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BellSouth Telecommunications, Inc. v. E. Leon Jacobs

THE NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS BellSouth COMMUNICATIONS VERSUS JACOBS.

CHIEF JUSTICE: MR. GRIMES.

MAY IT PLEASE THE COURT. I AM STEVE GRIMES REPRESENTING BellSouth. BY DEREGULATION, THE LEGISLATURE LIMITED THE PUBLIC SERVICE COMMISSION'S AUTHORITY TO REGULATE THE TELEPHONE BUSINESS, AND THE COMMISSION IS NOW ONLY AUTHORIZED TO REGULATE CHARGES FOR BASIC LOCAL SERVICE AND NOT BASIC SERVICE, AND THE LEGISLATURE INTENDS FOR THE MARKETPLACE TO REGULATE THE BALANCE. BASIC LOCAL SERVICE IS NOT INVOLVED IN THE CASE, SO THE ISSUE IS WHETHER THE COMMISSION HAS AUTHORITY TO REGULATE BellSouth'S INTEREST CARRYING -- CARRYING -- INTEREST CARRYING CHARGE ON DELINQUENT ACCOUNTS AS A NONBASIC SERVICE. NOW, THE LEGISLATURE, IF IT IS NOT A NONBASIC, IF IT IS NOT A NONBASIC SERVICE, THEY HAVE NO AUTHORITY TO REGULATE IT. NOW, THE --

MR. GRIMES, COULD I ASK JUST ONE QUESTION. WE GO BACK.

YEAH.

THIS WHOLE THING HAS SEEMED TO HAVE FALLEN INTO A SEMANTICS KIND OF QUAGMIRE HERE. IS IT A SERVICE OR IS IT NOT A SERVICE AND THOSE KINDS OF THINGS. GO BACK WITH ME, IF YOU WILL, TO THE 1986 ERA, AND IF WE HADN'T STARTED TALKING ABOUT THIS LATE CHARGE OR LATE-PAYMENT CHARGE AS A, QUOTE, SERVICE OF SOME KIND BUT JUST TO SAY THAT IS PART OF THE RATE STRUCTURE, AND THEN WE COME TO 1996, AND THEN WE COME ON TO THE OPEN 99 FILING OF THE TARIFF. IF WE JUST CALL THAT PART OF WHAT THE RATE IS FOR DELIVERING TELECOMMUNICATIONS SERVICE, WHAT IF ANY, DIFFERENCE WOULD THAT HAVE MADE? WOULD IT HAVE MADE ANY DIFFERENCE, INSTEAD OF BECOMING ALL WRAPPED UP IN THIS CONCEPT OF SERVICE? DO YOU UNDERSTAND MY QUESTION? WELL, I UNDERSTAND THAT IN, BEFORE DEREGULATION, EVERY CHARGE WAS REPORTED, BECAUSE THEY WERE REGULATED ON THEIR RATE OF RETURN. YOU GOT A PERCENTAGE OF THE RATE OF RETURN. WHEN, AND THIS ORIGINAL LATE PAYMENT CHARGE WAS INITIATED BEFORE THEN, IN 1986, AND WHEN THEY WENT TO DEREGULATION, IT WAS PUT INTO THE STRUCTURE OF THE DEREGULATION, AND WAS PUT IN AS WHAT THEY CALL THE NONBASIC SERVICE BASKETS. NOW, THERE WAS NO EFFORT, ON THE PART OF BellSouth TO MAKE A DETERMINATION AS TO WHETHER OR NOT THAT WAS A TELECOMMUNICATIONS SERVICE OR NOT. THEY WERE JUST CHANGING, SET BE UP -- SETTING UP A NEW STRUCTURE AND SO THEY PUT IT IN THERE, AND OF COURSE LATER ON, WE HAVE THE INTEREST-CARRYING CHARGE, AND OUR POSITION IS, TOTAL POSITION, REALLY, IS THAT THE INTEREST-CARRYING CHARGE IS SIMPLY NOT A TELECOMMUNICATIONS SERVICE. AND THAT THE BASIC NONBASIC SERVICE, IS DEFINED AS A TELECOMMUNICATIONS SERVICE. NOW, THE OPPONENTS TALK ABOUT, WELL, WILL SERVICE OF, SHOULD BE CONSTRUED BROADLY. THERE IS, THAT IS IN THE STATUTE. BUT RHETORICALLY, HOW CAN YOU SAY THAT A CHARGE PUT ON FOR SOMEBODY NOT PAYING THEIR BILL, THE OPTION, THEY HAVE THE OPTION TO PAY THEIR BILL ON TIME, IS A SERVICE TO THAT PERSON, BUT BEYOND THAT --

THAT IS WHAT I AM TRYING TO GET AWAY FROM, THIS DISCUSSION OF SERVICE, NONSERVICE. I AM TRYING TO SEE, JUST AS A PRACTICAL MATTER, IF THIS WERE CONSIDERED AS PART OF WHAT A CUSTOMER PAYS FOR THEIR PHONE, NOT CONSIDERING IT A SERVICE FOR DELIVERING SERVICE

WHEN YOU HAVEN'T PAID YOUR PILL, BUT JUST CONSIDERING IT AS PART OF THE RATE. AS PARTFTOS. IT COSTS NINE BUCKS TO HAVE A TELEPHONE, AND IF YOU DON'T PAY ON TIME, YOU ARE GOING TO PAY TEN BUCKS. IT IS JUST PART OF WHAT YOU HAVE TO PAY. WOULD THAT MAKE DAVERENCE IN THIS, OR DO YOU HAVE TO BECOME INVOLVED IN ALL OF THIS DISCUSSION ABOUT SERVICE, NONSERVICE AND THAT KIND OF THING?

I THINK YOU DO, BECAUSE NOT ALL CHARGES, NOW, ARE TELECOMMUNICATIONS SERVICES, AND NOT ALL CHARGES OF TELEPHONE COMPANIES ARE UNDER THE REGULATION. THE COMMISSION, ITSELF, IN SEVERAL INSTANCES, HAVE HELD THAT CERTAIN CHARGES BY TELEPHONE COMPANIES WERE NOT UNDER THEIR REGULATION, BECAUSE THEY WEREN'T TELECOMMUNICATIONS SERVICES. THAT IS WHY WE HAVE PUT THE EMPHASIS ON WHETHER IT IS OR IS NOT A TELECOMMUNICATIONS SERVICE BECAUSE OF THE STATUTE, AND IN FACT THERE IS A STATUTE THAT THE LEGISLATURE HAS NOT DEFINED TELECOMMUNICATION SERVICES AS SUCH, BUT THERE IS A STATUTE THAT, IT IS SECTION 202.11-3, WHICH DEALS WITH THE TAXATION OF TELEPHONE COMPANIES, AND THEY DEFINE COMMUNICATION SERVICES AS TO, ARE GET FIND TO INCLUDE ONLY THOSE SERVICES RELATING TO THE TRANSMISSION OF INFORMATION, AND THAT DEFINITION EXPRESSLY EXCLUDES THINGS LIKE LATE PAYMENT CHARGES AND COLLECTIONS SERVICES AND BAD CHECK CHARGES.

IF YOU GET A DISCOUNT FOR PAYING THE BILL EARLY, WOULD THE AMOUNT YOU PAY STILL BE FOR A SERVICE?

I DON'T KNOW. I HAVEN'T EVER THOUGHT ABOUT THAT. I SUPPOSE IT WOULD.

WHY WOULDN'T THE AMOUNT YOU HAVE IT PAY, IF YOU PAY THE BILL LATE, STILL BE THE AMOUNT YOU ARE PAYING FOR THE SERVICE, BUT IT, ALSO, INCLUDES AN AMOUNT THAT THE COMPANY IS CHARGING YOU. THEY COULD CUT OFF THE SERVICE, I SUPPOSE, AND NOT HAVE YOU HAVE IT AT ALL, AND THEN SAY, WELL, WE WILL CONNECT IT UP AGAIN, AFTER YOU PAY YOUR BILL, BUT YOU KEEP THE SEE GOING, AS I UNDERSTAND IT. THAT ?AVE TO, FOR A PERIOD OF TIME. HOWEVER, WE, THEN, SUSPEND THE SERVICE, BUT THE BAD CHECK, I MEAN THE INTEREST-CARRYING CHARGE CONTINUES TO RUN, EVEN THOUGH WE HAVE SUSPENDED THE SERVICE! AND SO IT HASN'T ANY RELATIONSHIP TO THE FURNISHING OF THE SERVICE.

IT HAS NO RELATIONSHIP? IT IS DIRECTLY PEGGED TO --

THE SERVICE HAS ALREADY BEEN PERFORMED, WHEN THE TIME THAT THE BILL IS SENT. THAT IS THE SERVICE THAT HAS ALREADY BEEN PERFORMED.

BUT THE LATE CHARGE IS OBVIOUSLY DIRECTLY PEGGED TO THE CHARGE THAT YOU ARE MAKING FOR THE SERVICE THAT YOU ARE RENDERING TO THEM, IS IT NOT?

BUT THE SERVICE HAS ALREADY BEEN RENDERING, AND IT IS NOT A SERVICE IN AND OF ITSELF. IT IS SEPARATE, AND IT IS, THEREFORE, NOT A TELECOMMUNICATIONS SERVICE.

WHAT GOES INTO DETERMINING WHAT YOU ARE CHARGING FOR A LATE CHARGE? IN OTHER WORDS IS THERE SOME FORMULA THAT THE COMPANY HAS FOR THAT, OR DO THEY EXPLAIN THAT TO THE COMMISSION, HOW WE ARRIVED AT WHAT THIS LATE CHARGE IS?

I, NOT TO MY KNOWLEDGE AT WHICH TIME IS SET UP AS AIN'T REST CARRYING CHARGE, FOR THE LOSS OF THE USEFUL THE MONEY.

IS IT ARBITRARY? IN OTHER WORDS CAN YOU CHARGE ANY AMOUNT THAT YOU WANT?

IT IS SUBJECT TO THE USERRY STATUTE, JUST LIKE ANY OTHER --.

BUT IT IS NOT SUBJECT TO REGULATION BY THE COMMISSION.

NO, BECAUSE IT IS NOT A TELECOMMUNICATIONS SERVICE. THE MARKETPLACE WILL CONTROL THAT, BECAUSE IF THE CUSTOMER DOESN'T WANT TO PAY THAT, THEY WILL GO TO ANOTHER TELEPHONE COMPANY. THE FACT OF THE MATTER IS, JUST LIKE ANY OTHER MERCHANT WHO SELLS MERCHANDISE AND THE PEOPLE DON'T PAY AND THEY CHARGE A LATE CHARGE OR AN INTEREST-CARRYING CHARGE FOR THE LOSS OF THE USEFUL THE MONEY.

THEY ARE NOT LIKE ANY OTHER MERCHANT. WE ARE BACK TO THIS IS A TELEPHONE COMPANY, AND I GUESS, JUST SO WE UNDERSTAND THE IMPLICATIONS OF WHAT WE ARE DEALING WITH, IF WE AGREE WITH YOUR ARGUMENT THAT THIS IS NOT A NON-BASIC SERVICE, THEN THE POSITION WOULD BE THAT THERE WOULD BE NO REGULATION WHATSOEVER, ON WHAT YOU COULD CHARGE AS A LATE CHARGE. RECONNECTION.

NOR ON ANY OTHER TYPE OF LATE CHARGE THAT SOMEBODY ELSE CHARGES, OTHER THAN A BANK, BECAUSE THEY ARE IN THE BUSINESS OF LENDING MONEY.

BUT IN THIS CASE, IT WAS GOING AS THE PSC CALCULATED, FROM, REVENUES OF \$44 MILLION TO IN ONE YEAR, IF THIS WAS RAISED, IT WOULD GO FROM \$44 MILLION TO \$70 MILLION IN REVENUE OF A 57 PERCENT INCREASE, AND THE STATUTE LIMITS THE INCREASE IN ANY ONE YEAR, TO 6 PERCENT. CORRECT?

IF IT --

IF IT IS A TELECOMMUNICATIONS SERVICE, YOU ARE CORRECT.

SO ALL THAT IS REALLY WHAT HAPPENED IS THAT, AS I AM UNDERSTANDING IT, IF IT IS A NONBASIC SERVICE, YOU, STILL, THE PSC IS REALLY NOT MAKING A DETERMINATION, OTHER THAN YOU GET TO DO 6 PERCENT A YEAR. THAT IS --

IF IT IS A NONBASIC SERVICE.

BUT THE QUESTION AS TO WHETHER THAT IS EVEN A REASONABLE INCREASE, IS THAT SOMETHING YOU WOULD HAVE TO JUSTIFY, OR IS -- OR AS LONG AS IT IS NO MORE THAN 6 PERCENT IN ANY GIVEN YEAR, YOU CAN DO IT.

IF NONBASIC CONCERN IS CONCERNED, YOU CAN DO IT, IT IS MY UNDERSTANDING, AS PART OF DEREGULATION.

EACH YEAR YOU CAN GO UP 6 PERCENT, 6 PERCENT.

MY UNDERSTANDING IS YES, IT IS A NONBASIC SERVICE. IF IT IS A NEW NONBASIC SERVICE, YOUR INITIAL CHARGE IS NOT REGULATED, AND THEN YOU ARE SUBJECT TO THE 6 PERCENT AGAIN.

GIVE ME AN EXAMPLE OF THE TYPE OF CHARGE THAT HAS BEEN DESIGNATED NOT TO BE A NONBASIC TELECOMMUNICATIONS SERVICE THAT WE COULD UNDERSTAND --

WELL, A CHARGE FOR THE YELLOW PAGES, THAT THE TELEPHONE COMPANY, IT IS RELATED TO THE FACT THAT THEY ARE IN THE TELECOMMUNICATIONS.

BUT AS FAR AS FOR AER, ,S JUSTICE LEWIS WAS RAISING, GETS THEIR BILL AND YOU HAVE GOT ALL OF THESE CHARGES ON THERE AND YOU ARE TRYING TO FIGURE OUT WHAT THEY ARE, WHAT CHARGES APPEAR ON A CONSUMER'S TELEPHONE BILL EVERY MONTH WOULD NOT BE SUBJECT TO THE REGULATION REGULATION.

WELL, ONE OF THE MOST RECENT, WE HAVE SUBMIT ADD SUPPLEMENTAL AUTHORITY, AND THE QUESTION, THIS CAME IN, IF YOU WILL SEE IN THE RECORD, IN WHICH IT WAS INSTALLMENT BILLING, AND THE QUESTION BEFORE THE COMMISSION WAS WHETHER INSTALLMENT BILLING WAS TELECOMMUNICATIONS SERVICE, AND THE COMMISSION HELD, ITSELF, THAT IT WAS NOT A TELECOMMUNICATIONS SERVICE, AND THEREFORE IT WAS NOT SUBJECT TO THEIR REGULATION, AND THEY TRIED THEY RECOGNIZED THEY HAD ALREADY SAID THIS OTHER ONE, OURS THAT WE GOT HERE TODAY, WAS A TELECOMMUNICATIONS SERVICE, AND THEY TRIED TO DISTINGUISH IT, BY SAYING, WELL, IN AN INSTALLMENT BILLING, THE CUSTOMER HAS THE OPTION OF NOT CHOOSING IT. WELL, OF COURSE, THE CUSTOMER ALSO HAS THE OPTION OF NOT, OF PAYING THE BILL ON TIME, SO THAT WASN'T A DISTINCTION. IN FACT, IN THE ORDER, THE COMMISSION SPECIFICALLY HELD THAT TELECOMMUNICATION SERVICE MEANS THE OFFERING OF A SERVICE THAT RELATES TO THE TRANSMISSION OF INFORMATION FROM ONE POINT TO ANOTHER, AND WENT ON TO SAY THAT INSTALLMENT BILLING IS A METHODOLOGY, RELATING TO HOW A CUSTOMER PAYS AND NOT A SERVICE HE RECEIVES. IT IS THE SAME AS A LATE-PAYMENT CHARGE OR AN INTEREST-CARRYING CHARGE. THEY OBVIOUSLY CHARGE FOR INSTALLMENT BILLING.

HAS BellSouth, ITSELF, EVER CLAIMED THAT THIS WAS A SERVICE?

NO. NOT THE INTEREST-CARRYING CHARGE. THEY NEVER DID. NOW, CERTAINLY YOU COULD, THE QUESTION WOULD COME UP, GOING BACK, I THINK, TO WHAT JUSTICE WAS TALKING ABOUT, WHEN THEY, IN 1995, WHEN THEY WENT TO DEREGULATION, THIS, THE LATE PAYMENT CHARGE, AS CONTRASTED TO THE INTEREST-CARRYING CHARGE, WAS PUT INTO THE NON-- WAS PUT INTO THE NONBASIC SERVICE BASKET.

BY YOUR CLIENT.

YEAH. THAT'S RIGHT. BUT THAT WASN'T A DETERMINATION THAT IT WASN'T A NONBASIC SERVICE.

WHY WASN'T THAT AN ADMISSION, YOU KNOW, BY BellSouth THAT, THEY HAVE ALWAYS TREATED IT AS A SERVICE?

WELL, IT IS NOT. THEY CAN'T BE ESTOPPED. IT EITHER IS OR IT ISN'T.

WHAT IS THE DIFFERENCE BETWEEN A LATE PAYMENT CHARGE THAT BellSouth HAS SAID, BEFORE, SHOULD BE TREATED AS A SERVICE, AND AIN'T REST-KRAERING -- AND AN INTEREST-CARRYING CHARGE. IS THERE ANY DIFFERENCE?

THEY ARE, BOTH, NONBASIC SERVICES. ONE, OF COURSE, YES, THEY RELATE TO DIFFERENT THINGS. ONE IS THE COST OF COLLECTION OF THE MONEY. THAT IS VERY CLEAR IN THE RECORD THAT WHEN THEY PUT THE LATE-PAYMENT CHARGE IN, IT WAS CLEAR, THE COMMISSION ACKNOWLEDGED, THAT IT WENT TO PARTIALLY COVER THE ADMINISTRATIVE COSTS OF COLLECTION, WHEREAS THE INTEREST-CARRYING CHARGE COVERS THE LOSS OF THE USEFUL THE MONEY THAT THEY WOULD HAVE, IF THE BILL HAD BEEN PAID ON TIME. NOW, I UNDERSTAND BECAUSE ARE SAYING. IT WAS DESIGNATED OR PUT INTO THE BASKET TO START WITH.

BY BellSouth.

YEAH. THAT'S RIGHT. BUT THAT DOESN'T MEAN THAT IT IS A TELECOMMUNICATIONS SERVICE. NOBODY, THERE IS NO ESTOPPEL HERE. IT IS EITHER/OR IS NOT A TELECOMMUNICATION SERVICE, AND BY ANY STFD OF DEFINITION, PRINCIPLE OF STATUTORY CONSTRUCTION, IT IS SIMPLY NOT A TELECOMMUNICATIONS SERVICE.

HOW DID BellSouth, WHAT IS THE EXPLANATION FOR WHY BellSouth CLAIMED IT WAS BEFORE?

THEY WERE SIMPLY, THERE WAS A STRUCTURE SET UP. THEY WERE PUTTING EVERYTHING IN,

THAT WAS IN THEIR TAR I HAVE, THEY WERE PUT- TARIFF, THEY WERE PUTTING IT IE ERE WAS SET UP BASIC, NONBASIC, AND THEY STARTED OUT WITH PUTTING IN EVERYTHING THAT THEY HAD BEEN PUTTING IN BEFORE, ON THEIR RATE OF RETURN BASIS, UNDER THE STRUCTURE OF DEREGULATION. THEY WERE NOT TRYING TO MAKE ANY DETERMINATION WHETHER, LEGALLY, IT WAS OR NOT A TELECOMMUNICATIONS SERVICE. AS TIME, AS TIME WENT ON, IT WAS DETERMINED THAT SOME OF THE THINGS THAT WERE IN THE TARIFF CLEARLY WERE NOT TELECOMMUNICATIONS SERVICE. THE, ANOTHER INSTANCE OF IT, WHERE CHARGES FOR SOFTWARE TO BE USED TO MAKE FREE LODGE DISTANCE CALLS OVER THE INTERNET -- LONG-DISTANCE CALLS OVER THE INTERNET, THE COMMISSION DETERMINED THAT THAT IS NOT TELECOMMUNICATIONS SERVICE, EVEN THOUGH IT IS PUT INTO THE TARIFF AND IT IS, THERE IS, IT EITHER IS OR IS NOT A TELECOMMUNICATIONS SERVICE. WE SUBMIT THAT, BY ANY STANDARD OF THE DEFINITION, THERE IS TEN PAGES IN OUR BRIEF SHOWING ALL KIND OF CANONS OF STATUTORY CONSTRUCTION THAT, IT IS SIMPLY NOT A TELECOMMUNICATIONS SERVICE.

CHIEF JUSTICE: YOU ARE IN YOUR REBUTTAL TIME.

I WILL RESERVE THE REST. THANK YOU.

MAY IT PLEASE THE COURT. I AM RICHARD BELACK, REPRESENTING THE PUBLIC SERVICE COMMISSION, AND WITH ME AT THE TABLE IS ROBERT VANDIVER, PUBLIC COUNSEL, AND MR. VANDIVER IS HERE TO ANSWER ANY QUESTIONS.

HOW IS THIS ANYMORE AFTER TELECOMMUNICATIONS SERVICE THAN THE 1.5 PERCENT THAT SOME CREDIT CARDS CHARGE FOR CARRYING THE COMEST?

THES THAT CREDIT CARDSN'RIE CAPS, AND THE PROBLEM WITH THE WHOLE ARGUMENT OF BellSouth IS THAT IT IS POST-TALK. FIRST, THEY SAID IN THEIR,, ON PAGE 4 OF THE INITIAL BRIEF, THAT THEY HAVE RESTRUCTURED THEIR CHARGE AND ADDED IN AND INITIALIZED AN INTEREST-CARRYING CHARGE, BUT BECAUSE THAT STATEMENT IS IN THEIR STATEMENT OF THE CASE IN FACTS AND NOT IN THEIR ARGUMENT, THEY HAVE NO LEGAL AUTHORITY WHEREBY THEY CAN SAY THAT THEY CAN RESTRUCTURE THEIR CHARGES. IN OTHER WORDS, THEY HAVE CITED A LOT OF PLAIN MEANING CASES, BUT THE PLAIN MEANING OF THE PRICE CAP IS THAT YOU CANNOT ADD ADDITIONAL CHARGES, IF THE TOTAL EXCEEDS THE PRICE CAP.

ARE WE TALKING ABOUT BOTH ASPECTS OF THIS CHARGE? THERE IS THE 150 TOO RESIDENTIAL CUSTOMERS AND -- FOR RESIDENTIAL CUSTOMERS AND THE NINE DOLLARS FOR BUSINESS CUSTOMERS, AND ADDED TO THAT, THEN, IS THE 1.5 PERCENT LATE FEE. ARE WE DIVIDING THOSE INTO TWO THINGS, OR ARE WE TALKING ABOUT THE WHOLE PACKAGE HERE. IS PART OF IT A NONBASIC SERVICE AND PART OF IT NOT?

WELL, THEIR ARGUMENT IS THAT THEY CAN DIVIDE IT UP, BUT THAT IS NOT WHAT THE PRICE CAP STATUTE SAYS. IN OTHER WORDS, THE PRICE CAP STATUTE SAYS THAT, FOR ANY PARTICULAR SERVICE FOR WHICH THE CHARGES ARE CAPPED, YOU CAN INCREASE THE CHARGES NO MORE THAN 6 PERCENT EVERY YEAR. WHAT THE PRICE CAP STATUTE DOES NOT SAY --

THE PRICE CAP STATUTE APPLIES ONLY TO TELECOMMUNICATIONS SERVICES.

THAT'S CORRECT. BUT WHAT IT DOES NOT SAY IS THAT IF YOU ARE RESTRUCTUREING THOSE CHARGES, FOR THE PURPOSE OF ADDING A PENALTY OR FOR THE PURPOSE OF ADDING A FEE, OR FOR THE PURPOSE OF REIMBURSING YOURSELF FOR PERCEIVED UNDER RECOVERY FROM THE LATE 1980s, OR FOR ANY OTHER ALL OF THOSE REASONS, E PRICE CAP SHALL NOT. . THAT THEY HAVE SIMPLY EXEMPTED THEMSELVES FROM THE PRICE CAP FIRST. THEN THEY ARE MAKING A POST-TALK ARGUMENT FOR WHY THE RESULTS OF THAT EXEMPTION ARE PLAUSIBLE. Z BUT THEY CAN'T GET THERE, BECAUSE THERE IS NO RESTRUCTURING EXEMPTION WRITTEN INTO THE STATUTE.

HOW DO YOU DISTINGUISH THE INSTALLMENT BILL SOMETHING.

INSTALLMENT BILLING WAS NEVER SUBJECT TO A CAP. THAT IS THE FIRST DISTINCTION. SO THERE ISN'T THE PROBLEM OF THEM RESTRUCTUREING OUT OF AN EXISTING CAP, WHICH IS A GIGANTIC DELTONA PROBLEM FOR THE ENTIRE REGULATORY SCHEME. THE SECOND THING IS, THE WAY THE COMMISSION DISTINGUISHED IT, IS THE COMMISSION NOTED THAT YOU DON'T LOSE YOUR TELECOMMUNICATIONS, IT IF YOU DECIDE NOT TO JOIN BellSouth'S INSTALLMENT PLAN, SO IT IS MORE LIKE AN OFFER AND AN ACCEPTANCE. NOW, BellSouth SAYS, WELL, THAT IS JUST LIKE THE LATE PAYMENT CHARGE. YOU CAN DECIDE TO PAY ON TIME OR NOT. BUT THAT IS A VERY FACILE APPROACH TO IT. YOU COULD DECIDE TO PAY ON TIME, BUT BECAUSE THE MAIL IS SLOW, IT TURNS OUT YOU OWE A LATE PAYMENT. YOU COULD DECIDE TO PAY ON TIME, BUT BECAUSE THE MAIL IS SLOW, THE BILL COST DAY AFTER YOU GO ON VACATION INSTEAD OF THE DAY BEFORE YOU GO ON VACATION. THE LATE CHARGE ACCRUES, FAN YOU DON'T PAY IT, YOU ARE TERMINATE -- AND IF YOU DON'T PAY IT, YOU ARE TERMINATED, AND THAT IS THE CRUCIAL DISTINCTION BETWEEN THIS AND THE INSTALLMENT PLAN. THEY ARE ARGUING TO YOU THAT THE INTEREST-CARRYING CHARGE, TAN DOESN'T MATTER WHAT THE TITLE THEY PUT ON IT, IT SHOULD JUST BE ADDITIONAL AMOUNT, IS UNRELATED TO TELECOMMUNICATIONS. BUT THAT IS AN UNREAL ARGUMENT. IT IS ONLY FOR THE EARS OF THE COURT.

COULD YOU GO BACK TO THE INITIAL QUESTION. I WAS TRYING, MAYBE I AM NOT EX-EXPRESSING THE QUESTION ADEQUATELY, BUT IT --M NOT EXPRESSING THE QUESTION ADEQUATELY TSS, TO, BOTH SIDES, GETTING INTO THE DISCUSSION, IF THIS IS A, QUOTE, SERVICE, AND IT SEEMS IN THE BRIEFS AND LOOKING AT ALL OF THE ARGUMENTS, THAT YOU ARE CONSIDERING A TELECOMMUNICATION COMPANY, BECAUSE IT DOESN'T TURN OFF THE PHONE DURING THIS PERIOD OF TIME THAT YOU HAVE NOT PAID YOUR BILL, THAT YOU ARE PROVIDING A, QUOTE, SERVICE, THAN IS WHY IT IS A SEMANTICAL THING, SO THAT IS THE REASON FOR MY QUESTION. LET'S GO BACK BEFORE THE PRICE CAP AND THE RATE OF RETURN. IF IT HAD BEEN CONSIDERED AS THIS IS PART OF WHAT THE RATE IS FOR THE PHONE.

RIGHT.

ALL RIGHT, AND WE DIDN'T CALL IT A SERVICE THEN. WE DON'T CALL IT A SERVICE NOW, BUT THIS IS JUST PART OF A RATE THAT YOU HAVE TO PAY FOR THIS TELECOMMUNICATIONS SERVICE. WOULD THAT HAVE MADE A DIFFERENCE?

WELL, YOU WOULD CALL IT A SERVICE, BECAUSE THE RATES ARE PAID FOR SERVICE, UNDER RATE OF RETURN.

THEY ARE PATE FOR -- PAID FOR SERVICE, BUT THE FIRST \$10 THAT YOU PAY FOR THE PHONE IS NOT A SERVICE. IT IS THE COST OF IT, ISN'T IT?

WELL, COST HAS NOTHING TO DO WITH THIS CASE, BECAUSE COST WENT OFF THE RADAR SCREEN IN 1996.

I AM NOT USING IT IN THAT SENSE. I AM USING IT, WHAT A CUSTOMER HAS TO PAY FOR THEIR TELEPHONE, THAT IS NOT A SERVICE. THAT IS WHAT THEY PAY. THEY DO GET A SERVICE, BUT THEY PAY FOR IT, CORRECT?

THAT'S CORRECT.

SO THE ACT OF PAYMENT IS NOT A SERVICE. YOU ARE PAYING "X" NUMBER OF DOLLARS. THAT IS NOT A SERVICE.

WE DIDN'T SAY THE ACTUAL CHARGE FOR THE SERVICE. WHAT WE SAID WAS EXACTLY BECAUSE

ARE SAYING. WE SAID THAT, THE REASON IT IS PAID IS TO GET THE CONTINUED PROVISION OF TELECOMMUNICATIONS SERVICE, DESPITE LATE PAYMENT, SO THERE IS NO DIFFERENTIATION IF YOU FAIL TO PAY THEIR CHARGE, THEIR NEW ONE, PURPORTED NEW ONE AND YOU CAN CALL, IT YOU CAN PUT ANY TITLE YOU WANT ON IT, YOUR SERVICE WILL BE TERMINATED. THEREFORE, THE SUGGESTION TO YOU THAT IT IS NOT RELATED TO TELECOMMUNICATIONS IS NOT A REAL WORLD POINT.

BUT, AGAIN, IT IS THAT THE STATUTE, THIS IS A FUNNY STATUTE THAT YOU GET INTO, E SECOND, THE SECOND STATUTE THAT HAS THE CAP OTNLKSN TERMS OF WHAT IS CAPPED, AND IT DOES TALK IN TERMS OF A, QUOTE, SERVICE, AND SO YOU CAN LIST SOMETHING AS A SERVICE, BUT IF YOU DON'T INITIALLY CATEGORIZE THAT AS A SERVICE, THAT IS JUST A PAYMENT.

NONE OF THE PAYMENTS UNDER THOSE CIRCUMSTANCES WOULD QUALIFY FOR THE PRICE CAP, BUT THAT IS AN ARGUMENT THAT WOULD ELIMINATE THE APPLICATION OF THE PRICE CAP FROM ANYTHING.

THAT IS WHAT I AM ASKING YOU. IT WOULD SEEM TO ME THAT IS WHERE IT IS HEADED.

RIGHT, AND WE ARE JUST AT IT FROM A DIFFERENT WAY, BUT WE ARE SAYING THE SAME THING -- WE ARE JUST COMING AT IT FROM A DIFFERENT WAY, BUT WE ARE SAYING THE SAME THING AS YOU ARE. IF THEY CAN STRUCTURE THE SERVICE, CLEARLY UNDER THE PRICE CAP, YOU CAN'T ADD ADDITIONAL CHARGES FOR THE SAME PROVISION OF TELEPHONE.

THIS IS JUST SAME PAYMENT AS WAS BEFORE. FOR A TRADITIONAL TELEPHONE.

IN YEAR ONE, THE CUSTOMER GETS THE CONTINUED PROVISION OF TELECOMMUNICATIONS, DESPITE LATE PAYMENT, IN RETURN FOR A CHARGE.

WHAT IF ANOTHER INSTITUTION, THOUGH, WAS PROVIDING THIS TO THE CUSTOMER? THAT IS, WHAT IF HE HAD SET UP SITUATION WITH HIS BANK, FOR INSTANCE, AND IT WAS TIED TO KEEPING A BALANCE IN PLACE THAT WILL PAY THE TELEPHONE BILL, FOR INSTANCE.

RIGHT.

AND THAT, WHEN YOUR ACCOUNT FALSE BELOW THAT BALANCE, YOU ARE GOING TO HAVE TO PAY, ALTHOUGH WE ARE GOING TO PAY THE BILL, YOU ARE GOING TO HAVE TO PAY INTEREST TO US, AND SO NOW WE HAVE A FINANCIAL INSTITUTION, REALLY, DOING THE SAME THING THAT THE TELEPHONE COMPANY IS DOING. NOBODY WOULD CLAIM THAT THAT WAS A TELECOMMUNICATIONS SERVICE, WOULD IT?

RIGHT, BECAUSE THEIR RATES AREN'T CAPPED. YOU SEE, THE THING IS YOU ARE IN YEAR ONE. YOU ARE RECEIVING THE CONTINUED PROVISION OF TELECOMMUNICATIONS, DESPITE LATE PAYMENT, IN RETURN TO A CERTAIN CHARGE. IT IS NOW YEAR TWO, POST, QUOTE, RESTRUCTUREING. YOU ARE RECEIVING EXACTLY THE SAME SERVICE, THE CONTINUED PROVISION OF TELECOMMUNICATIONS, DESPITE LATE PAYMENT, EXCEPT ETTS 50 PERCENT. THIS CANNOT HAVE BEEN WHAT THE LEGISLATURE HAD IN MIND, WHEN THEY CAPPED THE CHARGES FOR THAT SERVICE. BECAUSE THE SERVICE HASN'T CHANINGTED. IT IS EXACTLY THE -- HASN'T CHANGED TCHL IS EXACTLY THE SAME SERVICE, AFTER RESTRUCTURING, BUT YOU ARE -- HASN'T CHANGED. IT IS EXACTLY THE SAME SERVICE, AFTER RESTRUCTURING, BUT YOU ARE PAYING NOW.

IF THAT IS ON YOUR BILL IN YEAR ONE, THAT THAT IS NOT SUBJECT TO THE PRICE CAP, CORRECT?

RIGHT, BUT THIS SERVICE WAS. THE CONTINUED PROVISION OF TELECOMMUNICATIONS, DESPITE LATE PAYMENT, IS A SERVICE FOR WHICH CHARGES ARE CAPPED.

THAT IS A LEGAL ISSUE, WHERE THAT IS WHAT THE COMMISSION HAS DETERMINED, AND THAT IS WHAT WE ARE BEING ASKED TO SAY, NO, IT IS NOT.

RIGHT, BUT THAT PRESUMES ALL OF BellSouth'S COSTS. COSTS ARE NOT THE ISSUE. IT PRESUMES THE COST OF THE USEFUL MONEY. IT PRESUMES PENALTIES. IT PRESUMES FEES. IT PRESUMES ANYTHING ASSOCIATED WITH THAT SERVICE, BECAUSE NONE OF THAT IS ON THE REGULATORY RADAR SCREEN. ALL OF THAT CONSIDERATION WENT AWAY, UNDER PRICE REGULATION.

THE ONLY THING THE COMMISSION CAN DO, IF THIS IS A NONBASIC TELECOMMUNICATIONS SERVICE, IS JUST SAY YOU CAN'T EXCEED 6% PENT. THEY CAN'T -- 6 PERCENT. THEY CAN'T SAY THERE WAS NO JUSTIFICATION TO RAISE IT AT ALL, SO EVERY YEAR -- TO RAISE IT AT ALL, SO EVERY YEAR BellSouth COMES BACK AND SAY WE ARE GOING TO ADD 6 PERCENT, 6 PERCENT, 6 PERCENT, DOING THAT.

THAT IS THE CRUCIAL POINT OF THE CASE. IF THEY WERE THE RATE OF RETURN, REMEMBER IN BellSouth VERSUS JOHNSON, THEY TRIED TO IMPORT, INTO THE PRICE CAP SYSTEM, A RATE OF RETURN CONCEPT CALLED RATE REGROUPING. THEY DID EXACTLY THE SAME THING. THEY CREATED, FOR THEMSELVES, A REGROUPING EXEMPTION. THE REGROUPINGS EXCEEDED THE CAP, AND THEY SAID, WELL ER. E REGROUPING THE RATES. THAT IS A VALID THING TO DO, FROM REGULATORY STANDPOINT. IN RATE OF RETURN TIMES, IT WAS, BUT THEY HAD NO EXEMPTION TO EXCEED THE CAP.

IF BELL SOUTH SOUTH -- IF BellSouth DECIDES, THIS IS REALLY, BECAUSE THE MARKETPLACE INTEREST IS MUCH MORE THAN THIS AND WE REALLY CAN'T DO THIS, DO THEY HAVE THE OPTION, WITHOUT GOING BACK TO THE PSC, TO JUST SAY WE ARE NOT GOING TO HAVE ANYMORE LATE CHARGE. IF YOUR BILL IS NOT IN ON TIME, WE JUST TERMINATE SERVICE?

THEY COULD HAVE DONE THAT BEFORE THE RATE FREEZES, FOR RATE, FOR --

I MEAN, ELIMINATE THAT --

I DON'T KNOW WHAT THE STATUS IS OF RESCINDING THESE SERVICES AND CHARGES UNDER PRICE REGULATION, BUT THEY COULD HAVE, IF THEY DIDN'T WANT THIS FROZEN, THEY COULD HAVE FILED A TARIFF PRIOR TO PRICE REGULATION AND RESCINDED THEIR TARIFF FOR LATE CHARGES, AND THEN REIMPOSED IT AFTERWARDS, BUT THEY KNEW THAT ALL COST ISSUES, S.U.V. AS REIMBURSE -- THAT ALL COST ISSUES, SUCH AS REBIMYOURSELFING THE COST OF THE MONEY, WOULD -- REIMBURSING THE COST OF THE MONEY, WOULD BE IRRELEVANT, BECAUSE WE CAN'T SAY WE FIND IN 1987 AND THEREFORE YOU ARE OVER RECOVERING IN 1987, THERE FOR WE ARE GOING TO REDUCE THE CAP FOR THE OVER-RECOVERED SERVICES.

LET'S JUST SAY THERE WAS A SERVICE FOR CALL WAITING.

RIGHT.

THAT COST, THAT COSTS WHATEVER IT COSTS.

RIGHT.

IF, IN ANOTHER YEAR THEY DECIDE WE DON'T WANT TO DO CALL WAITING, DOES THAT REQUIRE PSC APPROVAL, WE ARE NOT TALKING ABOUT RAISING IT BUT CAN THEY ELIMINATE THAT SERVICE?

I ASSUME THAT THEY CAN FILE TARIFFS AND ELIMINATE --

WITHOUT PSC APPROVAL.

I JUST DON'T KNOW THE ANSWER ON CANCELING SERVICE UNDER PRICE REGULATION. O KNOW THAT THEY CAN'T EXCEED A 6 PERCENTP, OR OO WHAT THEY HAVE DONE IN THIS CASE, WHICH HAS THE EFFECT OF EXCEEDING THE CAP BY 44 PERCENT, BY REDEFINEING THE, I DON'T WANT TO USE THE WORD BASKET, BECAUSE IT IS CONFUSING IN ANOTHER WAY, BUT BY REDEFINING THE BASKET OF WHAT IS OFFERED IN RETURN FOR THAT CAP. IN OTHER WORDS, IF THE LEGISLATURE CONTEMPLATED THIS, THE LEGISLATURE WOULD HAVE SAID YOU CAN'T RAISE THIS CHARGE FOR LATE PAYMENT, BEYOND 6 PERCENT A YEAR, UNLESS YOU ARE RESTRUCTURING THOSE CHARGES FOR THE PURPOSE OF ADDING A PENALTY OR A FEE OR REIMBURSEMENT OF COSTS THAT YOU BELIEVE HAD BEEN PREVIOUSLY UNDER RECOVERED, BECAUSE ALL OF THOSE ARE COST BASED CLAIMS, AND THEY WERE OUT, AS OF 1996.

IF THEY HAD INITIALLY PUT THIS IN THE BASKET AS SOMETHING OTHER THAN A CHARGE, WOULD THIS BE A DIFFERENT CASE?

IT WOULDN'T BE IN THE BASKET, BUT THE, BUT WHAT IS, SEE, HERE, THAT GETS BACK TO, TAKE THE CHANGE IN 1996. EVERY COMPANY'S SERVICES AND CHARGES WERE FROZEN, AND MAYBE SOME OF THEM WERE IN PERFECT HE CAN WILL IB RIM, AS TO WHAT THE -- EQUILIBRIUM, AS TO WHAT THE COST WERE AND THENX SERVICE, AND NOW BellSouth, UNDER RECOVERY, WHATEVER IT WAS, THAT IS FROZEN FROM TIME FORWARD, AND THEY DON'T HAVE A MECHANISM TO GO BACK AND GET THE CAP LIFTED TO 50 PERCENT BECAUSE THEY BELIEVE THEY UNDER-RECOVERED IN 1987, ANY MORE THAN THE COMMISSION CAN GO BACK TO 1987, IDENTIFY SOME THINGS THAT WE BELIEVE ARE OVER-RECOVERED, AND THEN TELL THEM THEY CAN'T GET THAT 6TEY. WE ARE GOING TO LOWER THE CAP, UNTIL THEY HAVE COME INTO EQUILIBRIUM, WITH THEIR OVER-RECOVERED COSTS BACK IN '87. THE WHOLE THING WENT OFF THE RADAR SCREEN IN 1996, AND THEY WERE EAGER FOR THAT TO HAPPEN. THEY WERE EAGER FOR COST REIMBURSEMENT REGULATION TO9f QRaP(PEAR, BECAUSE THEY DIDN'T WANT THE COMMISSION TO BE ABLE TO SAY YOUR CHARGES ARE SO FAR IN EXCESS OF YOUR COSTS THAT WE ARE GOING MAKE YOU REDUCE YOUR CHARGES. IF WE DON'T KNOW WHAT THE COSTS ARE AND THERE IS NO MECHANISM TO DO THAT, WE CAN'T DO. THAT THAT IS WHY THEY WERE ENTHUSIASTIC ABOUT THAT, SO IT IS IN CONSISTENT OF THEM TO COME BACK, SEVEN YEARS AFTER THE INCEPTION OF PRICE REGULATION, SEVEN YEARS AFTER THE FREEZE FRAME PHOTOGRAPH WAS TAKEN, OF ALL OF THE SERVICES AND CHARGES, AND SAY OOPS! THERE IS PART OF THIS THAT WE NEVER RECOVERED. AND WE HAVE GOT TO UNDO THIS SERVICE, AND INSTEAD OF CONSTRUING IT IN ITS BROADEST SENSE, WE ARE GOING TO SLICE IT UP INTO FRAGMENTS, SO THAT WE CAN TAKE THE FRAGMENTS BACK OUT, PUT THEM BACK ON, AND CHARGE ADDITIONAL MONEY FOR THOSE FRAGMENTS OF THE SERVICE.

UP TO 1996, THE RATES WERE APPROVED BY THE PSC OR ANY INCREASE, BASED ON A CONCEPT OF WHETHER IT WAS A REASONABLE RATE OF RETURN, CORRECT?

RIGHT.

SO PRESUMABLY WHATEVER WAS FROZEN IN 1996 --

-- WAS PRESUMED REASONABLE.

AND THEN BellSouth COULD HAVE FROM 1996 TO 2002, AGAIN, INCREASED ANY OF ITS CHARGES BY 6 PERCENT?

WELL, THE BASKET. THERE IS A BASKET OF MISCELLANEOUS NONBASIC SERVICES, AND IF THEY WANT, THEY CAN LOWER SOME OF THEIR OTHER CHARGES AND PUT THE WHOLE 6 PERCENT INTO THEIR DREAM OF RECOVERING 1987 UNDER-RECOVERIES, BUT IT IS THEIR DREAM. THERE IS NO MECHANISM TO RECOGNIZE ANY OF THESEARG E RADAR SCREEN, UNDER THIS REGULATORY SCHEME, ANY MORE THAN THIS REGULATORY SCHEME COULD RECOGNIZE REGROUPING. IT HAS

NOTHING TO DO WITH PRICE REGULATION. IT REMAINS THEIR DREAM, AND NO ARGUMENT CAN BE PREMISED THAT WOULD EXPUNGE THIS CAP AND EVISCERATE IT, AND IT IS AN ARGUMENT THAT IMPROVES ENTIRELY TOO MUCH. THEY HAVE RESTRUCTURED THEMSELVES OUT OF EVERY3W PRICE CAP, IF THEY COULD. THERE WOULD BE NO PRICE CAP, AND WHAT THE STATUTE SAYS, AND THE STATUTE IS 364.01-3, IT SAYS THAT THE COMMISSION SHALL EXERCISE APPROPRIATE REGULATORY OVERSIGHT DURING THIS TRANSITION FROM MONOPOLY SERVICE TO COMPETITIVE SERVICE, TO PROTECT CUSTOMERS. WHAT WE DID, HERE, IS WE LOOKED AT THIS, AND WE HAD A MECHANISM TO DO. THAT WE HAD AN IRONCLAD CAP. SO WE SAID THEY ARE CHARGING 44 PERCENT ADDITIONAL CHARGE FOR EXACTLY THE SAME OF HIS -- THE SAME SERVICE. IT HAD A CAP CHARGE TO IT, AND THEY HAVE GOT TO REFUND THAT. IF THE CAPS HAD A BIG HOLE IN THEM, WE MIGHT WANT TO PROTECT THE CUSTOMER BUT WE CAN'T.

YOU HAVE GOT THE AMOUNT, BUT WHAT PERCENTAGE OF THE CUSTOMERS ACTUALLY END UP WITH THIS KIND OF A CHARGE IS THERE ANYTHING IN THE RECORD?

THERE PROBABLY IS, AND IN FACT, THAT BRINGS TO MIND SOMETHING THAT I WOULD LIKE TO PRESENT TO THE COURT, AND IT IS REALLY TWO VERY BRIEF STATEMENTS AND TO COMPARE THEM, BECAUSE IT GIVES SOME SENSE OF WHAT WE THINK ARE THE IMPORTANT ELEMENTS HERE. BellSouth, ON PAGE 537 OF THE RECORD, THIS WAS PART OF THE AGENDA TRANSCRIPT, THEIR REPRESENTATIVE SAID SO WHAT WE ARE LOOKING AT, NOW, IS AN INTEREST CHARGE, WHICH FRANKLY IS A DESIRE TO, IF THERE IS A COST ISSUE, WE FRANKLY WOULD PREFER FOR CUSTOMERS TO PAY ON TIME AND NOT INCURE THAT CHARGE, AND WE HAVE BEEN PLEASED TO SEE THAT WE IN FACT, HAVE A POSITIVE TREND IN CUSTOMERS WHO ARE NOW PAYING THEIR BILLS ON TIME, AND THEN ON A 56, COMMISSIONER -- ON 556, COMMISSIONER DEASON SAID I APPRECIATE ALL THE DIALOGUE AND TALK WE HAVE HAD HERE, BUT WHETHER OR NOT IT IS PERMISSION TO PUT THE BURDEN ON CUSTOMERS AND WHETHER OR NOT IT IS GOOD MANAGEMENT POLICY AND WHETHER IT RESTRUCTURES AND MAKES INCENTIVES FOR CUSTOMERS TO PAY THEIR BILL ON TIME, ALL OF THAT, WHILE IMPORTANT, IS NOT IN THAT MODE N THAT MODE, WE ARE LOOKING UNDER THE INTERPRETATION OF THE STATUTE, WHETHER THIS IS A PERMISSIBLE CHARGE, AND WE ARE NOT HERE TO DEBATE THE MERITS OF THIS, OTHER THAN CAN IT BE IMPLEMENTED CONSISTENT WITH THE STATUTE, AND YOU HAVE GOT TO LOOK AT THAT ISSUE, AND I BELIEVE THAT THAT CHARGE IS NOT CONSISTENT WITH THAT STATUTE THAT, THE STAFF'S INTERPRETATION IS CORRECT, AND THE PROBLEM IS YOU CANNOT HAVE A PRICE CAP WHO CH IS A USERRY. YOU EITHER -- PRICE CAP WHICH IS A USERRY. -- A LOSSRY. THIS PRICE CAP AND ALL OF THE PRICE CAPS ARE LOSERY. AND THAT IS WHY THE COMMISSION SHOULD BE AFFIRMED.

CHIEF JUSTICE: THANK YOU.

I AM TRYING TO SEE HOW MUCH TIME I HAVE.

CHIEF JUSTICE: HOW MUCH TIME?

MARSHAL: FOUR MINUTES.

WE ARE NOT OFFERING A SERVICE TO KEEP THESE PEOPLE GOING WHEN THEY DON'T PAY THEIR BILL FOR 1 AND-A-HALF PERCENT. WE CAN'T TURN OFF THEIR SERVICE FOR A WHILE, BECAUSE OF THE COMMISSION'S OWN RULES. PRETTY SOON WE CAN SUSPEND THE SERVICE, BUT THE INTEREST-CARRYING CHARGE KEEPS ON GOING, BUT THE, WE ARE NOT TRYING TO PROVIDE A SERVICE. WE HAVE GOT A BUSINESS. IF THE ONLY THING WE WERE GOING TO GET WAS 1 AND-A-HALF PERCENT FOR PROVIDING A SERVICE, THE SERVICE HAS ALREADY BEEN PROVIDED. NOW, INSOFAR AS THE, THERE WAS MENTION OF INSTALLMENT BILLING, THAT WAS IN THE TARIFF. LIKE ALL THESE OTHER THINGS, AND IF YOU DON'T, IF THE CUSTOMER DOESN'T PAY THE CHARGE ON THAT, LIKE ANY OTHER CHARGE, IF THEY WOULD HAVE ELECTED INSTALLMENT BILLING, THEY

WOULD EVENTUALLY GET CUT OFF. WE CAN ULTIMATELY CUT THEM OFF, BUT THERE IS A WHOLE PERIOD OF TIME YOU HAVE TO GO THROUGH, BECAUSE OF THE RULES, BECAUSE OF THE SUSPENSION, AND THEN THE ULTIMATE TERMINATION. NOW, THERE IS LOTS OF THINGS, JUST BECAUSE --

DO YOU HAVE INSTALLMENT BILLING --

WHAT?

IF YOU CHOOSE INSTALLMENT BILLING --

YEAH.

-- AND YOU ARE LATE WITH THAT THEN THIS OTHER PROVISION WOULD KICK IN, ALSO?

I WOULD ASSUME THAT -- I WOULD ASSUME THAT IT WOULD. OF COURSE, THERE IS A CHARGE FOR INSTALLMENT BILLING, SO I WOULD ASSUME THAT IT WOULD, YEAH. IT IS LIKE ANY OTHER CHARGE FOR SOMETHING ELSE THAT YOU ARE GETTING FROM THE TELEPHONE COMPANY, BUT THE POINT IS NOT EVERY TELEPHONE CHARGE OF THE TELEPHONE COMPANY, UNDER DEREGULATION, IS A, IS SUBJECT TO THE PRICE CAP. IT SIMPLY IS A NONBASIC SERVICE AND NOT ALL THESE CHARGES ARE NOT NONBASIC SERVICE. VOICEMAIL IS NOT A NONBASIC SERVICE. INSIDE WIRING IS A NONBASIC SERVICE. CHARGES FOR THESE. A WHOLE LOT OF THINGS THAT IS, OF COURSE, RELATED TO TELEPHONE COMPANY'S BUSINESS, LIKE THE YELLOW PAGES, I TALKED BEFORE, BUT THEY ARE NOT ALL NONBASIC SERVICES, AND YOU CAN ONLY REGULATE NONBASIC SERVICE, AND THE WHOLE PREMISE OF THEIR ARGUMENT SEEMS TO BE, WELL, IT WAS PUT INTO THE NONSERVICE, THE LATE PAYMENT CHARGE WAS PUT INTO THE NONSERVICE BASKET OR THE NONBASIC SERVICE BASKET IN THE BEGINNING, AND THEREFORE YOU ARE STUCK WITH IT. BUT IF IT IS A NON-- BUT THE ISSUE IS WHETHER IT IS A NONBASIC SERVICE, NOT WHETHER, WHAT IT WAS PUT INTO A BASKET AT THE INITIAL TIME, AND, OF COURSE, THIS IS OUR, I WANT TO EMPHASIZE, AGAIN, THAT OUR INTEREST-CARRYING CHARGE IS BASED ON A DIFFERENT SET OF CHARGES. WE HAVE NEVER SAID THAT THE INTEREST-CARRYING CHARGE IS A NONBASIC SERVICE, AND THEY DIDN'T TRY TO, MR. BELLAK, IN HIS SKILL, DID NOT EVEN ADDRESS THE FACT OF WHETHER THIS WAS A TELECOMMUNICATIONS SERVICE. HE JUST SAID IT GOT IN THE BASIC SERVICE BASKET TO START WITH, AS A LATE PAYMENT CHARGE, AND FOR THERE FOR IT HAS SIMPLY GOT TO BE COVERED NOW, BUT THE ISSUE IS IN THE FINAL ANALYSIS, IS, IS IT OR IS IT NOT A TELECOMMUNICATIONS SERVICE, AND I HAVE GOT TO EMPHASIZE, ONCE AGAIN, THAT NOT EVERY CHARGE OF A TELEPHONE COMPANY JUST SIMPLY BECAUSE IT, THEY WERE INVOLVED IN THE TELEPHONE COMPANY BUSINESS, IS NOT THE INSTALLMENT BILLING IS CERTAINLY THE MOST RECENT EXAMPLE OF THAT, AND UNDER YOUR CASE LAW, IF THERE IS ANY REASONABLE DOUBT OF THE AUTHORITY OF THE COMMISSION TO IMPOSE A PARTICULAR REGULATION, IT HAS TO BE AGAINST THE COMMISSION. AND THIS IS SIMPLY A QUESTION OF LAW FOR THE COURT TO DECIDE, AS TO WHETHER IT IS A TELECOMMUNICATIONS SERVICE OR NOT, AND WE SUBMIT THAT IT IS NOT, AND THAT THE CASE, THE ORDER SHOULD BE REVERSED.

THANK YOU, MR. GRIMES. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THE CASE. THE COURT WILL TAKE A FIVE-MINUTE RECESS AS WE GET READY FOR OUR FINAL CASE FOR THE MORNING.