHAMEL: We set our fees on the basis of
15 the amount of equipment, certain communication elements in
16 some instances, service to the equipment, and to how many
17 approaches our customers have to accessing that data.

18 So, for instance, we might charge less for the sim
19 presentation of a quote than we might charge for a
20 special presentation, either a reminder format, or what we
21 refer to as an option change or such; but we did not charge
22 specifically for the data elements that an individual may
23 retrieve.

24 MR. URBAN: I think it may repeat my question, but
25 would I pay more if I received the display of options last

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1 sale reports in addition to equity last sales reports?

2 MR. DUHAMEL: No, you would not, not to us.

3 MR. URBAN: If the Commission were to find that
4 OPRA does have authority to assess this access fee here in
5 question, or enter access fee, whatever its level, how
6 would that impact upon your ability to compete with other
7 vendors in the professional information services?

8 MR. HERNAN: The vendors all operate in a competitive
9 environment. To the extent that one vendor doesn't carry
10 the information that another vendor does carry, he is non-
11 competitive to some portion of a potential customer waste.
12 Most of our customers receive information from many sources,
13 one of which is OPRA. I can't state for a fact, but I do
14 not believe we have any customers that receive only OPRA
15 data. They also receive security data from various transactions
16 and they also receive commodity information.

17 To the extent that we cannot deliver an element
18 of information to an office, we cannot satisfy the need
19 of that office. To that extent we are non-competitive.

20 I interpreted your question that we would have the
21 opportunity of paying the fee and receiving the information
22 or not paying the fee and not receiving the information.

23 MR. FRISCHKORN: Of course, if all vendors have
24 to pay the same fee, there will be no competitive impact.
25 And this was indicated in our presentation. And there are

1 other good reasons why a fee should not be imposed upon the
2 vendor at all.

3 MR. URBAN: You would not view the assessment of
4 an equal fee on all vendors as posing any unreasonable
5 discrimination on those vendors?

6 MR. FRISCHKORN: That is correct. Again, there
7 are other reasons why no such fee should be imposed.

8 MR. RAPPAPORT: Does that specifically mean that
9 you disagree with the position taken by Mr. Sumner that the
10 vendor with a lesser number of subscribers would have no
11 difficulty spreading out the fee, or would have to do so
12 at higher cost than the vendor with a larger number of sub-
13 scribers?

14 MR. DUHAMEL: No, sir, we do not disagree with
15 that position. It is indeed true that a vendor with a
16 lesser number of subscribers, if he were paying a fixed
17 fee, would obviously have to spread that, and we agree with
18 that. I think our position, in answer to Mr. Urban's question,
19 simply is that we would be forced to sign that agreement
20 if the Commission so ruled. We would do that simply because
21 we would be at a competitive disadvantage were we not able
22 to offer the same data that our competitors are offering.
23 But we do not disagree with Mr. Sumner's remarks.

24 MR. RAPPAPORT: Thank you.

25 MR. URBAN: You stated that you incurred a certain

1 cost in implementing your own ability to receive options last
2 sale reports on a high speed basis. Are there any cost
3 savings that you might accrue over a period of time from
4 receipt of that information on a high speed basis?

5 MR. FRISCHKORN: Mr. Hernan will answer that questio

6 MR. HERNAN: Had the high speed line been implemente
7 at the output, there would have been cost savings in implement
8 the high speed line as opposed to implementing the alternative.
9 However, that was not the situation. What we were faced
10 with were inputs from five different exchanges, for which
11 we had to create inputs and write programs to accept those
12 inputs. As a consequence, OPRA's implementing the high speed
13 line represented to us additional cost. We now had to redo
14 a sixth time what we had done five times, and in essence
15 scrapped that which had been created just a couple of years
16 earlier.

17 MR. URBAN: If we looked ahead to the future and
18 perceived that at some future date there might be a 6, 7,
19 and 8 options exchange, would the fact that there is now a
20 central processor mitigate the need for you to perhaps
21 change your ability to receive output from other exchanges
22 the 6th, 7th and 8th time?

23 MR. HERNAN: That is possible. Also, on the
24 other hand, if that 6th, 7th and 8th are transmitting in the
25 identical format every one of the other 5 that we have already

1 done, we would then have to reprogram for them.

2 MR. URBAN: Will you turn to the third issue for
3 just a few minutes.

4 I am not sure I understand Mr. Frischkorn's
5 position on the authority of OPRA to terminate the provision
6 of a free communications line within 100 miles of New York
7 City. Is your position on that issue solely contingent
8 upon the inability of OPRA to terminate the 1975 vendor
9 agreement?

10 MR. FRISCHKORN: Precisely.

11 MR. URBAN: If the Commission were to find that
12 the vendor agreement were properly terminated, would it
13 be unreasonably discriminatory?

14 Let me rephrase that question.

15 If the Commission were to find that the vendor
16 agreement were not properly terminated and that OPRA was
17 bound to continue operating under the terms of the 1975
18 vendor agreement, would it be unreasonably discriminatory
19 against new vendors who might desire to enter into the
20 business for them not to receive the free transmission
21 line within 100 miles of New York City?

22 MR. FRISCHKORN: I guess our position on the
23 communications circuit differs from the communications on
24 the access fee. Perhaps this will clarify things. We do not
25 say that the OPRA can never impose a charge for the

1 communications circuit. Indeed, that is a facility which
2 is specifically dedicated to our use. And I think that under
3 the law and legislative history we would be hard pressed
4 to say that we did then have to have that charge. However,
5 we don't believe, until OPRA presents us with another
6 acceptable agreement, that OPRA can discount paying for that
7 charge. It could if it wanted to, I expect, tomorrow
8 present us with a revised agreement on that specific point,
9 on the communications charge. And we could either agree or
10 not agree on the provision. And we would have no recourse
11 to the Commission under any circumstances with regard to that
12 specific charge.

13 In other words, if they could terminate the
14 agreement validly, and wanted us to enter into a new agreement
15 to pick up the termination circuit, we would either have to
16 do it or not enter into the agreement. We wouldn't complain,
17 to the Commission that it is an improper charge. It is a
18 proper charge in our view. However, it is a charge that we
19 would have to bear until OPRA properly terminates the 1975
20 agreement and imposes a new agreement.

21 MR. URBAN: One of the provisions of the proposed
22 agreement is the elimination of the prohibition on re-
23 transmission of an options tape. Has GTE availed itself
24 of the ability to present an options last sale tape? Or does
25 it see any likelihood that it might avail itself of that

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1 possibility in the future?

2 MR. DUHAMEL: We have not and we do not see any
3 such intention in the immediate future. We have had no
4 request for such.

5 MR. URBAN: I will turn the microphone over to
6 Nancy Wojtas.

7 MS. WOJTAS: Mr. Hernan or Mr. Duhamel, do
8 you recall when you were notified to make changes by OPRA
9 to your programs for this new high speed consolidated line?

10 MR. DUHAMEL: I believe we were formally notified
11 on July 7th in a letter from the Options Pricing Reporting
12 Authority, Association to all vendors. There may have been
13 some informal discussion about it before then, of which I
14 am not personally aware.

15 MS. WOJTAS: At that time were you notified that
16 the '75 vendor agreement would be terminated?

17 MR. DUHAMEL: I believe that notification was a
18 proposal without necessarily indicating a termination.
19 The termination came quite a bit subsequently.

20 MS. WOJTAS: Mr. Frischkorn, Section 16 of the
21 1975 vendor agreement on its face appears to provide parties
22 to the contract with the right to terminate without any
23 limitation the contract upon 30 days written notice. Could
24 you explain why this provision is not applicable to the
25 situation?

1 MR. FRISCHKORN: Again, our position is that they
2 may terminate the contract for any valid reason, imposing
3 a fee on the vendors for nonvalid uses.

4 MR. WOJTAS: What provision can you specifically
5 point to in the contract itself which sets this out?

6 MR. FRISCHKORN: I don't think there is a specific
7 provision. I think it is a matter of policy.

8 MS. WOJTAS: Thank you.

9 MR. URBAN: Thank you, Mr. Frischkorn.

10 Mr. Rappaport.

11 MR. RAPPAPORT: I would like to thank you gentlemen
12 and GTE for having come here today to give us your views on
13 this subject. And if there are no further questions,
14 as there appear to be none at this time, you will be excused
15 as witnesses.

16 I would like to ask both you and the representatives
17 of Bunker Ramo, since you are apparently staying here,
18 whether -- and I would direct this question to the represen-
19 tatives of OPRA also -- whether you would care to avail
20 yourselves of at the most five minutes apiece for
21 any comments after each of the three organizations has said
22 its piece. If you would care to, I am going to reserve a
23 period of up to five minutes for each of the three organizatic
24 for -- well, rebuttal may be one way of characterizing it,
25 but for any additional comments that you would like to give,

1 since you are still here, and are in a if not round table,
2 in a format which may be conducive to further comments.

3 Would that be acceptable, Mr. Urban?

4 MR. URBAN: Yes, that would be acceptable, Mr.
5 Rappaport.

6 MR. RAPPAPORT: Thank you.

7 Let us take a recess at this point.

8 (Recess.)

9 MR. RAPPAPORT: The proceeding is officially
10 reconvened, and we were about to hear from the representative
11 of OPRA.

12 Let me ask Mr. Urban to officially indicate that
13 our next witness is OPRA. And perhaps you could take over.

14 MR. URBAN: The next witness to be called in this
15 proceeding is the Options Price Reporting Authority, OPRA.

16 The spokesman for OPRA will introduce himself and
17 his associates and proceed in their presentation.

18 MR. COWLES: Thank you, sir.

19 I am Dick Cowles. I am the COE's representative
20 to OPRA. And with me is Steve Williams on my left, who is
21 the American Stock Exchange's representative to OPRA.
22 And on my right Mike Meyer, counsel to OPRA. And Mark Zaander,
23 also counsel to OPRA.

24 We have a prepared statement. I would like to
25 submit it as part of the record.

1 MR. RAPPAPORT: Before we do that perhaps I could
2 ask each of you who are about to give testimony this after-
3 noon to be sworn in.

4 Would you all raise your right hands.

5 Thereupon,

6 RICHARD J. COWLES, STEPHEN L. WILLIAMS,
7 MICHAEL L. MEYER, and MARK C. ZAANDER

8 were called as witnesses and were duly sworn by
9 Mr. Rappaport.

10 MR. RAPPAPORT: You wish to have your written
11 statement marked as OPRA Exhibit No. 1?

12 MR. COWLES: That is correct.

13 MR. RAPPAPORT: It will be so identified and receive
14 (OPRA Exhibit No. 1 was marked
15 for identification and received
16 in evidence.)

17 MR. COWLES: In addition, I would like to make
18 some comments.

19 TESTIMONY OF RICHARD J. COWLES
20 ON BEHALF OF THE OPTIONS EXCHANGE.

21 MR. COWLES: I thought the best place to begin
22 would be by describing where OPRA found itself in 1976.
23 Some of this has already been covered by others in this
24 hearing. We did find ourselves in a situation by that time.
25 A number of participants in OPRA had grown from two exchanges
to five. Each sent in its own options last sale reports to

1 vendors. This data was not processed or consolidated by
2 any central processor, but was sent separately by each exchange
3 to each vendor, following what was becoming an increasingly
4 complex net of transmission lines. The information so received
5 was processed by the vendors for transmission to inter²rogator
6 devices furnished by them to their customers, all of whom
7 were required to be OPRA subscribers.

8 After considerable consultation with the vendors
9 through 1976, and in response to requests of vendors, including
10 GTE and Bunker Ramo, OPRA determined to develop a single
11 consolidated high speed transmission that would be sent by
12 a central processor to each vendor.

13 I would like to emphasize that this undertaking
14 was done in large part to benefit the vendors and other
15 persons that wanted to receive a single consolidated high
16 speed service such as subscribers who want to receive the
17 information directly and not through a vendor. And thus
18 OPRA decided to develop the consolidated system in order to
19 limit the number and standardize the format of inputs to
20 vendors, to assure a common and accurate time sequence of
21 reports transmitted to vendors, to provide an expanded
22 capability needed to process the increasing volume of
23 options transactions in a timely manner, and to eliminate
24 unnecessary restrictions on the dissemination of options
25 last sale information, for instance, giving vendors the

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1 ability to transmit a continuous last sale price stream
2 in the form of a tape.

3 In order to accomplish all this OPRA contracted
4 with SIAC on the basis of competitive bids to develop a
5 high speed data processing system and to serve as its
6 central processor.

7 I would like to emphasize that in going through
8 this process a requested proposal was prepared based on
9 special occasions jointly arrived at with OPRA's existing
10 vendors, all of which participated in these discussions as
11 to what such consolidated system ought to provide to vendors
12 and to other interested subscribers.

13 The request for proposal was distributed to Bunker
14 Ramo, GTE, and others. Out of that process we received four
15 proposals. As I recall, Bunker Ramo and GTE did not choose
16 to bid. The outcome of it was that SIAC came out the low
17 bidder in comparison to Quotron, Caswell Associates, and
18 Monchik Weber. OPRA also took the occasion to review its
19 total financial structure at this time in order to reflect
20 the new cost of developing and operating such consolidated
21 high speed system.

22 Following the pattern previously established by the
23 Consolidated Tape Associates with respect to its consolidated
24 high speed system for transmitting stock transaction reports,
25 and really trying to optimize on that design and see if

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1 they couldn't do it at lower cost. OPRA did determine to
2 impose an access charge upon each person, known vendors, who
3 would have direct access to the consolidated high speed
4 facility. In doing so OPRA had several alternatives for
5 covering those costs of consolidation. And as a business
6 matter, OPRA chose to recover the costs of this facility
7 through a reasonable, non-discriminatory fee to all users
8 of the facility, based on costs directly related to its
9 operation.

10 We see no reason for singling out any vendors for
11 special treatment. OPRA has fashioned a facility charge
12 which has spread fairly among all users of the facilities, not
13 only vendors, such as Dunker Ramo and GTE, but other vendors
14 and subscribers have received data directly from the high
15 speed system.

16 The implementation of these and other changes to
17 OPRA's arrangements with vendors logically called for a
18 number of modifications to the original 1975 agreement. Because
19 OPRA intended to continue the practice of having identical
20 agreements with all vendors, OPRA determined to effect
21 these changes by terminating the 1975 agreement in accordance
22 with their terms by notice of the vendors, and replacing
23 them with new agreements entered into with those vendors
24 who wished to continue to carry options last sale information
25 under their terms.

1 Accordingly, in September 1977, after a considerable
2 discussion with the vendors, OPRA sent in a proposed draft
3 of the new vendor agreement to each vendor. Parenthetically,
4 It might point out that this was as we were well along with
5 the implementation of the system and we were receiving the
6 full cooperation of all the vendors in the testing of that
7 system.

8 After additional negotiations, a further revised
9 agreement was sent to each vendor for execution, together
10 with a letter notifying the vendors that the 1975 vendors
11 agreements were to be terminated on the date when the new
12 consolidated high speed transmission became available,
13 which date was more than 30 days after the date of the letter.
14 All vendors except GTE and Bunker Ramo have executed the
15 revised agreements. Today there are 8 vendors under the
16 new agreement, and several other subscribers.

17 As you know, GTE and Bunker Ramo disputed the
18 legality of OPRA's action, seeking to impose an access
19 arrangement on them and in terminating the 1975 vendor
20 agreement. And in December 1977 they each asked permission
21 to stay OPRA's action. Because at that time negotiations
22 were still taking place between OPRA and these two vendors,
23 and because OPRA did not want to discontinue providing last
24 sale information to those vendors until their customers, or
25 OPRA's subscribers, could be given adequate notice to permit

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1 them to make alternative arrangements with one of the
2 other vendors, in late December 1977 OPRA voluntarily
3 offered to continue to supply last sale information to GTE
4 and Bunker Ramo on an interim basis, provided that they would
5 agree to retroactive application of any revised vendor
6 agreement that might be negotiated. The two vendors agreed
7 to this arrangement, except that Bunker Ramo questioned the
8 need for retroactive application. Since that time OPRA
9 has continuously furnished last sale information to
10 these two vendors, and although negotiations with them have
11 continued, the parties have not been able to resolve their
12 difficulties.

13 I would also like to point out in our statement
14 we have concentrated on the legal issues raised by this
15 hearing. And at this point I would just like to summarize the
16 four major points covered in that statement.

17 First, OPRA, as an exclusive securities information
18 processor, may lawfully charge vendors an access fee for
19 access to its consolidated high speed last sale information
20 facility.

21 Secondly, OPRA's termination of the 1975 vendor
22 agreement was lawful and proper in all respects.

23 Thirdly, OPRA may lawfully discontinue paying for
24 the cost of transmission lines between SIAC and the premises
25 of vendors located within 100 miles of New York City.

1 And fourth, the discontinuance by OPRA of services
2 provided to persons who refuse to pay a lawful access charge
3 would not amount to a prohibition or limitation of access
4 within the meaning of Section 11A(b) (5).

5 With that I would like to turn to Steve Williams
6 of the American Stock Exchange for additional comments.

7 MR. WILLIAMS: I have one additional comment. And
8 that has to do with the relationship between the AMEX and
9 the Securities Industry Automation Corporation, which is
10 the OPRA process.

11 The question of the AMEX's relation to SIAC
12 was raised in Bunker Ramo's submission. And I would just
13 like to say that as Mr. Cowles has already described, the
14 selection of SIAC as the OPRA processing was because it was
15 the low bidder. And I would just add to that that after it
16 became apparent that SIAC was the low bidder, the AMEX
17 withdrew from the procedure and did not participate in the
18 negotiations between OPRA and SIAC.

19 MR. COWLES: Thank you.

20 MR. RAPPAPORT: Mr. Urban.

21 MR. URBAN: Thank you, Mr. Cowles and Mr. Williams.

22 Mr. Cowles, do you have a list available of who
23 the current vendors are who have agreed to the revised
24 vendor agreement?

25 MR. COWLES: We can supply that.

1 MR. URBAN: Could we reserve -- I believe
2 we are on Exhibit D, for the list of current vendors who
3 have agreed to the modified vendor agreement?

4 MR. RAPPAPORT: The only question I have is, how
5 do you calculate D? We had been identifying them as, I
6 believe, Bunker Ramo's Exhibits 1 and 2.

7 MR. URBAN: If you could reserve that as OPRA
8 Exhibit No. 2, then, please.

9 MR. RAPPAPORT: Thank you.

10 (OPRA Exhibit No. 2 was
11 Reserved.)

12 MR. URBAN: Mr. Cowles, in the course of your
13 presentation you also mentioned that there were a number of
14 subscribers who received access directly under a direct
15 connect agreement. Could you describe to us what a direct
16 connect agreement is, the number of subscribers pursuant
17 to such agreements, and depending on the length of the list
18 who and how many.

19 MR. COWLES: It is a rather short list. There
20 are about three at this time. I don't think it is commonly
21 known that the fifth agreement is available. But any
22 authorized subscriber can use this arrangement to receive
23 data directly over the high speed stream connecting their
24 computers to our facilities and process it accordingly, much
25 in the way a vendor might process it.

1 MR. URBAN: Could you provide for the record the
2 identity of those three direct connect subscribers?

3 MR. COWLES: Certainly.

4 MR. URBAN: Maybe if you could just include that
5 within OPRA Exhibit 2.

6 MR. COWLES: Certainly.

7 MS. WOJTAS: In the same exhibit could you provide
8 a breakdown of the subscribers, how many are broker-dealers,
9 how many are institutional investors?

10 MR. URBAN: The question had arisen earlier on
11 the basis of Bunker Ramo's presentation, I believe at page
12 4 of Bunker Ramo's statement, the the vendors themselves
13 must maintain records and report periodically the identity
14 of any subscribers which were receiving options last sale
15 reports from those particular vendors. It was suggested
16 during the questioning of both Bunker Ramo and GTE that
17 OPRA might be the proper party to provide the list of
18 current subscribers. Could you comment on one, the purpose
19 of maintaining the list. Is the maintenance and the record
20 keeping required of the vendors separate and apart from
21 your internal approval of a subscriber? And secondly, your
22 ability to provide the Commission with a list of those sub-
23 scribers, with the identity of which vendors they are
24 receiving information from.

25 MR. COWLES: We could supply you with a list of

1 our subscribers. We don't keep records as to which vendor.
2 In putting together the OPRA billing scheme we try to simply
3 follow the practice which existed in the industry. All we
4 ask is that a subscriber fill out a subscriber agreement to
5 qualify, and then he can receive that information from any
6 number of vendors. So your subscriber list has really grown
7 in practical terms through each vendor as he receives a
8 new subscriber.

9 At the beginning he has most of the names which
10 would come directly from the vendor. That gave us a master
11 list. And in turn after we received the names from the vendor
12 we sent the subscriber contracts, so the vendors often
13 supplied the contracts to subscribers. By whatever means
14 those contracts came back to us, we received them, and
15 copies were distributed. To my knowledge we have never really
16 called on a vendor to turn in somebody to get an OPRA data
17 until he executed a subscriber agreement.

18 So what generally happens to the vendor today is
19 that if he gets a subscriber that he hasn't had before, he
20 will check a master list that we send out periodically; and
21 if a subscribing firm is already on there, there is nothing
22 more he needs to do. That means that person already has an
23 executed agreement with OPRA.

24 Occasionally he will come across a new subscriber.
25 In that case he supplies him with the data, he typically

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1 gives them one of our contracts, and we in turn execute
2 the contract with the subscriber.

3 MR. URBAN: Mr. Rappaport, I believe you initially
4 requested that Bunker Ramo give us a subscriber list. Would
5 you care to determine how you would like that list presented
6 for current purposes?

7 MR. RAPPAPORT: Since Mr. Cowles' answer indicates
8 that you don't know, or at least your lists do not indicate,
9 which of the subscribers are utilizing a particular vendor --

10 MR. COWLES: That is correct.

11 MR. RAPPAPORT: Have you any reason to believe that
12 there are differences among the vendors that are significant
13 in terms of the extent to which their subscribers may be
14 members of exchanges that are in turn OPRA members as opposed
15 to broker-dealers who are not members of those organizations
16 as opposed to institutions or other subscribers?

17 MR. COWLES: There is a tendency for there to be
18 some differences among vendors. I would say that the major
19 warehouses would tend to be customers, for instance, of
20 GTE or Bunker Ramo and maybe to a slight extent Quotron; or
21 to the same extent when we get closer to a trading desk,
22 one is more likely to see vendors such as Monchik, Weber
23 bring data and to some extent also the Quotron device.

24 So that you might see that with the trading desk
25 of a firm or it could be an institution; there are differences

1 among them. But it is very hard to classify it.

2 MR. RAPPAPORT: On that basis I am going to retreat
3 and ask, if you could identify on balance the proportion
4 of subscribers that fall into the categories that I have
5 described.

6 MR. COWLES: We don't have information as to what
7 categories.

8 MR. RAPPAPORT: So it is a matter of somebody,
9 either you or the gentlemen who are from the other two
10 organizations, sitting down with a red book and identifying
11 whether it is a broker-dealer or which one it is?

12 MR. COWLES: That is correct.

13 MR. RAPPAPORT: You say you do make these lists,
14 this master list available to each of the vendors?

15 MR. COWLES: Certainly. That is to simplify
16 the whole procedure.

17 MR. URBAN: Mr. Rappaport, if I might suggest,
18 Bunker Ramo in their submission mentioned -- I can quote
19 there that submission -- that the OPRA agreement requires
20 vendors to maintain records and report periodically to
21 OPRA the identity of those to whom OPRA's data is being
22 disseminated. If we could revisit that point during the
23 five minutes reserved to Bunker Ramo, perhaps Bunker Ramo
24 could address at that point its capability of providing
25 us with the information on the basis of those records.

1 MR. RAPPAPORT: Yes, I think on this condition,
2 I will take a very brief intermission between the conclusion
3 of the OPRA testimony, and we will have a chance to do some
4 discussing among ourselves.

5 MR. MEYER: Mr. Rappaport, I might point out, I
6 assume it is recognized that these subscribers of OPRA, to
7 the extent that they actually receive OPRA data are customers
8 of one or more of the vendors. And while to a certain degree
9 OPRA requests that the vendors provide them with the names
10 of their customers, one would assume that the vendors have
11 customer lists, in any event they must know who their
12 customers are, they bill these customers.

13 So the only requirement, that vendors know who
14 the subscribers are that they are actually serving, the
15 only requirement does not come from an OPRA imposed requirement
16 but one would assume from just ordinary standards of doing
17 business and ordinary record keeping.

18 MR. RAPPAPORT: Yes. But I gather from what Mr.
19 Cowles said that OPRA is an organization that would know,
20 for example, whether a particular subscriber subscribes to
21 several of these services.

22 MR. MEYER: OPRA does not know that. All that OPRA
23 knows is that a particular individual or organization is
24 or is not on our approved list. We don't know if they are
25 in fact getting any data.

1 MR. RAPPAPORT: So knowing whether the trading room
2 versus the registered Rep's desk had two differenc machines
3 is something that you would just generally not know from
4 your OPRA experience?

5 MR. MEYER: Again, while other exclusive securities
6 information processors might have that information, because
7 I understand in some cases their subscriber fees are based
8 upon the particular number or location of units, our fee is
9 much simpler than that.

10 We have no need for that kind of information, and
11 therefore we don't have it.

12 MR. RAPPAPORT: Thank you. We will come back to
13 that in a few minutes.

14 MR. URBAN: Mr. Cowles, if I could continue.

15 On the question of a vendor and a direct subscriber,
16 are there any vendors -- I guess characteristically we have
17 been thinking of vendor as someone like Bunker Ramo, GTE,
18 Quotron--where would a new service fall within this
19 dichotomy? Would they be a vendor, or would they be connected
20 to your service through a direct connect agreement?

21 MR. COWLES: They have a separate agreement, new
22 service agreement. In addition, they are directly connected,
23 as a vendor, as a directly connected subscriber.

24 MR. URBAN: The access fee at issue here, exactly
25 what information and in what form does that entitle a

1 vendor or a direct connect subscriber to receive?

2 MR. COWLES: The information is the total stream
3 of data being supplied by the OPRA facility. In many ways
4 the OPRA facility is not unlike a value added common carrier.
5 I don't know if that made any sense. But what I am trying
6 to say is, there is an ability through the OPRA system for
7 any participant to supply information to anybody directly
8 connected to them.

9 MR. URBAN: It might be helpful just for the trans-
10 script in this proceeding if you can describe what type
11 of information each participant exchange provides to OPRA,
12 the format in which they provide it to OPRA, and its
13 processor and the type of processing that SIAC does with
14 that information to result in an output to which vendors
15 are interested in subscribing.

16 MR. COWLES: The major stream of information is
17 the last sales reports from each options exchange, the price
18 and volume of every trade, and the indication as to which
19 exchange, in a series description as well. That is combined
20 by the facility that SIAC operates for us and supplied
21 then in a consolidated manner to the vendors and anybody
22 else directly connected.

23 In addition, we supply other data to the vendors
24 in this fashion. Several of the options exchanges have
25 operated to supply their bid-ask quotation information through

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1 that facility to the vendors, rather than create a separate
2 network for that.

3 In addition, there is recap information at the end
4 of the day that summarizes high, low, close, and information
5 comes out in each service in the morning, and other summary
6 information of that nature.

7 MR. URBAN: The uniform access fee which OPRA
8 proposes to charge them would entitle a vendor to receive
9 any or all of this information?

10 MR. COWLES: Yes, because the access fee is not
11 specific as to the kind of data received, but to having
12 access to the facility itself.

13 MR. URBAN: Do you know whether all vendors which
14 do subscribe or have entered into vendor agreements make
15 use of all of this information?

16 MR. COWLES: I would say they make use of all the
17 last sale and bid-asked information. It is problematic as
18 to whether they make use of all the summarized information.

19 MR. URBAN: The fee that we understand OPRA is
20 charging those vendors which have entered into a new vendor
21 agreement, and which you propose that Bunker Ramo - GTE paid
22 is \$500 per month. Aside from the reasonableness of the
23 charge, could you explain how the charge was calculated?

24 In other words, was it designed to recoup certain
25 costs, and if so, what costs specifically?

1 MR. COWLES: Perhaps it might help to introduce
2 this as part of the record. There is a letter that was sent
3 on May 11 by OPRA to Bunker Ramo and to GTE describing
4 OPRA's monthly costs. And these fall into three basic
5 categories.

6 First, \$6,500 a month, which is a monthly charge
7 payable to SIAC under the contract we have with SIAC. That
8 is fixed through February, 1980, unless specified volume
9 levels are exceeded.

10 In addition, there was \$110,000 of developing
11 costs, \$80,000 of which was paid to SIAC and the remainder
12 was line costs during development. And that over five year
13 amortization works out to \$1,080.

14 In addition, we have allocated 20 percent of
15 OPRA's total administrative budget for the administrative
16 costs of operating the OPRA system. That is \$1,200. And
17 that gives us a total of \$9,500.

18 And we presume that there would be somewhere in
19 the vicinity of 19 persons or so that would want to receive
20 this on a direct connect basis. And that is how we derive
21 the \$500 a month fee.

22 At this writing we have 15 persons who are receiving
23 it directly, including Bunker and GTE. So we are losing
24 several thousand a month on that basis.

25 MR. URBAN: What was the extent of the consultation

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1 between OPRA and the vendors as to OPRA's decision to
2 implement this high speed line?

3 MR. COWLES: In my opinion there was considerable
4 consultation. We wanted to make sure that the system as
5 designed would involve all vendors who were going to be
6 recipients of it, including one or two direct connect
7 subscribers as well.

8 So the characteristics of the system that emerged
9 are quite different from what we walked into to begin with.
10 There were a series of monthly meetings over the development
11 of the system. And to my knowledge there was virtually
12 complete consensus, perhaps complete consensus, on the design
13 of the system. I don't really recall any strong differences
14 among the vendors or disagreements as to what we are
15 providing.

16 MR. URBAN: At what point during these consultations
17 did OPRA determine to pass the costs in terms of the access
18 fee on to the vendors?

19 MR. COWLES: I would have to check on the exact
20 date, but it was well along in those consultations, a point
21 where we were already developing the system, based on the
22 specifications that we had arrived at. It was somewhere
23 around the July to September period that OPRA had its own
24 discussions about how to recoup the costs of the facilities
25 in 1977.

1 MR. URBAN: The representative of GTE has present
2 a question I would like to ask at this point.

3 The question as phrased by Mr. Frischkorn was,
4 could OPRA further breakdown the costs enumerated in its
5 letter of May 11, 1978 to Mr. Joseph Duhamel of GTE,
6 particularly the monthly charge payable to SIAC and the
7 administration costs?

8 MR. MEYER: Let me try and answer that. And it
9 may be that Mr. Cowles or Dr. Williams may want to further
10 elaborate.

11 I would think the answer to that question is, yes
12 it is always possible to break down costs further. And we
13 have broken them down in very rough headings in that letter
14 But first I believe that the question of just how far costs
15 ought to be broken down, that that is the kind of question
16 that is appropriate for the negotiations that have been
17 going on between the parties rather than a proceeding such
18 as this.

19 And further, given the relatively low level of
20 the charge in any event, we ourselves have to question how
21 much effort can really be justified in order to provide a
22 breakdown of a cost that at the outset is only \$500 gross.

23 So I think that our offer of this information,
24 which was made voluntarily, was done by us at that level of
25 detail that we thought was appropriate and adequate under t

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1 circumstances. I think that is about the answer that we would
2 give to that.

3 MR. RAPPAPORT: Is that letter of May 11 being
4 offered for identification and inclusion?

5 MR. MEYER: Yes, that has been offered.

6 I believe the letter that has been offered is the
7 one to Bunker Ramo. And I believe I can state that other
8 than for the address, an identical letter was sent to GTE.

9 MR. URBAN: If we could enter that in as OPRA
10 Exhibit No. 3.

11 MR. RAPPAPORT: Admitted.

12 (Whereupon, OPRA Exhibit
13 No. 3 was received in
14 Evidence.)

15 MR. URBAN: Mr. Cowles, are any of the vendors
16 which entered into an agreement so far, do any of them not
17 have secondary subscribers? Do any of them make primary
18 use of the information for their own use?

19 MR. COWLES: I am not clear on your question.

20 MR. URBAN: Let me rephrase it.

21 Do all vendors which have agreed, entered into
22 a vendor agreement with OPRA, use the information which
23 they receive from OPRA primarily for their own processing
24 to be passed on to other parties, or do any of them use the
25 information internally, solely internally?

1 MR. COWLES: To my knowledge, none of them use it
2 solely internally. We do have vendors who supply it in a
3 continuous stream to subscribers. And those subscribers in
4 turn may use it.

5 MR. URBAN: Have there been any occasions where
6 the vendor agreement has been modified?

7 MR. MEYER: The only modification to the vendor
8 agreement is that modified agreement that is the subject
9 of this proceeding. The agreement provides on its face that
10 OPRA will enter into identical agreements with all vendors,
11 so that it is not possible for OPRA to modify an agreement
12 by individual negotiations of a particular vendor.

13 As a practical matter, the only way that the vendor
14 contract can be modified, since it has to be the same with
15 all vendors, is to terminate the contract and enter into a
16 new, identical agreement with each vendor. And that is what
17 we have done here.

18 There have been no other instances of a modification

19 MR. URBAN: Is the current attempt to terminate the
20 1975 vendor agreement the only instance upon which that
21 agreement has been terminated or attempted to be terminated?

22 MR. MEYER: Yes.

23 MR. URBAN: Have there been any individual instances
24 where the agreement has been terminated?

25 MR. MEYER: No, there have not, for the reason that

1 I explained.

2 MR. URBAN: You mentioned earlier that your initial
3 cost projection for setting the access fee was based upon
4 a projection of, I believe you indicated 19 vendors, or
5 direct connect subscribers. And you also have indicated
6 that there are currently only 14 such subscribers, including
7 Bunker Ramo and GTE. Does the failure, at least at this time
8 to reach your projected number of subscribers, indicate any
9 plans to increase the access fee to recoup your total
10 projected costs?

11 MR. COWLES: It could have. But as you can see
12 from the letter to Bunker Ramo and the corresponding letter
13 to GTE, in those letters we have agreed to forego any
14 increase in that \$500 a month fee under the terms of our
15 agreement with SIAC until February, 1980.

16 MR. URBAN: I have one particular question that
17 relates back to the retransmission service offered by OPRA.

18 As a part of OPRA's high speed line service it
19 permits vendors to request retransmission of data which is
20 garbled or lost in transmission. Is this ability to request
21 retransmission in any way affected by the ultimate use of
22 the data by the vendors?

23 I will give you an example.

24 If one vendor, for example, is storing the
25 information for recall and another is using the information,
as I believe Monchik, Weber does in calculations involving

1 trading strategies, is retransmission in any way more difficul
2 to one vendor than the other?

3 MR. COWLES: There may be differences within the
4 technical design of the vendors systems, but in terms of
5 the final service offer, comparing Bunker Ramo to Monchik,
6 Weber, I don't think that materially affects the retransmissio

7 I do know that during the period of April or May
8 Bunker Ramo had a request for about 150 retransmissions,
9 and I know Monchik Weber was somewhere under 20 for the month.
10 So there are differences between the system, but I don't
11 believe you can characterize it the way you have.

12 MR. URBAN: Primarily Bunker Ramo made the point
13 that the competitive impact or the burden on competition
14 which may result from this access fee can result from their
15 inability to spread that access fee among the same number
16 of subscribers as other vendors might be able to distribute
17 that fee. Is the concept of a uniform access fee in this
18 sense discriminatory among the vendors?

19 MR. MEYER: We don't believe that it is. As with
20 any fixed cost, of course, the greater the number of persons
21 to whom that cost can be passed on, the lower the added
22 cost to any particular person. It is certainly conceivable
23 to think of a fee that would be at such a high level that
24 only the largest vendors would be able economically to pass
25 that on to their customers.

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If there were such a fee, it would probably act to the advantage of the larger vendors such as the ones present in this proceeding, and to the disadvantage of the smaller vendors. But this fee at this level is relatively so low that as a practical matter we don't believe it can possibly have any anti-competitive impact at all on even the smallest vendor. And we have had no complaints from any of the smaller vendors in that respect.

MR. URBAN: Mr. Rappaport, I believe that completes our questioning.

MR. RAPPAPORT: I have a question or two that I would like to jump in with.

On this last point, Mr. Meyer, it was either you or Mr. Cowles who was describing in response to a question from Mr. Urban about five or ten minutes ago what was included in this current fee. And if my memory serves me correctly, roughly it was described as including the development costs, line costs, and I guess operating costs. And there was also some reference to two other matters. One involved what I thought was the concept of amortizing those development costs. And yet at the conclusion of your statement I didn't want to interrupt Mr. Urban at the time. There was also a statement to the effect that this current fee was insufficient, that you were somehow or other losing money on it.

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1 I guess my question is, is this current fee therefor
2 not amortizing the development costs, or these losses somethin
3 that are attributable to the line costs and the operating
4 costs, or to the development costs, or what?

5 I am very confused about it.

6 MR. COWLES: The shortfall of costs at the beginning
7 are pretty minor. The procedure we followed was to take
8 the cost development and amortize it over five years, the
9 useful life, we feel, of that installation. That happened
10 to include some start up costs that dealt with lines
11 while we are developing the system. And it was not a large
12 amount. But the \$110,000 development spread over five years,
13 we have added that on to the monthly cost of operating the
14 system.

15 If you add all that up -- and I don't have the
16 exhibit in front of me at this point -- we come out with
17 somewhere around \$9,500 a month, what I would call direct
18 costs to this. If we have 14 people times 400, that is somethi
19 like \$7,000. So we have a shortfall of \$2500.

20 I would anticipate that as people begin to realize
21 that they can receive option prices directly from this
22 consolidated high speed team, that we will get more direct
23 connect subscribers. And I am not worried about making
24 the \$9,500 a month. We would like to look at it at the end
25 of two years and re-evaluate our costs over the number of

1 subscribers and see if the fee should be lowered, or raised,
2 or whatever.

3 MR. RAPPAPORT: So that if people would get the
4 service, the information directly, would that mean that
5 they too would be required to pay this \$500 a month fee?

6 MR. COWLES: Yes.

7 MR. RAPPAPORT: And then they could either re-
8 transmit it as your current subscribers do, or not as they
9 saw fit?

10 MR. COWLES: The retransmission would be the vendor
11 retransmitting, not the subscriber.

12 MR. RAPPAPORT: But subscriber and vendor would
13 pay the same fee? I guess I am all confused on the terms
14 heré.

15 MR. MEYER: This may help to clarify it, Mr.
16 Rappaport. The fee may best be viewed as a facilities charge.
17 It is the charge that OPRA imposes for access to its facility;
18 namely, the SIAC produced consolidated high speed output.
19 Vendors need to have access to that facility in order to
20 have the data to vend to their subscribers. Subscribers
21 may want access to that facility. They don't need it,
22 because they can obtain data in usable form and the equipment
23 to display it from a vendor. And that is the usual way that
24 most subscribers obtain this information. Some of the
25 largest, more sophisticated subscribers, might choose to
have their computers connect directly to the SIAC computer

1 in New York.

2 In other words, have direct access to that facility.
3 Very few subscribers have requested that today.
4 But those that do are required to pay the identical facility
5 access charge that any other persons, including a vendor
6 who has that kind of access, pays.

7 Mr. Cowles expressed the hope that as more sub-
8 scribers become aware of the service that we offered --
9 and we have not kept it a secret, it is just that this is
10 not something that is generally understood -- that some
11 of the largest subscribers, and some additional ones, might
12 choose to have direct access, and that would increase the
13 total number of persons paying the access fees and sharing
14 in the cost of operating that facility. Does that help?

15 MR. RAPPAPORT: It does. And I thank you.

16 I have one other question. And that is, you
17 obviously had a choice of different approaches toward
18 collecting whatever your incurred costs, ongoing costs are --
19 and stop me if Mr. Urban or any other members of the staff
20 have asked this question. Why was it deemed best in your
21 judgment, to impose a fee upon -- or facility fee, as you
22 have described it, rather than passing these costs, as the
23 opponents of your position today would have had you do,
24 directly upon subscribers, or all the costs upon the subscribe

25 MR. MEYER: Let me try and answer that question.

1 Others may well have more to say.

2 The question might have been asked, why did we not
3 impose a comparable facilities charge from the outset?
4 Although we did not have this particular facility, each
5 of the exchanges had its own costs from the beginning in
6 providing data to the vendors. And yet the exchanges and
7 OPRA bore those costs, ~~including even the line costs~~. Why
8 did we do that, given the fact that the other major exclusive
9 securities information processor, CTA, had at that time been
10 imposing an access charge on vendors?

11 And I think the answer to that has to do with the
12 efforts of the options exchanges to market their product,
13 frankly, and provide as broad an audience as possible for
14 options data. And in order to do that, they were willing to
15 incur and absorb certain costs that the stock markets were
16 not willing to absorb.

17 When these costs were increased by the development
18 of a consolidated facility, at that point it appeared
19 appropriate for OPRA to get in line and to have its economic
20 structure more like that that was found elsewhere in the
21 industry. And that is really why at that point we discussed
22 establishing an access charge, and then did determine to
23 impose the charge that has been described.

24 Do you want to add to that?

25 MR. COWLES: Two other points, I guess in more of

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1 a business nature. We also had the precedent of the low
2 speed networks, where exchanges in the past were charging
3 a facilities charge for that network to be connected into
4 the branch office. And this had nothing to do with charging
5 for information. In addition, we were troubled by the
6 situation that we had under the old agreement that really
7 anybody could be a vendor, and how could we tell a person
8 that they could not sign a vendor agreement and receive
9 this information that had no charge? And we were putting
10 together a consolidated facility. And we thought that was
11 the appropriate group to bear that cost. They were in our
12 feeling the largest beneficiary.

13 MR. RAPPAPORT: Thank you.

14 Any further questions from the staff?

15 MR. URBAN: No.

16 MR. RAPPAPORT: Let's take a five minute break
17 at this point, and then we will reconvene for a few more
18 minutes.

19 (Recess.)

20 MR. RAPPAPORT: The proceeding will come to order.

21 On behalf of the staff and myself before we get
22 into this brief rebuttal period, I am going to ask OPRA if
23 instead of the identification of the subscribers that we had
24 previously requested, and I might add reserved a Bunker
25 Ramo exhibit for, we could have a document from OPRA,

1 the current latest list of approved subscribers. And we will
2 reserve an OPRA Exhibit No. 4 for that document if that can
3 be furnished. Can it be?

4 MR. COWLES: Yes, it can. We will supply it.

5 MR. RAPPAPORT: Thank you very much.

6 (OPRA Exhibit No. 4 Reserved.)

7 MR. RAPPAPORT: At this time I would like to ask, on
8 the assumption that we will have the remarks limited to
9 five minutes from each of the organization present today,
10 if the representatives of Bunker Ramo would care to begin.

11 TESTIMONY OF PETER B. ARCHIE
12 ON BEHALF OF BUNKER RAMO CORPORATION.

13 MR. ARCHIE: I thank you.

14 I will sum up very briefly.

15 Point one, I think it has been made clear that OPRA
16 and its members are now being compensated for the options
17 last sale information in the form of substantial subscriber
18 fees. These are the fees that are paid by the subscribers
19 to enter into contract with the vendors, a substantial source
20 of income to OPRA. We don't know the magnitude. We don't
21 have to get into it here. But the important point here is
22 that there is a substantial source of funds that flows into
23 OPRA out of its activities in making options trading
24 information available.

25 It is my understanding that subscriber fees are
the only kind of fees referred to in the OPRA plan. I should

1 like to emphasize a second time that the absence of access
2 fees will insure that those who fix the costs end up in
3 control of those costs, and access fees result in the cost
4 being passed on to the vendors who are not in control of
5 the costs.

6 The third point, that OPRA is a combination of
7 exchanges. OPRA has fixed its access fees in a way which in
8 my judgment, would violate the antitrust laws unless the
9 SEC makes an affirmative finding that "access fees are
10 required and necessary to make the Exchange Act work."

11 That, as I recall, is a standard announced by
12 the Supreme Court in 1963 in the Silver case.

13 We submit that a finding under the Silver standard
14 is not justified in this proceeding.

15 Point number four; in our view the proposed 1977
16 contract would not end the OPRA vendor relationship. It is
17 an amendment -- it changes the existing arrangement, and
18 under the 1975 contract the terms of that relationship can
19 only be amended by the consent of the parties. Here that
20 consent is lacking.

21 The point was made earlier in the statement by
22 OPRA that the vendors derive substantial advantages from
23 the new high speed system. Our testimony earlier today
24 was that we are not receiving any advantages from that
25 system. Indeed, the direct subscriber arrangement would

1 create a situation where our largest subscribers might
2 elect to buy the information from OPRA directly.

3 ~~So OPRA in effect, is in competition with our~~
4 ~~clients, and we, in effect, are paying the cost.~~

5 The comment was made earlier that the other
6 exchanges are charging an access fee. I would like to state
7 for the record that when CTA imposed an access fee, an
8 appeal was filed to that. The staff, as I recall, has taken
9 no action on that appeal. So we are not paying an access
10 fee with having objected to the SEC.

11 A final point. There has been discussion today
12 about how the fixed cost of the access fees perhaps would
13 impact on a smaller vendor. Let me suggest an additional
14 problem there.

15 If a small company wanted to get in to become a
16 vendor on a small scale, its fixed cost for access fees
17 both to OPRA and the CTA would be the same as its large --
18 it would be exactly the same as all of its large competitors.

19 For example, if a small vendor in St. Louis wanted
20 to go into business and was only going to have five or ten
21 accounts, its fixed cost would be the same as a large vendor
22 who reserved accounts all over the country.

23 That is all I have, Mr. Rappaport.

24 MR. RAPPAPORT: Thank you, Mr. Archie.

25 Before I call on the representatives of GTE I

1 would like to ask one question of the OPRA representatives.

2 If an organization chooses to become a subscriber,
3 a direct subscriber, if you will, to OPRA, would it have
4 to, in addition to paying the facilities charge, pay a
5 subscriber's fee as well?

6 MR. COWLES: Yes.

7 MR. RAPPAPORT: Thank you.

8 Would the representatives of GTE care to use their
9 five minutes?

10 MR. FRISCHKORN: Yes, we have several items we
11 would like to comment on.

12 FURTHER TESTIMONY OF ALLEN R. FRISCHKORN, JR.
13 ON BEHALF OF GTE INFORMATION SYSTEMS, INC.

14 MR. FRISCHKORN: First in connection with the
15 so-called CTA precedent, I would like to note three things.
16 One, the precedent of paying an access charge to CTA
17 occurred prior to the implementation of the Securities Act
18 amendments of 1975. Thus the persuasive regulatory scheme
19 that now exists over the operations of the exclusive processing
20 was not in existence at that time. And the Commission can
21 at this time determine that even though prior to the enactment
22 of the legislation a fee may have been imposed, now it is
23 totally improper to impose a fee for access to information.

24 Secondly, we too agreed to pay a fee to CTA
25 only under protest, and I might add, a considerable prodding
from the Commission's staff to get the full CTA effort going.

1 Finally, we understand on good authority that the
2 charge that CTA is imposing upon the vendors is only for a
3 computer port. The types of costs that OPRA is trying to
4 sock us for, that is, the developmental and administrative
5 costs, are not included within the CTA fee.

6 We would not object to filing the costs of
7 the computer port or communications facilities dedicated
8 specifically to our use. And that is the point we are trying
9 to make with the question to OPRA concerning a further break-
10 down of their costs. Even assuming that OPRA may legally
11 under the Securities Act amendment impose some type of
12 charge upon the vendor, there is the question of the reasonableness
13 of such charge.

14 As indicated previously, the Commission has public
15 utility like jurisdiction over the charges of an exclusive
16 processor. We believe that the only reasonable charge,
17 assuming any charge could be imposed, the only reasonable
18 charge that an exclusive processor may impose is cost to
19 support facilities dedicated on our exclusive use.

20 In other words, but for the existence of GTE
21 information systems, they would not encounter costs, for
22 example, a computer port or communications facility.

23 To sum up basically our position, number one,
24 there is not one shred of evidence in the law or the
25 legislative history of the Act that vendors have to pay

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1 an access fee to exclusive processors.

2 Secondly, it is not in the best interests of the
3 investing public or the Commission to require vendors to
4 bear access charges, that is, underwrite the administrative
5 developmental costs of an exclusive processor. It should
6 be an axiom, I think, here that each element in the chain
7 of dissemination of marketing information should bear those
8 costs reasonably attributable to its operations.

9 There is a mechanism in place that OPRA has to
10 recover the cost from its subscribers. We have a mechanism
11 in place to recover our costs from our customers. We should
12 not have to subsidize, in effect, OPRA's costs, the costs
13 for decisions that we have no direct input in or no control
14 over.

15 MR. RAPPAPORT: Thank you very much.

16 Would the representatives from OPRA like to
17 avail themselves of their five minutes.

18 TESTIMONY OF MICHAEL L. MEYER
19 ON BEHALF OF THE OPTIONS EXCHANGE.

20 MR. MEYER: I think I can sum up our position
21 quite simply. And it is this.

22 The statute imposes certain obligations on exchanges
23 on securities information processors. Among those obligations
24 is the requirement that we provide for current dissemination
25 of last sale transaction reports. There are costs entailed

1 in collecting, processing and disseminating this information.

2 Obviously, those costs must be paid for somehow.

3 The exchanges and OPRA have only certain revenue sources
4 that they might look to to pay those costs. Indeed, because
5 we are options exchanges, we do not have the source of a
6 listing fee that other exchanges might have.

7 The statute does not impose any particular pattern
8 of how those costs are paid for, but permits the exchanges,
9 permits exclusive securities information processors to
10 choose from any number of possible approaches to recovering
11 those costs, so long as this choice results in the avail-
12 ability of the information on fair, reasonable, and non-
13 discriminatory terms. That is what we have done here.

14 Indeed, not only are we losing money merely on
15 the costs associated with the high speed line as compared
16 with the revenues of the access charge, but overall the
17 options exchanges are losing money on their total
18 transaction dissemination system.

19 While the economics are different from one exchange
20 to the other, it is correct to say that when you take the
21 total cost of price reporting and compare those costs with
22 all the revenues, including subscriber fees, that cover
23 price reporting, the net result is a loss to each of the
24 exchanges.

25 So we believe then simply that since something

1 has to pay for these systems, the approach that we have
2 chosen to try and recover these costs is fair, is reasonable,
3 and is not discriminating against anyone. And therefore, the
4 statute as it stands is being complied with.

5 Thank you.

6 MR. RAPPAPORT: Thank you very much.

7 I did not specify in my thanks earlier the represen-
8 tatives of OPRA for having come here today. And I would like
9 to convey my thanks and that of the Commission and the Staff.
10 And I will repeat that for all three groups today.

11 I think your presentations were highly professional
12 and quite useful to us. We thank you very much.

13 This proceeding is officially closed.

14 (Whereupon, at 4:05 p.m., the hearing in the
15 above entitled matter was concluded.)

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UNITED STATES OF AMERICA
Before The
SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER OF:)

BUNKER RAMO CORPORATION,)
GTE INFORMATION SYSTEMS INCORPORATED,)
and OPTIONS PRICE REPORTING AUTHORITY)

File No. 4-280

COMMENTS OF
GTE INFORMATION SYSTEMS INCORPORATED

GTE Information Systems Incorporated ("GTE"), a vendor of market information to the financial community, hereby submits its comments in response to the Commission's Order of May 19, 1978, Securities Exchange Act Release No. 14784, in the above-referenced proceeding.

BACKGROUND

The background of this proceeding has been previously set forth by GTE in its Grievance filed with the Commission on December 15, 1977; GTE's letter to Mr. George A. Fitzsimmons dated March 23, 1978 relating to OPRA's proposed termination to GTE of the retransmission service of the high-speed line; and its Statement dated April 6, 1978, Securities Exchange Act Release No. 14606. Those pleadings are incorporated herein by reference.

In its Order of May 19, 1978, which set this matter for hearing, the Commission solicited views and arguments on the

following issues:

- (1) Whether OPRA, as an exclusive securities information processor registered pursuant to §11A(b)(3) of the Act, may charge vendors an access fee for receipt of options last sale transaction reports;
- (2) Whether OPRA, irrespective of whether it may charge such an access fee may terminate the 1975 Vendors Agreement; and
- (3) Whether OPRA may discontinue providing vendors a communications circuit which links the vendors to OPRA's central processor and enables them to receive the options last sale transaction reports.

At the hearing in this matter, which took place on June 20, 1978, GTE presented orally to the Commission its views on these issues. The purpose of these comments is to further amplify GTE's position and to respond to several issues raised by OPRA, Bunker Ramo and the Commission staff at the hearing.

GTE's POSITION

In brief, it is GTE's position that OPRA may not legally impose upon vendors of market information a fee for access to such information. OPRA's stated intention not to give vendors access to options information unless such vendors pay an illegal access fee is tantamount to a "prohibition or limitation" of access to OPRA's services. Such "prohibition or limitation" of access is inconsistent with the purposes of the Securities Act Amendments of 1975, 88 Stat. 97, to maximize the availability of market information to the investing public.

If the Commission determines that the imposition of an access charge by an exclusive processor is not a "prohibition or limitation" of access, the Commission should determine that such charges would impede the Commission's responsibility under the Act to "assure the prompt, accurate, reliable, and fair collection, processing, distribution and publication of information with respect to quotations for and transactions in . . . securities . . ." See, 15 U.S.C. §78K-1(c)(1)(B). The Commission should institute a rulemaking proceeding to prohibit exclusive processors, such as OPRA, from levying access charges on vendors of market information.

OPRA SHOULD NOT BE PERMITTED TO
IMPOSE AN ACCESS CHARGE ON VENDORS

The Securities Act Amendments of 1975
Do Not Authorize the Imposition
of Access Charges on Vendors

Neither the Securities Act Amendments of 1975 nor the legislative history of the legislation support the imposition of access fees upon vendors of market information. Obviously, there is no express provision in the Securities Act Amendments authorizing the imposition of an access fee by an exclusive processor on vendors. Likewise, the legislative history of the Securities Act Amendments does not support an intent on the part of Congress in enacting such legislation to permit exclusive processors to charge vendors for access to such market information. As noted by GTE in its Grievance filed with the

Commission on December 15, 1978, the only language in the legislative history relating to allocation of the costs of dissemination of market information indicates that such charges should be borne by exchanges, associations, brokers and dealers.*/
Even though the House version of the legislation was not ultimately enacted into law, the Conference Report on the legislation did not contradict the intent that charges for dissemination of market information should be borne by those elements in the financial community who utilize the market information to facilitate securities trading. See, H.R. Rep. No. 94-229, 94th Cong., 1st Sess., P.92 (1975).

In its Statement submitted to the Commission on June 14, 1978, OPRA argues that the phrases "fair and reasonable terms" and "terms which are not unreasonably discriminatory", which appear in the Securities Act Amendments and its legislative history, envision that an exclusive processor may impose charges for access to its services.**/First, requiring that an exclusive processor make information available on "fair and reasonable terms" or on "terms which are not unreasonably discriminatory" does not necessarily envision the levying of a fee for access to such information. What Congress obviously intended by such phrases was that an exclusive processor must make information available on the same basis to all persons who desire such information. For example, it could not give the information

*/ See, GTE Grievance, pages 6 - 9.

**/ See, subparagraphs (C) and (D) of section 11A(c)(1) and S. Rep. No. 94-75, 94th Cong., 1st Sess., pp. 10-11 (1975).

to one vendor with a retransmission service and another vendor without such retransmission service. Secondly, to the extent that the phrases "fair and reasonable terms" and "terms which are not unreasonably discriminatory" can be read to include the right to impose a fee, any such fee should be limited to those persons who utilize securities transactions information to facilitate securities trading -- i.e., brokers and dealers. Likewise, the language cited by OPRA in the legislative history that gives the SEC oversight over the reasonableness of charges of an exclusive processor means only that the SEC can determine the reasonableness of those charges which may be appropriate under the law -- i.e., charges to brokers and dealers.

In any event, even assuming that OPRA may impose access charges on vendors, it is clear from the legislative history that the SEC has authority under the Securities Act Amendments to determine the reasonableness of any such fee. This authority to determine the reasonableness of a fee, we believe, includes the authority to determine whether any fee upon the vendors for access to market information is reasonable. As discussed below, no fee on vendors for access to options transactions information would be reasonable.

No Reasonable Basis Exists for the
Imposition by OPRA of an Access
Fee on Vendors

The vendors in carrying options transactions information to OPRA subscribers, provide a valuable service to the OPRA

member exchanges and the investing public. In making options transactions information available to the financial community, the vendors enhance the value of OPRA information. Despite the services and benefits of the vendors activities to the OPRA member exchanges, the vendors impose no charge upon OPRA, or the OPRA participants for such services. But for the existence of the vendors, OPRA member exchanges would have no way to make available options transactions information to brokers and dealers, short of duplication by OPRA of the vendor networks.

The costs which OPRA incurred in developing and implementing the high-speed line were for the direct benefit of OPRA and its participants and not the vendors. In its Statement of June 14, 1978, OPRA set forth the following reasons for development of the high-speed line:

". . .in order to limit the number and standardize the format of inputs to vendors, to insure common and accurate time sequencing of reports transmitted to vendors, to provide the expanded capability needed to process the increasing volume of options transactions in a timely manner and to eliminate unnecessary restrictions on the dissemination of options last sale information."

The first three reasons stated by OPRA directly benefit OPRA participants. The fourth reason refers to eliminating the restriction previously imposed by OPRA on retransmission by vendors of the OPRA data stream. However, this is a restriction which GTE, at least, never objected to and GTE does not, in

any event, wish to retransmit the OPRA data stream. In this regard, it is significant to note that OPRA participants incurred substantial costs savings in reducing the number of communications circuits for which OPRA participants must pay. Whereas previously OPRA participants paid for communications circuits to each of the vendors premises, under the high-speed line, OPRA participants pay only for the communications circuit between the exchange and SIAC, the OPRA central processor.

Originally, OPRA approached the vendors and asked them to carry OPRA information. In agreeing to carry OPRA information to its subscribers, the vendors incurred considerable costs in modifying their systems. GTE, for example, spent several hundred thousand dollars in making modifications to its terminals in order to meet OPRA's specifications for distribution of its information to OPRA subscribers.

The vendors have no control over OPRA costs. Requiring OPRA to recover its costs from its subscribers rather than the vendors will foster efficiencies in OPRA's operations. If OPRA can unload its costs on the vendors at will, there will be no incentive for OPRA to control its costs. However, if OPRA is required to pass its costs on to its subscribers, the subscribers will insure efficiency in OPRA's operations. If OPRA subscriber fees increase drastically, OPRA will lose subscribers.

The vendors have incurred and will continue to incur substantial costs in improving their own systems. If the vendors have to additionally bear OPRA developmental and administrative costs, the amount of money that vendors will have available to make improvements in their own systems will be reduced. In moving towards a National Market System for the trading of securities, each segment of the securities industry will have to incur costs. In this regard, the vendors will have to bear considerable costs in making improvements to their systems. The vendors should not also have to bear OPRA's costs. The goal of the Commission to bring about a National Market System will be facilitated if the Commission adopts a policy under which each segment in the chain of dissemination of market information recovers its costs from those who benefit directly from the services rendered by those in the segment. In the case of GTE, this would be its customers, and in the case of OPRA this would be OPRA subscribers.

Traditionally, OPRA has recovered all of its costs through fees to its subscribers. OPRA subscribers are also the vendors customers. Thus, OPRA already has a mechanism in place to recover costs which it incurs by virtue of the high-speed transmission. If the vendors have to bear OPRA's costs in connection with the high-speed transmission, they will have to absorb the costs or pass them on to their customers. As noted above, if the vendors absorb the costs, the vendors will have less capital available to improve their own services.

Moreover, if the vendors pass their costs on to their customers they will incur additional administrative costs. There is no good reason why the vendors should have to act as a middleman in passing on OPRA's costs. OPRA's costs should be passed directly on to OPRA subscribers.

GTE's primary concern with respect to OPRA's access charge is the precedent it will set for other exchanges or associations to charge vendors for access to market information. While an access fee of \$500.00 as proposed by OPRA is relatively small, the cumulative effect of access fees from multiple sources could be substantial. Moreover, while the OPRA charge is \$500.00 today, it may be substantially increased in the future. In short, the cumulative impact on the vendors of numerous access fees could provide a disincentive to the vendors to remain in the business of securities information dissemination.

In sum, no reasonable basis exists for the imposition of an access fee by OPRA on vendors. Such costs as OPRA and other exchanges or associations incur in information dissemination should be recovered from those persons who use the securities transactions information to buy and sell securities.

GTE Does Not Object to Paying a
Charge for Communications Facilities
Dedicated Exclusively to GTE's Use

As was brought out at the hearing on this matter, the vendors currently pay a fee to the Consolidated Tape Association

for the right to receive securities transactions information.*/
As pointed out by GTE at the hearing, we have been advised by CTA that the fee which GTE pays to CTA is for the use of a computer port. GTE does not object to paying a fee for a communications facility, where such facility is dedicated to GTE's exclusive use. However, GTE does object to paying for the developmental and administrative costs incurred by OPRA in connection with its high-speed transmission. Assuming that OPRA may legally charge a fee to the vendors, any such fee should be restricted to reimburse OPRA only for those costs associated with facilities dedicated to GTE's exclusive use.

Permitting OPRA to Charge an Access
Fee Would Raise Antitrust Problems

In its Statement dated June 20, 1978, and at the hearing in this matter, Bunker Ramo urged that the fixing of the price of access to options transactions information by the OPRA member exchanges could constitute a violation of the price fixing provisions of the antitrust laws. GTE agrees with Bunker Ramo that permitting the OPRA participants to fix the price of access to options transactions information raises substantial anti-trust problems, which problems could be avoided if the Commission acts to prohibit OPRA from imposing an access fee on the vendors.

*/ GTE agreed to pay the CTA fee under protest since it was advanced in 1974 as an access charge. Since the CTA fee predated the enactment of the Securities Act Amendments of 1975 it should not be viewed as a precedent by the Commission for OPRA to impose an access charge.

OPRA SHOULD NOT BE ALLOWED TO TERMINATE THE
1975 VENDORS AGREEMENT FOR A PURPOSE
THAT IS INCONSISTENT WITH THE OPRA PLAN

The pervasive jurisdiction which the Commission has over the operations of exclusive processors under section 11A of the Securities Act Amendments of 1975 includes jurisdiction over all OPRA activities and operations. See, for example, section 11A(b)(6), 15 U.S.C. §78K-1(b)(6). It is clear that the Commission has authority to prohibit termination of the 1975 Vendors Agreement if it finds that termination of the Agreement would be contrary to the public interest. The Plan which OPRA filed with the Commission and over which the Commission has continuing jurisdiction, does not provide for the levying of access charges on vendors. In order for OPRA to impose such fees, OPRA should have to amend its Plan and such amendment would be subject to review by the Commission. If the Commission does not require the filing with it of changes in the OPRA Plan it would lose effective control over OPRA's activities. The Commission should find that termination of the 1975 Vendors Agreement for a purpose not consistent with the OPRA Plan is contrary to the public interest and should be prohibited.

OPRA MUST CONTINUE TO PROVIDE VENDORS THE
COMMUNICATIONS CIRCUIT BETWEEN SIAC
AND THE VENDORS PREMISES UNTIL A
NEW OPRA/VENDOR AGREEMENT IS EXECUTED

The 1975 Vendors Agreement provides that OPRA shall pay the costs of the communications circuit between SIAC and the vendors premises within 100 miles of New York. Since OPRA can't terminate the current agreement until it amends the OPRA Plan to provide for the imposition of access fees on vendors (assuming, of course, that such fees are legal), OPRA must continue to pay for the communications circuit between SIAC and the vendors premises within 100 miles of New York. Of course, OPRA would not be precluded from entering into negotiations with vendors on the issue of the communications circuit charge. Unlike the access charge, there would be no legal impediment to the vendors paying such a charge. However, as of this date, OPRA has not shown a willingness to separate the communications circuit charge from the access charge for purposes of negotiating a new or modified agreement.

CONCLUSION

For the foregoing reasons, the reasons set forth in GTE's previous pleadings in this matter, and the reasons set forth by GTE at the hearing, the Commission should determine that the imposition on vendors by OPRA of an access fee is an

unwarranted "prohibition or limitation" of access as those terms are used in section 11A(b)(5) of the Securities Act Amendments of 1975, and prohibit OPRA from imposing such access fees on vendors. Alternatively, if the Commission finds that the imposition of an access fee is not a limitation of access, it should find that the imposition of such a fee would impede the fulfillment of its responsibility under the law to maximize the availability of securities market information to the public. On the basis of such finding and the record in this proceeding it should institute a rulemaking proceeding to prohibit the imposition by exclusive processors of access fees on vendors. If the Commission finds that OPRA should be permitted to charge vendors for access to options transactions information, any such charge should be limited to the cost to OPRA of communications facilities dedicated to the exclusive use of a particular vendor. Finally, OPRA should not be permitted to

impose access fees on vendors until it amends the OPRA Plan to provide for such fees, such amendment is reviewed by the Commission and OPRA enters into revised agreements with the vendors.

Respectfully submitted,

GTE Information Systems
Incorporated

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June 23, 1978

CERTIFICATE OF SERVICE

I, Marie T. Sorbello, do hereby certify that I have served a copy of the foregoing Comments of GTE Information Systems Incorporated, this 23rd day of June, 1978, by mailing a copy, postage prepaid to the following:

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