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Level 3 Communications, LLC v. E. Leon Jacobs, Jr.

NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS LEVEL 3 COMMUNICATION VERSUS JACOBS. MR. HOFFMAN.

THANK YOU YOUR HONOR. MAY IT PLEASE THE COURT. I'M KENNETH HOFFMAN, TO MY RIGHT IS GREG ROGERS. WE ARE HERE BEFORE THE COURT THIS MORNING ON BEHALF OF LEVEL 3 COMMUNICATIONS. I WOULD LIKE TO RESERVE FIVE MINUTES FOR REBUTTAL, JUSTICE WELLS. THE FACT OF THIS CASE ARE VERY SIMPLE. LEVEL 3 IS AN ALTERNATIVE LOCAL EXCHANGE COMPANY. AND ALEC, IF YOU WILL, THAT IS AUTHORIZED TO PROVIDE LOCAL PHONE SERVICE IN FLORIDA. LEVEL 3 LEASES PORTIONS OF REAL PROPERTY IN BUILDINGS THAT LEVEL 3 OWNS TO OTHER COMPANIES. SUCH AS DATA COMPANIES AND INTERNET SERVICE COMPANIES AND TELECOMMUNICATIONS COMPANY.

SO THAT WE UNDERSTAND EXACTLY WHAT YOU'RE TALKING ABOUT WHEN YOU TALK ABOUT THIS CORE LOCATIONS. YOU HAVE EQUIPMENT AT A PARTICULAR PLACE. AND OTHER COMPANIES PAY YOU A FEE TO SORT OF PUT THEIR OWN EQUIPMENT INTO YOUR EQUIPMENT OR SOMETHING SIMILAR TO THAT?

SIMILAR, JUSTICE QUINCE. WE HAVE A BUILDING WHERE WE HAVE EQUIPMENT. AND WE HAVE VACANT SPACE. WE RENT THAT SPACE TO OTHER COMPANIES. PRIMARILY TO COMPANIES THAT PROVIDE INTERNET RELATED SERVICES.

THESE COMPANIES THAT YOU RENT THE SPACE TO THEN CONNECT TO YOUR NETWORK? IS THAT CORRECT?

THEY CONNECT NOT ONLY TO OUR NETWORK AT TIMES. THEY CONNECT TO SOME OF THE OTHER COMPANIES TO WHOM WE RENT SPACE. SO THEY CAN CONNECT TO LEVEL 3 OR THEY CAN CONNECT TO OTHER COMPANIES. PRIMARILY INTERNET RELATED COMPANIES THAT RENT SPACE IN OUR BUILDING.

BUT IT'S SPECIFICALLY FOR EQUIPMENT?

CORRECT.

IT IS NOT LIKE YOU HAD A EMPTY BUILDING AND YOU GAVE IT TO SOMEONE TO USE FOR A WAREHOUSE FOR THEIR PAPER OR SOMETHING?

IT IS A BUILDING WHERE WE CALL IT A GATEWAY CENTER WHERE WE HAVE OUR EQUIPMENT. AND WE HAVE VACANT SPACE THAT WE RENT TO OTHERS. WHEN THEY RENT FROM US, WE CALL THAT COLOCATION.

WE ARE TRYING TO REALLY HAVE SORT OF A COMMON SENSE EXPLANATION HERE. THAT AS OPPOSED TO IF THERE WAS A BUILDING DOWN THE STREET THAT WAS CHEAPER TO RENT, SORT OF AN EXPLANATION OF WHY YOUR TENANTS WOULDN'T JUST TAKE THAT EMPTY BUILDING DOWN THE STREET BECAUSE IT HAS CHEAPER RENT, AND RENT THERE. WHY WOULD THEY CHOOSE YOUR PLACE AS OPPOSED TO DOWN THERE? THERE IS A REASON FOR THAT, IS THERE NOT?

THAT IS ABSOLUTELY CORRECT JUSTICE ANSTEAD. AND THIS IS A COMPETITIVE BUSINESS. WHAT

THESE COMPANIES WILL DO, THEY WILL LOOK AROUND AT THE POTENTIAL VENUES OR LOCATIONS WHERE THEY CAN RENT THEIR EQUIPMENT. AND ONCE THEY RENT THEIR EQUIPMENT, WHEN THEY CAN INTERCONNECT FOR VARIOUS PURPOSES. AGAIN, IN THE CASE WITH LEVEL 3, THAT INTERCONNECTION IS PRIMARILY FOR THE PURPOSE OF PROVIDING WEB HOSTING, INTERNET TRANSPORT AND OTHER INTERNET TYPE SERVICES.

BUT IT ALSO ENGAGES IN LOCAL EXCHANGES, AS WELL, DOES IT NOT?

IT DOES NOT.

I THOUGHT YOU HAD LOCAL CONNECTION AND THAT WAS ONE OF THE PRIME DISPUTES GOING ON HERE IS THAT YOU DID NOT SEGREGATE OR SEPARATE THE TRANSMISSIONS FOR OTHER PURPOSES BECAUSE IT WAS ALWAYS MOST OF THE CAPACITY WAS USED FOR AND THOSE KINDS OF WORDS. SO AM I TOTALLY MISUNDERSTANDING WHAT THIS CASE IS ABOUT?

JUSTICE LEWIS, THE RECORD BELOW FOR THE DATA, THE RESPONSE TO THE STAFF DATA REQUEST THAT WE PROVIDED, SHOWS THAT THE RENTALS IN LEVEL 3'S GATEWAY'S BUILDINGS ARE PREDOMINANTLY FOR THE PURPOSE OF PROVIDING INTERNET RELATED SERVICES BY THOSE COLOCATE IRS.

BUT NOT EXCLUSIVELY?

NOT EXCLUSIVELY.

LET'S GO BACK TO WHAT TISSUE IS. THE ISSUE IT IS A NEXUS TO LOCAL SERVICE, ISN'T THAT WHERE WE ARE GOING ON THIS CASE?

THAT IS ONE OF THE ISSUES. WE THINK THE PRIMARY ISSUE IS WHETHER THE COLOCATION SERVICE THAT LEVEL 3 PROVIDES IS A REGULATED SERVICE.

THAT AGAIN TIES BACK TO OF A LOCAL NATURE.

CORRECT.

THAT IS WHY ALL THESE QUESTIONS ARE GOING TO THAT ISSUE, IF YOU COULD ANSWER THOSE DIRECTLY WITHOUT TALKING ABOUT REAL PROPERTY CONCEPTS, THAT WOULD BE VERY HELPFUL TO US.

AGAIN, JUSTICE LEWIS, THE RENTALS ARE PRIMARILY FOR INTERNET SERVICES, NOT FOR LOCAL SERVICE.

BUT AGAIN, DOES IT TOUCH UPON AND CIRCULATE THROUGH WITH REGARD TO LOCAL SERVICES AND LOCAL SERVICE PROVIDERS CONNECTING IN?

THERE IS NOTHING IN THE RECORD, JUSTICE LEWIS, AND I AM TRYING TO ANSWER THIS AS DIRECTLY AS I CAN. -- THE DEGREE TO WHICH SOME OF THE COLOCATORS WHO HAVE PAID LEVEL THREE RENTAL MONEY, PROVIDE LOCAL PHONE SERVICE.

I MEAN THAT IS ONE OF THE PROBLEMS HERE, IS IT NOT?

CORRECT.

WELL YOU DON'T CHARGE DIFFERENTLY, I MEAN, IF SOMEBODY WHO QUALIFIED WANTS TO, WANTS TO COME TO YOUR FACILITY, YOU'RE NOT ASKING WELL WE'RE GOING TO CHARGE MORE IF WHAT YOU'RE DOING IS HAVING CONNECTING UP WITH THE INTERNET VERSUS LOCAL SERVICE, ARE YOU?

JUSTICE PARIENTE, THERE IS NO INFORMATION IN THE RECORD AS TO THE LEVEL OF CHARGES, WHETHER WE CHARGE COLOCATORS X DOLLARS TO PROVIDE WEB HOSTING SERVICE OR WHETHER WE CHARGE THEM MORE OR LESS THAN THAT.

WELL WOULDN'T THAT BE IN TERMS OF THIS REVIEW, AND WHAT WE, WHAT DEFERENCE WE GIVE THEN, IF THERE IS NOTHING TO THE CONTRARY, THEN WHY NOT -- WHY ARE WE GOING TO PRESUME THAT THIS IS REVENUES THAT ARE DERIVED FROM INTERSTATE USAGE? AND AGAIN, THAT'S ASSUMING WE BUY YOUR ARGUMENT THAT WE HAVE GOT TO LOOK AT EXACTLY WHAT THE REVENUES ARE COMING INTO YOU FROM AS OPPOSED TO THE FACT THAT THESE ARE INTERSTATE, -- INTRASTATE REVENUES.

THE ONLY INFORMATION -- THIS WAS A PETITION FOR DECLARATORY STATEMENT, JUSTICE PARIENTE. THIS WAS NOT AN EVIDENTIARY HEARING. AND THE ONLY DATA IN THE RECORD BELOW WAS A RESPONSE TO A COMMISSION STAFF DATA REQUEST. THAT IS FOUND AT PAGE 29 OF THE RECORD. IN THERE WE STATE, LEVEL 3 STATES THAT MOST OF THE EQUIPMENT THAT IS PLACED IN LEVEL 3'S GATEWAYS IS USED FOR THE PROVISION OF INTERNET RELATED SERVICES. BEYOND THAT, AS JUSTICE LEWIS WAS GETTING INTO, THERE IS NO DELINEATION AS TO EXACTLY WHAT SERVICES ARE USED BY WHICH COLOCATORS.

DOESN'T THAT CREATE A PROBLEM BECAUSE SOME ARE, SOME ARE FOR THE INTRASTATE USE RATHER THAN INTERSTATE? ISN'T THAT A PROBLEM WE HAVE TO DEAL WITH SEGREGATION?

I DON'T THINK SO JUSTICE LEWIS, BECAUSE ALL OF IT, NO MATTER WHAT IT IS USED FOR IS COLOCATION. AND COLOCATION IS NOT REGULATED -- COLOCATION PROVIDED BY AN ALEC, LIKE LEVEL 3, IS NOT REGULATED BY THE COMMISSION. AND THAT GETS TO THE HEART OF WHAT THIS CASE IS ABOUT. THIS CASE IS ABOUT TWO STATUTES PRIMARILY. PRIMARILY TWO STATUTES. 364.336 AND 350.113. 364.336 IS THE REGULATORY ASSESSMENT FEE STATUTE. AND THAT STATUTE IS THE ONE RELIED UPON BY THE COMMISSION, SAYS THAT THE FEE IS IMPOSED ON GROSS OPERATING REVENUES DERIVED FROM INTRASTATE BUSINESS. BUT THAT STATUTE EXPRESSLY REFERENCES 350.113. PARAGRAPH THREE. WHICH SAYS THE FEE SHALL TO THE EXTENT PRACTICABLE BE RELATED TO THE COST OF REGULATING SUCH TIME OF REGULATED COMPANY. THE MONIES THE COMMISSION COLLECTS FROM THE FEE ARE USED TO OPERATE THE COMMISSION. WE THINK THAT THE ONLY SENSIBLE AND HARMONIOUS CONSTRUCTION OF THESE TWO STATUTES IS IS THAT THE PURPOSE OF COLLECTING THE FEE IS TO RECOVER THE COMMISSION'S COST OF REGULATION. THE CONSTRUCTION URGED BY THE COMMISSION IN THEIR FINAL ORDER, WE BELIEVE OPENS THE DOOR TO INCREDIBLY BROAD COMMISSION JURISDICTION, WHICH WOULD GIVE THE COMMISSION THE RIGHT TO IMPOSE THE FEE ON ANY UNLIMITED NUMBER OF UNREGULATED VENTURES.

BUT ISN'T THE STATUTE WRITTEN THAT BROADLY IN THAT IT PERMITS THE COMMISSION TO ASSESS A FEE BASED ON GROSS OPERATING REVENUE, SO LONG AS IT'S DERIVED FROM INTRASTATE BUSINESS? ISN'T THE STATUTE WRITTEN JUST THAT BROAD?

JUSTICE SHAW, IT DOES SAY THAT. BUT THEN IT GOES ON IN TWO PLACES TO REFERENCE SECTION 350.113 PAREN 3. WE THINK, AND THAT IS THE STATUTE THAT SAYS THAT THE FEE IS DESIGNED TO RECOVER THE COSTS OF REGULATION. WE THINK YOU HAVE TO READ THESE TWO STATUTES IN TANDEM.

LET ME ASK THIS QUESTION. IF YOU DID NOT PROVIDE INTERNET SERVICE, DID NOT PROVIDE ANY INTERSTATE SERVICES AND ALL THAT WAS LEFT WAS THAT FOR THE INTRASTATE CONNECTIONS, WOULD YOU BE COVERED BY THE REGULATORY PROCESS?

NO, WE WOULD NOT. AND LET ME EXPLAIN MY ANSWER. THE CRITICAL DEPOSITIVE ISSUE HERE IS WHETHER ALEC COLOCATION IS REGULATED BY THE COMMISSION. THERE IS NO DISPUTE THAT IT

IS NOT. THERE IS AN EXCHANGE IN THE RECORD BETWEEN CHAIRMAN JANER AND COMMISSION COUNSEL WHICH CONFIRMS THAT THE COMMISSION DOES NOT REGULATE ALEC COLOCATION. SO IF ALL --.

WHAT DO YOU MEAN WHEN YOU SAY REGULATE, THEY DON'T REGULATE COLOCATIONS?

WHAT THAT MEANS, WAY MEAN BY THAT JUSTICE QUINCE IS THAT ALEC'S SUCH AS LEVEL 3 ARE NOT REQUIRED TO FILE THESE COLOCATION ARRANGEMENTS THAT THEY ENTER INTO. THEY'RE NOT REQUIRED TO GET THEM APPROVED BY THE PFC. THE RATES TERMS AND CONDITIONS ARE NOT APPROVED BY PSC. THESE ARE TOTALLY UNREGULATED FREE MARKET ACTIVITIES THAT HAPPEN TO BE CONDUCTED BY A CERTIFICATED ALEC IN THIS CASE BUT ALSO CONDUCTED BY A HOST OF OTHER UNREGULATED COMPANIES WHO ARE NOT ALECS.

IS THIS AT ALL SIMILAR TO, WE RECENTLY HAD BEFORE US THE PROVISION OF -- I'M TRYING TO THINK. THE LITTLE BOOKLET. THE WHITE PAGES.

IN SOME WAYS IT IS. THE VERIZON CASE. IN SOME WAYS IT IS.

THE COMPANY ITSELF, NOT SOME SUBSIDIARY DECIDES TO GO AHEAD AND PROVIDE THESE KINDS OF YELLOW PAGE, WHITE PAGE SERVICES, ETCETERA. THOSE FEES WOULD OR WOULD NOT BE INCLUDED IN THEIR GROSS REVENUES?

THEY WOULD NOT. SO I THINK THAT IF IN THIS CASE, LEVEL 3 HAD DECIDED TO FORM A SEPARATE SUBSIDIARY FOR THE PROVISION OF THE UNREGULATED COLOCATION RENTALS-

THAT IS PRETTY CLEAR IN THE RECORD. THERE WAS ALSO AN EXCHANGE BETWEEN COMMISSIONER JACOBS AND COUNSEL, WHO I BELIEVE IT WAS COMMISSIONER POLECKY, AND COUNSEL CONCERNING WHETHER OR NOT YOU HAD A SEPARATE COMPANY DOING THIS, WHETHER OR NOT IT WOULD BE SUBJECT TO REGULATIONS.

AND IT WAS CLEAR THAT IT WOULD NOT BE. AND I THINK JUSTICE QUINCE THAT IF THIS COMPANY HAD FORMED A SEPARATE SUBSIDIARY, THIS CASE WOULD MATCH UP ON ALL FOURS WITH VERIZON. BUT THE CASES ARE SILL SIMILAR.

EXCUSE ME. I DON'T FOLLOW THAT BECAUSE YOU SAY THAT THE ENTIRE COLOCATION, THE WHOLE SUBJECT MATTER OF YOUR BUSINESS IS NON-REGULATED BUSINESS. THAT IS TOTALLY DIFFERENT THAN THE ISSUE OF THE WHITE PAGES AND YELLOW PAGES. BECAUSE THERE THE WHITE PAGES HAD TO BE PROVIDED BY A REGULATED SERVICE AND THE YELLOW PAGES WERE NOT REQUIRED. SO I DON'T SEE HOW THESE EVEN RELATE IF YOU TAKE THE POSITION THAT THE COLOCATION IS NOT A REGULATED KIND OF ACTIVITY AT ALL.

JUSTICE LEWIS IN, THE VERIZON CASE, VERIZON HAD FORMED A SEPARATE SUBSIDIARY. THEY PROVIDED THE YELLOW PAGE ADVERTISING AND THE REVENUE THERE FROM. UNDER SECTION 364.037, THE INCUMBENT VERIZON, THE TRADITIONAL PHONE COMPANY WAS AUTHORIZED TO IMPUTE THOSE REVENUES OR IS REQUIRED TO IMPUTE THOSE REVENUES FOR PURPOSES OF ESTABLISHING ITS RATES. ONCE VERIZON ELECTED PRICE CAP REGULATION, AS YOU RECALL THE FACTS IN THAT CASE, YES, THAT STATUTE NO LONGER APPLIED. SO THOSE UNREGULATED REVENUES WERE NO LONGER IMPUTED IN TO THE REGULATED FOUR WALLS OF THE PFC. THEY'RE ALWAYS UNREGULATED BECAUSE THEY WERE PROVIDED BY AN UNREGULATED COMPANY. SO TO THAT EXTENT THE PARALLELS ARE ONE SET OF UNREGULATED REVENUES IN THE VERIZON CASE AND ANOTHER SET OF UNREGULATED COLOCATION REVENUES IN THE LEVEL 3 CASE.

WHAT ARE YOUR REGULATED REVENUES THEN?

WE HAVE VERY LITTLE.

BUT YOU HAVE THEM THOUGH. YOU DO HAVE THEM?

JUSTICE LEWIS IN, THE YEAR AT ISSUE FOR THIS AUDIT, WHICH WAS 1999, WE MAY NOT HAVE HAD ANY BASIC LOCAL PHONE SERVICE REGULATED REVENUE. THE ONLY REGULATE -- REGULATION THAT THE PFC PERFORMS OVER AN ALEC --.

YOU'RE NOT A LOCAL EXCHANGE SERVICE? COMPANY?

WE ARE AN ALTERNATIVE LOCAL EXCHANGE COMPANY.

SO WHAT DOES THAT MEAN?

THAT MEANS THAT WE ARE AUTHORIZED TO PROVIDE COMPETING LOCAL PHONE SERVICES.

WELL.

THAT IS THE ONLY ITEM OF REGULATION WITH THE PFC PERFORMS OVER AN ALEC.

IT IS JUST INCOME FROM THAT SERVICE THAT IS GOING TO DETERMINE THE REGULATION HERE.

LET ME ASK YOU, AND THIS IS PROBABLY TOO FAR SIMPLE ANALOGY. BUT TRYING HERE TO CONCEPTUALIZE YOUR ARGUMENT, WOULD YOUR ARGUMENT ESSENTIALLY BE THE SAME OR A GOOD EXAMPLE OF YOUR ARGUMENT WOULD BE IF YOU JUST HAD EXTRA SPACE IN YOUR BUILDING AND INSTEAD OF THE CONNECTIONS HERE TO THE INTERNET AND SUCH THAT THE SERVICE PROVIDERS THAT YOU ACTUALLY RENTED TO, YOU HAD THE SPACE IN SUCH A POSITION THAT YOU ARE ABLE TO RENT IT OUT ESSENTIALLY AS RETAIL SPACE TO A COMPANY THAT SOLD CELL PHONES AND THEY JUST PUT UP THEIR RETAIL OUTLET IN THAT SPACE THAT THEY RENTED FROM YOU, AND WHAT YOU'RE SAYING IS THAT THAT IS NOT RELATED TO THE SERVICE YOU PROVIDE AND THE INCOME THAT YOU GET FROM RENTING THAT SPACE OUT TO THAT TELEPHONE RETAIL SERVICE SHOULD NOT BE INCLUDED? I MEAN?

THAT'S CORRECT, IN THAT THE EFFECT, THE IMPACT OF THE COMMISSION'S DECISION WOULD BE TO CAPTURE ANY UNREGULATED SERVICE.

SO ANY RENTAL INCOME AT THE SAME BUILDING, NO MATTER WHAT THE FUNCTION OR PURPOSE THAT WAS USED BY THE TENANT.

WHATEVER IT MAY BE, WHICH WE THINK UNDERMINES THE LEGISLATURE'S INTENT TO PROMOTE COMPETITION. I SEE MY TIME IS UP.

THANK YOU. MS. BROWN.

MAY IT PLEASE THE COURT. MY NAME IS MARTHA CARTER BROWN. I AM REPRESENTING THE FLORIDA PUBLIC SERVICE COMMISSION HERE TODAY.

DO YOU AGREE WITH THAT LAST ANSWER, THAT IS, THAT IF THIS SPACE HAD BEEN RENTED OUT FOR CELL PHONE BUSINESS OR FOR ANYTHING ELSE, THAT UNDER THE COMMISSION'S INTERPRETATION OF 364.336, YOU COULD COLLECT A PERCENTAGE FOR THE REGULATORY ASSESSMENT FEE?

UNDER THE PLAIN READING AND THE PLAIN LANGUAGE OF THE REGULATORY ASSESSMENT FEE STATUTE, I WOULD AGREE.

AND THEN FURTHER THOUGH, IF THE COMPANY DID THE SAME EXACT THING BUT SET UP THEIR PROPERTY IN A SEPARATE CORPORATION SO THAT ONLY, THE ONLY PART THAT WAS REGULATED

WAS THE PROVISION OF THE LOCAL SERVICE, BUT EVERYTHING ELSE WAS IN A SEPARATE COMPANY, THAT WAS JUST RENTING OUT SPACE, THAT YOU COULDN'T TOUCH ANY OF THAT INCOME FOR THE PURPOSE OF ASSESSING A REGULATORY FEE?

I THINK IT IS A LITTLE HARD TO AGREE WITH THAT COMPLETELY ON THE BASIS OF THE FACTS. THE COMPANY WERE A SEPARATE COMPANY --.

GATEWAY FACILITY WAS OWNED BY A SEPARATE ENTITY AND WHAT THEY DID IS RENT, YOU KNOW, A SEPARATE CORPORATION, THEY RENTED TO EVERYBODY, INCLUDING LEVEL 3.,

AND PROVIDED NO TELECOMMUNICATIONS ON THEIR OWN, UNDER THE DEFINITION OF THE TELECOMMUNICATIONS COMPANY IN 364.01, THERE IS AN EXCEPTION FOR THE PROVISION ONLY OF NETWORK FACILITIES TO OTHER TELECOMMUNICATIONS PROVIDERS. SO IN THAT INSTANCE, THEY WOULD NOT BE A TELEPHONE COMPANY AND WE WOULD NOT -- THEY, THE REVENUES WOULD NOT BE SUBJECT TO REGULATED FEES.

SO DOESN'T IT SEEM THAT IF THE PURPOSE OF THE FEE IS TO ASSIST THE PFC IN TERMS OF PERFORMING A REGULATORY FUNCTION, THAT THE ARGUMENT THAT LEVEL 3 IS MAKING AND THAT WAS MADE IN THE DISSENT REALLY IS FAR MORE SENSIBLE READING OF THE STATUTORY SCHEME?

WELL, THE LEGISLATURE HAD THE OPPORTUNITY TO REVISE THE LANGUAGE OF THE STATUTE TWICE SINCE 1995 WHEN IT IMPLEMENTED OUR PRESENT SCHEME FOR COMPETITION IN LOCAL TELECOMMUNICATIONS. IT SLIGHTLY MODIFIED THE REGULATORY STATUTES THEN BY SAYING THAT WE COULD COLLECT THESE FEES ON AN ANNUAL BASIS. IT AGAIN IN 1997 MODIFIED IT TO REQUEST THE MARKET CIRCUMSTANCE THAT HAD DEVELOPED WHERE TELECOMMUNICATIONS COMPANIES WOULD LEASE THEIR NETWORK FACILITIES TO OTHER TELECOMMUNICATIONS COMPANIES. AND PROVIDED THAT THE REVENUES THEY RECEIVED FROM THAT LEASE WOULD NOT BE -- WOULD BE DEDUCTED THERE THE GROSS REVENUES. OTHER THAN THAT, THE LEGISLATURE HAS NOT CHANGED THE LANGUAGE OF THIS STATUTE.

BUT THE CORE, YOUR OPPONENT MADE THE POINT IN ARGUMENT HERE THAT THE CORE PURPOSE OF THE COMMISSION ASSESSMENT -- ASSESSING THESE FEES IS TO FINANCE THE COMMISSION, RIGHT? AND ITS REGULATORY OBLIGATION.

YES.

WE HAVE A REGULATED INDUSTRY, EACH REGULATED COMPANY IS GOING TO HAVE TO PAY SOME PORTION OF WHAT IT COSTS TO HAVE THE REGULATION. I THINK EVERYBODY WOULD AGREE THAT SEEMS TO MAKE SENSE. BUT IF YOU HAVE A COMPANY THAT, LET'S SAY THAT THEY JUST END UP WITH EXCESS PROPERTY AND PART OF THE EXCESS PROPERTY THAT THEY HAVE HAPPENS TO BE EMPTY BUILDINGS, OR AN EMPTY BUILDING. AND IT'S THE SAME COMPANY, BUT THEY OWN AN EMPTY BUILDING ACROSS TOWN, AND SO THEY RENT THE BUILDING OUT TO A SEVEN 11 OR A CORNER GROCERY STORE, WHICH HAS NOTHING TO DO WITH THE COMMISSION AND WHAT THE COMMISSION REGULATION. I'M CONCERNED THAT THE VIEW OF THE COMMISSION HERE WOULD BE, WELL WE HAVE A RIGHT, IN ORDER TO PAY OUR OVERHEAD FOR REGULATING THEM TO INCLUDE THAT INCOME FROM THE CORNER GROCERY STORE FROM THEIR EXCESS PROPERTY AND THE INCOME WE GET FROM THEM SO WE COULD DO OUR REGULATORY DUTY. ISN'T THAT THE LOGICAL EXTENSION OF WHAT YOU'RE SAYING?

WELL I HAVE TWO ANSWERS TO YOUR QUESTION. THE FIRST ONE IS THAT WE ARE NOT AT THAT POINT. WE ARE TALKING ABOUT COLOCATION REVENUE THAT WE BELIEVE IS MUCH MORE CLOSELY CONNECTED TO THE PROVISION OF TELECOMMUNICATIONS SERVICE THAN LEVEL 3 ADVANCES. BUT SECONDLY, EVEN IF WE WERE TO THE STAGE OF THE HOT DOG VENDOR, THAT'S THE EXAMPLE THAT WAS USED AT THE COMMISSION. IF THE REVENUE IS DERIVED FROM THE USE

OF TELECOMMUNICATIONS FACILITIES OF A REGULATED TELECOMMUNICATIONS COMPANY, TELECOMMUNICATIONS FACILITIES IS DEFINED VERY BROADLY IN OUR STATUTE AS WELL AS THE REGULATORY ASSESSMENT FEE STATUTE.

WELL DOESN'T THAT JUST SEND OUT A SIGNAL MY GOSH, YOU'D BETTER BE DARNED SURE THAT THE ONLY PROPERTY THAT YOU OWN IS THIS NARROW PROPERTY THAT YOU ABSOLUTELY NEED TO DO WHAT YOU DO, AND IF YOU DO EVER GET IN THE POSITION OF HAVING TO SPACE TO RENT, YOU'D BETTER BE ON NOTICE THAT WE ARE GOING TO, WHATEVER THAT INCOME COMES FROM, AND THERE IS A DISCONNECT THERE THAT I'M HAVING DIFFICULTY WITH.

WELL IN LEVEL 3'S ARGUMENT THAT THAT DISCONNECT ARISES, I BELIEVE, BECAUSE WE ARE NOT DISCONNECTED FROM THE PROVISION OF TELECOMMUNICATIONS SERVICE HERE, OR THE OPERATIONS OF A TELECOMMUNICATIONS COMPANY IN THIS CASE ON THESE FACTS CONCERNING COLOCATION REVENUE.

WELL --

THAT WAS THE COMMISSION'S VIEW WITH IT WHEN IT IS FACED WITH THOSE FACTS.

THAT IS WHAT MY QUESTION THEN IS, HOW CLOSE OR WHAT IS THE TEST THEN FOR WHAT THESE TENANTS HAVE TO BE DOING TO WHETHER OR NOT YOU CAN ASSESS THE INCOME FROM THESE TENANTS? AND WAS THAT ACTUALLY DONE HERE?

WELL WHAT WAS DONE HERE WAS AN INTERPRETATION OF THE PLAIN LANGUAGE OF THE STATUTE, WHICH WE BELIEVE YOUR RECENT VERIZON DECISION SUPPORTS. AND IS INSTRUCTIVE. ALONG THOSE LINES. IT'S HARD FOR THE COMMISSION TO REACT TO HYPOTHETICALS THAT MAY OCCUR. THERE DOES HAVE TO BE -- I WOULD CONCEDE TO YOU, SOME CUT OFF POINT. BUT IT IS MUCH, MUCH MORE BROADLY BASED THAN THE FACTS BEFORE YOU HERE AND WHAT LEVEL 3'S DOING IN ITS GATEWAY FACILITIES. COLOCATION IS, ONE MEANS AND METHOD OF INTERCONNECTION. AND INTERCONNECTION IS ESSENTIAL, AN ESSENTIAL DUTY OF ALL TELECOMMUNICATIONS PROVIDERS. BECAUSE WITHOUT INTERCONNECTION, THERE IS NO PUBLIC SWITCH NETWORK AND THE CALLS CANNOT SEAMLESSLY GO FROM ONE PROVIDER OR ONE LOCATION TO ANOTHER.

IF LEVEL 3'S SPINS OFF ANOTHER CORPORATION, A STRAW CORPORATION AND THEY DO THE LEASING, WHERE ARE WE THEN?

WELL, I THINK UNDER YOUR VERIZON DECISION, THEY CAN SPINOFF THAT CORPORATION. YOU SAID SOMETHING THAT WE FIND QUITE IMPORTANT IN YOUR RECENT VERIZON DECISION AND I WANT TO QUOTE IT FOR YOU. IF I COULD FIND IT.

I FOUND IT. THE PERTINENT LANGUAGE OF SECTION 364.336 IS PLAIN WHEN IT STATES THAT TELECOMMUNICATIONS COMPANY OPERATING UNDER CHAPTER 364 ARE ONLY REQUIRED TO PAY REGULATORY ASSESSMENT FEES BASED ON A PERCENTAGE OF THEIR OWN REVENUES GROSS OPERATING REVENUES DERIVED FROM INTRASTATE BUSINESS.

SO THEY COULD JUST SPIN THIS STRAW COMPANY OUT AND AVOID IT THEN.

AS LONG AS ALL THE STRAW COMPANY WAS DOING WAS PROVIDING LEASING FACILITIES. I THINK TWO THINGS HAPPEN THERE. ONE, IT IS NOT A TELECOMMUNICATIONS COMPANY SPECIFICALLY UNDER THE DEFINITION IN 364. AND TOO YOUR DECISION IN VERIZON SAYS THE REVENUES HAVE TO BE THEIR OWN REVENUE.

LET ME SEE NOW IF I UNDERSTAND THIS. IF LEVEL 3 HAS THIS BUILDING AND IT'S SELLING THE HOT DOGS, IS IT YOUR POSITION THAT THAT'S REGULATED? AND THEY HAVE TO PAY? BUT IF

LEVEL 3 SPINS OFF THIS CORPORATION AND THEY'RE SELLING THE HOT DOGS, THEY DON'T HAVE TO?

EXCEPT WE ARE NOT TALKING ABOUT HOT DOGS. WE'RE TALKING ABOUT COLOCATIONS.

WELL, THE WHOLE WORLD IS NOT COLOCATION. AND WE ARE MOVING A LITTLE BIT FROM THE COLOCATION NOW. WE'RE TALKING ABOUT COLOCATION, BUT AS YOU CAN SEE, WE ARE ALL HAVING PROBLEMS WITH WHAT COLOCATION IS QUITE FRANKLY. AND WOULD IT NOT BE COLOCATION IF THEY'RE SELLING SOMETHING OTHER THAN TELECOMMUNICATIONS?

DOES THAT TAKE IT OUT OF THE REALM OF THE UNIVERSE OF COLOCATIONS?

YES, I THINK IN TELECOMMUNICATIONS PARLANCE, COLOCATION OF COURSE IS VERY BROAD WORD. IT MEANS LOCATING TOGETHER IN ONE PLACE. IN TELECOMMUNICATIONS, IT HAS THE IMPLICATION OF LOCATING TELECOMMUNICATIONS EQUIPMENT, SWITCHES, DEVICES, IN ORDER TO INTERCONNECT WITH EACH OTHER. THAT'S WHAT COLOCATION MEANS.

IT IS RELATED SERVICES, IS IT NOT?

IT IS RELATED. VERY MUCH RELATED SERVICES. IT IS NOT THE CALL ITSELF, IT IS WHAT YOU NEED TO DO OR ONE MEANS IN ORDER TO COMPLETE THE CALL.

WOULD CELL PHONES FALL WITHIN THAT?

WELL, WE CAN PROBABLY GO ALONG THIS ROAD ALONG QUITE A BIT. THE LANGUAGE DOESN'T SAY ANY OF THAT. IT DOESN'T SAY REGULATED SERVICES. IT DOESN'T SAY TELECOMMUNICATIONS SERVICES. IT SAYS GROSS OPERATING REVENUES DERIVED FROM INTRASTATE BUSINESS.

THAT'S WHY I GUESS, WE ARE SAYING THAT IF THIS IS A HOT DOG STAND OR SOMETHING, YOU KNOW, THAT MIGHT GO TOO FAR. BUT YET IN READING THE COMMISSION'S DECISION, IT SEEMS TO BE GOING ON THE FACT THAT IT DOESN'T MATTER THAT THE REVENUE IS DERIVED FROM SOMETHING THAT IS NON-REGULATED. IT'S JUST GOING TO BE A BLANKET APPROACH. AND SO IF WE APPROVE THE COMMISSION'S ORDER THE WAY IT IS, WITHOUT ANY EXCEPTIONS OR TRY TO SAY WELL HERE COLOCATION RELATES TO INTERCONNECTION AND THEY ARE REQUIRED TO PROVIDE INTERCONNECTION AND THE RECORD DOESN'T REALLY SHOW HOW MUCH IS INTERNET AND HOW MUCH IS LOCAL EXCHANGE, SO THEREFORE IT IS REASONABLY RELATED OR PUT SOMETHING IN THAT, A CONDITION, BUT THEN WE'D BE READING WORDS INTO THE STATUTE AND ALSO BEARING COMMISSION'S DECISION. CAN YOU HELP ME OUT ON THAT AS FAR AS IT LOOKS LIKE THE ORDER IS VERY BROAD, BUT YOU'RE NOW, SEEM TO BE CONCEDED THAT THERE ARE LIMITATIONS.

WELL I SEEM TO BE CONCEDED THAT THERE ARE LIMITATIONS. IT'S ONLY IN SPECULATION ON DOWN THE ROAD. I REALLY DON'T SEE IN THE PLAIN LANGUAGE OF THE STATUTE THAT ANY REVENUES DERIVED FROM THE INTRASTATE OPERATIONS OF THE TELECOMMUNICATIONS COMPANY ARE EXCLUDED FROM THE SCOPE OF THE REGULATORY ASSESSMENT FEE STATUTES. AND YOU ALL HAVE TOLD US TWICE NOW TO LOOK VERY CAREFULLY AT THE PLAIN LANGUAGE OF THE STATUTE WHEN WE TAKE THESE ACTIONS.

BUT ISN'T THIS A CLEAR INFERENCE WHEN YOU TALK ABOUT INTRASTATE BUSINESS OF THE TELECOMMUNICATIONS COMPANY, THAT YOU ARE TALKING ABOUT THE REGULATED BUSINESS, THAT IS, THE WHOLE CONCEPT HERE IS TALKING ABOUT THE REGULATED BUSINESS, THAT IS, WE ARE ASSUMING THAT THE INTRASTATE BUSINESS IS THE REGULATED BUSINESS, THAT WE'RE GOING TO CHARGE OR TAX OR SURCHARGE IN ORDER TO RUN OUR COMMISSION.

YOU GET INTO A LOT OF OTHER INTERPRETATION OF WORDS NECESSARY IF YOU START ADDING THOSE QUALIFIERS TO THE STATUTE. WHAT IS A REGULATED BUSINESS? LEVEL 3 WOULD TELL YOU THAT THE COMMISSION DOES NO REGULATION OF COLOCATION. THAT'S TRUE, THAT DOESN'T MEAN IT CAN'T. IT DOESN'T MEAN THAT IN ITS OTHER BROADER, MORE GENERAL AUTHORITY OVER TO PRECLUDE ANTICOMPETITIVE BEHAVIOR, TO ADDRESS COMPLAINTS FROM LEVEL 3'S CUSTOMERS OR OTHER COMPETITORS, THAT THE COMMISSION WOULDN'T AT SOME FUTURE POINT DEAL WITH THIS. THE OTHER PROBLEM THAT YOU GET INTO IS TRYING TO DEFINE THE WORD TELECOMMUNICATIONS. IT IS A BROAD WORD. THE COMMISSION'S REGULATION IS NOT TIED TO SPECIFIC SERVICES. OR NECESSARILY AT ANY GIVEN MOMENT TO ANY PARTICULAR ACTIVITIES. THE ACTIVITIES ARE BROAD. THE LEGISLATURE SETS THIS SYSTEM UP IN ORDER TO ACCOMMODATE, WE BELIEVE, THE BREADTH OF THE COMMISSION'S REGULATORY ACTIVITY. YOU ALL HAVE SAID RECENTLY IN THE GLC VERSUS GARCIA CASE, THAT THE COMMISSION'S REGULATION OF TELECOMMUNICATIONS, EVEN AFTER 95, IS QUITE BROAD.

LET ME ASK YOU THIS. IN THIS SAME REG STATUTE ABOUT REGULATORY ASSESSMENT FEES, AFTER IT TALKS ABOUT INTRASTATE BUSINESS, THERE IS AN EXCEPT LANGUAGE. AND IT SAYS EXCEPT FOR PURPOSES OF THIS SECTION AND THE FEE SPECIFIED IN 350.113, WHICH IS THE, ANY AMOUNT PAID TO ANOTHER TELECOMMUNICATIONS COMPANY FOR THE USE OF ANY TELECOMMUNICATIONS NETWORK SHALL BE DEDUCTED. SO DOES THAT MEAN THAT IF LEVEL 3 HAS TO PAY A COLOCATION FEE TO SOME OTHER TELECOMMUNICATIONS COMPANY, THAT MONIES COULD BE DEDUCTED FROM THEIR GROSS REVENUES?

YES.

SO THE FACT THAT IT DOESN'T GO ON TO SAY AND EXCEPT FOR ANY FEES YOU COLLECT ON THE OTHER END, DOES THAT PLAY ANY PART IN THIS STATUTE AT ALL, DO YOU THINK?

YES, JUSTICE QUINCE, I THINK IT PROBABLY COULD. ONE OF THE POINTS THAT WE'RE TRYING, WE TRIED TO MAKE IN OUR BRIEF AND I'M TRYING TO GET ACROSS TO YOU HERE IS THAT THE LANGUAGE HAS SPECIFIC EXCLUSIONS AND LIMITATIONS ON IT AND IF WE READ MORE INTO IT THE WAY LEVEL 3 ASKS US TO DO, WE ESSENTIALLY WILL BE RESTRUCTURING THE WHOLE LEGISLATIVE SCHEME FOR THE DETERMINATION OF COSTS AND THE ASSESSMENT OF REGULATORY FEES AND WE CAN'T REWRITE THE STATUTE. WE THINK THAT'S THE LEGISLATURE'S JOB TO DO.

HAS THIS ISSUE EVER BEEN PRESENTED TO THE COMMISSION BEFORE? I MEAN I KNOW, I DON'T BELIEVE WE HAVE SEEN IT BEFORE BUT HAS IT EVER BEEN PRESENTED BY ANY OTHER TELECOMMUNICATIONS COMPANY TO THE COMMISSION BEFORE?

THIS ISSUE OF COLOCATION REVENUES? NO. IT HAS NOT. I WOULD ANTICIPATE THAT, PARTICULARLY IF YOU AGREE WITH LEVEL 3 AND DO NOT CHOOSE, AND CHOOSE TO NOT AFFIRM THE COMMISSION HERE, WE WILL SEE MANY, MANY MORE. I DON'T WANT TO PLAY CHICKEN LITTLE HERE BUT THIS IS A SIGNIFICANT CASE. EXCUSE ME?

HOW MANY COMPANIES, TELECOMMUNICATIONS COMPANIES ARE WE TALKING ABOUT WHO DO THIS COLOCATIONS,? ALLOW OTHER COMPANIES TO PLUG INTO THEIR NETWORK? ALL OF THEM?

NO, NOT ALL OF THEM. ALTHOUGH -- WELL, THEY HAVE TO ALLOW ALL TELECOMMUNICATIONS COMPANIES TO PLUG INTO THEIR NETWORK. THEY CAN DO IT, AND THAT'S INTERCONNECTION. THEY CAN DO THAT IN A -- IF THEY HAVE A NETWORK. THERE ARE OF COURSE TELECOMMUNICATIONS COMPANIES THAT DON'T HAVE THEIR OWN NETWORKS AND LEASE SPACE AND USE NETWORKS OF OTHER PROVIDERS. AND IN TERMS OF ACTUAL NUMBERS, I DON'T KNOW. THIS IS THE FIRST TIME IT'S COME BEFORE THE COMMISSION. BUT THE THEORY IS THAT OUR ASSESSMENT OF REGULATORY COSTS SHOULD BE BASED ON THE PARTICULAR REGULATED SERVICES THAT A PARTICULAR COMPANY PROVIDES. THAT'S NOT WHAT THE STATUTE SAYS. ON

THE OTHER SIDE OF IT, ON 351113, THIS LEVEL 3 THEORY IS THAT OUR COSTS ARE -- SHOULD BE DETERMINED BY THE AMOUNT OF REGULATION WE DO OVER A PARTICULAR COMPANY, OR A PARTICULAR SERVICE. AND THAT IS NOT THE PLAIN LANGUAGE OF 350.113 EITHER.

HAS THERE EVER BEEN A PARSING OUT AS SUGGESTED, WE SHOULD PAY ON THESE REVENUES, BUT NOT THESE REVENUES, IT IS CLEARLY A REGULATED ACTIVITY, CLEARLY A TELECOMMUNICATIONS ACTIVITY?

THERE IS A PARSING OUT JURISDICTION ISSUE OF INTERSTATE AND INTRASTATE.

IN THIS CASE, WE HAVE NOT -- THESE HAVE NOT BEEN PARSED OUT. THEY PROVIDE THE SERVICE, THEY SAY WE HAVE NOT REALLY PARSED OUT THIS SECTION EITHER?

THAT'S RIGHT.

IS THAT REALLY THE PROBLEM WE ARE DEALING WITH?

THAT IS A GOOD DEAL OF THE PROBLEM. IT IS LEVEL 3 ITSELF THAT SAYS IT CAN'T DO THAT. ALSO JUSTICE PARIENTE, YOU ASKED A QUESTION OF MR. HOFFMAN AND ASSUMING THAT YOU WOULD BUY ITS ARGUMENT THAT IT MATTERED WHAT SORT OF SERVICE HIS CUSTOMERS -- WE SUGGEST THAT YOU SHOULDN'T BUY THAT ARGUMENT. WE ARE REALLY TALKING ABOUT LEVEL 3'S GROSS OPERATING REVENUES DERIVED FROM INTRASTATE BUSINESS. WE BELIEVE, I GUESS MY TIME IS UP. THE STRONGEST GROUND WE THINK FOR YOU TO AFFIRM OUR DECISION IS THE PLAIN LANGUAGE OF THE STATUTE AND WE ENCOURAGE YOU TO DO SO. THANK YOU.

THANK YOU. REBUTTAL?

THANK YOU JUSTICE WELLS. JUSTICE ANSTEAD RAISED THE EXAMPLE OF THE 711 RENTAL AND I THINK THAT GOES TO THE HEART OF ONE OF OUR ARGUMENTS.

WE ARE NOT DEALING WITH HOT DOG STANCE OR GROCERY STORES. AREN'T WE REALLY DEALING WITH PIECES OF EQUIPMENT THAT PEOPLE ARE PAYING MONIES FOR TO CONNECT INTO? IS THAT WHAT WE'RE TALKING ABOUT?

YES, SIR.

WELL WHY DO WE KEEP TALKING ABOUT RESIDENTIAL REAL ESTATE AND THOSE KINDS OF THINGS? WE ARE TALKING ABOUT PIECES OF EQUIPMENT IN THE TELECOMMUNICATIONS INDUSTRY. IS THAT CORRECT?

THAT'S PARTLY CORRECT JUSTICE WELLS.

THE REST OF IT, IT IS RENTAL OF EQUIPMENT THAT IS USED FOR INTERNET RELATED SERVICE.

I UNDERSTAND, BUT STILL THAT IS TELECOMMUNICATION OF SOME KIND, IS IT NOT?

NO IT IS NOT.

BUT YOU HAVEN'T SEPARATED THOSE TWO.

THAT'S CORRECT.

JUST FROM A PRACTICAL POINT OF VIEW, THE TOTAL GROSS REVENUES THAT WERE IN THIS SIX MONTH PERIOD OR WHATEVER, OR HOW MUCH -- WERE HOW MUCH?

I BELIEVE YOUR HONOR THEY WERE CLOSE TO FOUR HUNDRED THOUSAND. AND THEY WERE

VIRTUALLY ALL FROM COLOCATION.

AND, SO THAT, BUT THE FOUR HUNDRED THOUSAND, AT THE RATE OF POINT 00015 IN THAT AT LEAST ACCORDING TO THE COMMISSION THAT WAS IN DISPUTE FOR YOU WAS 572 DOLLARS.

YES, MA'AM.

SO YOU'RE SAYING THERE SHOULD BE -- THE FEE WOULD BE OTHERWISE WHAT?

\$50, MINIMUM FEE THAT WE PAID, WHICH IS THE REQUIRED MINIMUM FEE.

AND FOR YOU TO TAKE THE TIME TO, IF WE BOUGHT YOUR ARGUMENT AND SAID IT IS UP TO YOU THEN TO SEPARATE OUT HOW MUCH WAS COMING FROM INTERNET RELATED, HOW MUCH FOR LOCAL EXCHANGE WOULD REQUIRE SOME EFFORT TO DO THAT? FAR IN EXCESS I WOULD IMAGINE THE FIVE HUNDRED DOLLARS.

YES, MA'AM, IT WOULD. I WANT TO POINT OUT TO THE COURT THAT WE THINK, THE COURT'S LEE COUNTY DECISION IT ISSUED JUST LAST WEEK IS INSTRUCTIVE, BECAUSE THERE THE COMMISSION ITSELF TOOK THE POSITION THAT ANY DOUBT AS TO THE EXTENT OF ITS JURISDICTION SHOULD BE RESOLVED AGAINST THE EXERCISE OF THAT JURISDICTION. AND THE COURT OF COURSE AGREED. HERE I THINK THIS DEBATE ALONE DEMONSTRATES THAT THERE IS A AT MINIMUM CONSIDERABLE DOUBT AS TO WHETHER THE COMMISSION HAS THE AUTHORITY TO REACH OUT INTO AN ALEC'S UNREGULATED REVENUES AND IMPOSE THE REGULATORY ASSESSMENT FEE. AND UNDER THE LEE COUNTY DECISION, WE BELIEVE THAT THE PROPER RESULT WOULD BE TO RESOLVE THAT DOUBT AGAINST THE EXERCISE OF THAT JURISDICTION. THERE WAS ALSO SOME DISCUSSION --.

IN LEE COUNTY THOUGH WE WERE TALKING ABOUT THE TOTAL, WHETHER OR NOT THE COMMISSION COULD REGULATE THAT PARTICULAR KIND OF COMPANY AT ALL, WEREN'T WE? THERE IS NO DOUBT HERE THAT LEVEL 3 DOES FALL UNDER THE REGULATORY JURISDICTION OF THE COMMISSION, IS THERE?

FOR LIMITED PURPOSES, CORRECT.

THE TELECOMMUNICATIONS COMPANY, THEY FALL UNDER THE JURISDICTION OF THE COMMISSION.

FOR THE PURPOSES OF THEIR BASIC LOCAL SERVICE, THAT'S CORRECT. THERE WAS SOME DISCUSSION ABOUT WHETHER COLOCATION IS A TELECOMMUNICATION SERVICE OR WHETHER IT IS RELATED TO TELECOMMUNICATIONS. AND AS WE HAVE STATED IN OUR BRIEFS, UNDER FLORIDA LAW, AND UNDER FEDERAL LAW, COLOCATION IS NOT TELECOMMUNICATION SERVICE. AND AGAIN, THE PFC ONLY REGULATION BASIC LOCAL SERVICE WHEN IT COMES TO AN ALEC. YOUR HONOR, THERE WAS SOME DISCUSSION IN AN EXCHANGE BETWEEN MS. BROWN AND JUSTICE SHAW REGARDING THE SEPARATE SUBSIDIARY. WE THINK THAT THAT DEMONSTRATES THE PROBLEMS WITH THE COMMISSION'S DECISION. HAD LEVEL 3 FORMED A SEPARATE SUBSIDIARY, I DON'T THINK WE'D BE HERE TODAY. AND WE DON'T THINK LEVEL 3'S CORPORATE STRUCTURE SHOULD BE A DRIVER OF THE COMMISSION'S JURISDICTION. WE THINK THAT'S UP TO THE LEGISLATURE AND THIS COURT. WE THINK THAT THE TEST --.

I THINK YOUR TIME IS UP.

THANK YOU YOUR HONOR.

THANK YOU VERY MUCH. COUNSEL. APPRECIATE YOUR ASSISTANCE IN THIS CASE.