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Verizon Florida, Inc. v. E. Leon Jacobs, Jr.

MR. CHIEF JUSTICE

GOOD MORNING AND WELCOME TO IT ORAL ARGUMENTS BEFORE THE FLORIDA SUPREME COURT. JUSTICE PARIENTE IS UNABLE TO BE HERE WITH US THIS MORNING, BUT SHE WILL PARTICIPATE IN THESE DECISIONS, AND OF COURSE WE HAVE BOTH VIDEO AND AUDIO, WHICH SHE WILL REVIEW. THE FIRST CASE ON THE ORAL ARGUMENT CALENDAR IS VERIZON VERSUS JACOBS. MR. BARKIN.

MAY IT PLEASE THE COURT MARVIN BARKIN AND MARIE TOMASSI AND KIM CASWELL FOR VERIZON. THIS IS A CASE THAT INVOLVES A BASIC QUESTION OF STATUTORY CONSTRUCTION. WE ARE A LOCAL EXCHANGE TELECOMMUNICATIONS COMPANY. WE SEEK A DECLARATION THAT WE ARE NOT REQUIRED TO PAY REGULATORY ASSESSMENT FEES ON THE YELLOW PAGE ADVERTISING REVENUES OF A SEPARATE COMPANY, VERIZON DIRECTORIES. MR. CHIEF JUSTICE

MR. BARKIN -- JUSTICE HARDING, GO AHEAD.

YOU SAY IT IS A CASE OF STATUTORY CONSTRUCTION, AND MY QUESTION TO YOU IS WHAT DEFERENCE SHOULD WE GIVE TO THE CONSTRUCTION GIVEN BY THE COMMISSION, AND WHAT IS OUR STANDARD OF REVIEW OF THAT DECISION?

YOUR HONOR, STANDARD OF REVIEW IS WHETHER THE COMMISSION'S INTERPRETATION IS CLEARLY ERRONEOUS. IN THIS PARTICULAR INSTANCE, WE SUBMIT THAT THE DECISION IS NOT ENTITLED TO DEFERENCE, FOR A VARIETY OF REASONS, AND THAT THE RISK OF GOING THROUGH WITH THE COURT'S ERDING OF THESE MATTERS BEYOND WHAT IS NEEDED, LET ME JUST GIVE YOU THE BASIC RULES. AN ADMINISTRATIVE RULING OR POLICY CONTRARY TO THE PLAIN OR UNEQUIVOCAL LANGUAGE OF A LEGISLATIVE ACT IS CLEARLY ERRONEOUS. DEFERENCE IS NOT ACCORDED HAD, WHENTHE AGENCY EXCEEDS THE AUTHORITY GRANTED BY THE LEGISLATURE. THAT IS OUR PRINCIPLE PURPOSE. THE COMMISSION HAS SUCH AUTHORITY AS THE LEGISLATURE HAS GRANTED IT. WE WILL SUBMIT, IN THIS CASE, THEYIDT GT THAUTHITY O DO AT TEECLATORY STATEMENT SAYS.

WOULD YOU GIVE US, PLEASE, THE CONNECTION BETWEEN VERIZON INFORMATION SERVICE, VERIZON DIRECT SERVICE, AND VERIZON FLORIDA.

THEY ARE SISTER CORPORATIONS, YOUR HONOR.

I BEG YOUR PARDON?

THEY ARE SISTER CORPORATIONS. COMMON PARENT.

VERIZON DIRECTORIES. THAT IS A CORPORATION IN AND OF ITSELF, AN INDEPENDENT CORPORATION?

IT IS AN INDEPENDENT FREE STANDING CORPORATION. IT HAS THE SAME, IT IS PART OF THE SAME CORPORATE STRUCTURE AS VERIZON FLORIDA INC., WHICH IS THE TELECOMMUNICATIONS COMPANY, BUT AN ENTIRELY SEPARATE FUNCTIONING OPERATING COMPANY.

DO I UNDERSTAND THE MONEY IS MADE THROUGH THE YELLOW PAGES, AS OPPOSED TO THE WHITE PAGES. ISTRR? THAT'S CORRECT, YOUR HONOR. THAT'S CORRECT. THERE MAY BE SOME

SMALL AMOUNTS OF MONEY MADE IN THE WHITE PAGES. WHATEVER IS MADE IN THE WHITE PAGES IS THE MONEY OF VERIZON FLORIDA. IT IS ON THEIR BOOKS. A FEE IS PAID ON IT. WE DON'T CONTEST THAT. HAT E DO CONTESTE THE MONIES MADE ON THE YELLOW PAGES. THOSE MONIES GO TO VERIZON DIRECTORIES NOT TO VERIZON FLORIDA.

SO IT IS THE CORPORATE STRUCTURE THAT IS THE DIFFERENCE DIFFERENCE.

THAT IS CORRECT, YOUR HONOR. ANDHO GETS THE MONEY. ALL THE MONEY. THE MONEY GOES TO VERIZON DIRECTORIES. IT IS NOT BOOKED OR KEPT OR RECEIVED BY VERIZON FLORIDA.

IS THE DIRECTORY A WHOLLY-OWNED SUBSIDIARY?

SUBSIDIARY OF A PARENT CORPORATION, SISTER CORPORATION. MR. CHIEF JUSTICE JUSTICE QUINCE HAD A QUESTION.

I AM SORRY, OUR HON.

YOU DO HAVE TO PAY, OR DO YOU A REGULATORY ASSESSMENT FEE, UNDER 364.336?

WE DO, YOUR HONOR.

YOU DO HAVE TO PAY THAT, AND SO, AND UNDER THAT PARTICULAR STATUTE, YOU HAVE TO PAY YOUR ASSESSMENT, BASED ON THE GROSS OPERATING REVENUES FOR YOUR COMPANY, CORRECT?

THAT'S CORRECT AGAIN, YOUR HONOR.

AND SO WHAT SPECIFICALLY TAKES THE YELLOW PAGES REVENUES OUT OF 364.336?

THE SPECIFIC LANGUAGE OF 336. 336. AND I WILL, IT IS REALLY VERY SHORT AND SWEET, AND I LEAVE OUT THE IRRELEVANT LANGUAGE. EACH TELECOMMUNICATIONS COMPANY LICENSED, SHALL PAY TO THE COMMISSION, A FEE THAT SHALL NOT EXCEED .25 PERCENT ANNUALLY OF ITS GROSS OPERATING REVENUES DERIVED FROM THEIR INTRASTATE BUSINESS, AND WHAT WE CITE, SHORT AND SWEET, IS IF MEANS -- IS "ITS" MEANS ITS. ITS MEANS US. IT IS NOT ANOTHER CORPORATION. IT DIRECTS ITSELF TO A PARTICULAR REGULATED CORPORATIONS, AND THAT IS VERIZON TELECOMMUNICATIONS COMPANY.

IT DOESN'T REALLY COME DOWN TO WHETHER OR NOT YOU HAVE YOUR RATE ALREADY FIXED. I MEAN THAT ARGUMENT, REALLY, ISN'T A REAL PART OF WITH WHETHER OR NOT -- ISN'T A REAL PART OF WHETHER OR NOT THIS ISN'T INCLUDED IN AN ASSESSMENT FEE, IS IT?

WE ARE NO LONGER A RETURN REGULATED RATE COMPANY. SINCE 1986, WE HAVE BEEN WHAT IS CALLED A PRICE CAP COMPANY. THE LEGISLATURE GAVE US THE ALTERNATIVE TO OPT TO BE A PRICE CAP COMPANY, SO NO LONGER ARE OUR CONSUMER RATES SET BY THE PUBLIC SERVICE COMMISSION. INSTEAD WE HAVE AN HISTORIC RATE WHICH WE ARE PERMITTED TO INCREASE BY THE RATE OF INFLATION LESS 1 PERCENT PER YEAR. NO LONGER IS IT EXPENSES AND INCOME, A TRADITIONAL RATE-SETTING COMPANY ANYMORE. IT IS NOT TRADITIONAL, YOUR HONOR. BUT WE THINK WE ARE WHERE THE PSC IS, IN ITS ORIGINAL BOX, BECAUSE THE COMMISSION TAKES THE POSITION OF WHAT USED TO BE THE POSITION. OUR POSITION HAS CHANGED, AND WHAT CHANGED IS WE QUIT BEING A RATE OF RETURN COMPANY, WHERE THERE MIGHT HAVE BEEN SOME PUBLIC FAVOR ARGUMENT, IN TERMS OF GETTING ALL OF THE REVENUE INTO OUR COMPANY AS YOU COULD, BECAUSE THAT WAY WE EASE UP ON THE CONSUMERS, AND WE HAVE GONE TO BEING A PRICE CAP SIX COMPANY.

SO YOUR RATE OF RETURN COMPANY, WERE YOUR YELLOW PAGES REVENUE INCLUDED IN STATUTORY ASSESSMENT?

THEY WERE, YOUR HONOR, BUT 364.037 WAS A STATUTE THAT SPECIFICALLY ALLOWED AND DIRECTED THE IMPUTATION OF THE REVENUES OF THE YELLOW PAGES INTO AN OPERATING COMPANY. NOW, THE STATE MAY SAY SOMETHING BEYOND THAT, BUT THE HEART AND SOLE OF THEIR POSITION, REALLY, IS 364.037, AND 364.037 WAS NEGATED, AS FAR AS WE WERE CONCERNED IN 1996, WHEN WE BECAME A PRICE CAP COMPANY UNDER I THINK, 364.051.

BUT ALTHOUGH YOU ARE A GIANT IN THE TELECOMMUNICATIONS FIELD, UNDER YOUR THEORY, YOU WOULD BE COMPLETELY EXEMPT FROM CHAPTER 364, BECAUSE OF THE PRICE CAP. IS THAT WHERE YOU END UP?

NO, SIR. WE ARE CERTAINLY SUBJECT TO CHAPTER 364 FOR A VARIETY OF PURPOSES, INCLUDING SERVICE REQUIREMENTS, BUT AS FAR AS RATES FIXING IS CONCERNED, WE ARE IN A DIFFERENT CATEGORY NOW. RATE FIXING IS DIFFERENT. THIS IS PRIMARILY A PROBLEM OF SERVICES, BUT IT IS NOT A SERVICE WE ARE REQUIRED TO PROVIDE. ONE OF THE POINTS THAT I WOULD MAKE HERE, AND THE REASON WHY I THINK THERE ARE THREE PRINCIPLE REASONS WHY I THINK THE PSC GOT IT WRONG THIS TIME, RESPECTFULLY. THE FIRST IS THAT THEY SEEM TO THINK THAT WE ARE REQUIRED TO PROVIDE YELLOW PAGES. THEREFORE WE CANNOT BE IN THE POSITION WHERE WE ARE NOT RESPONSIBLE TO THEM FOR FEES ON YELLOW PAGE REVENUES. THAT IS WRONG. ALL THE STATUTES REQUIRE IS THAT WE PROVIDE AN ALPHABETCAL DIRECTORY, WHICH IS WHITE PAGES. WE ARE NOT REQUIRED TO PROVIDE YELLOW PAGES.

BUT IF YOU MAKE NOVENUE OUT OF YOUR WHITE PAGES, YOU MUST, YOU WOULD GO OUT OF BUSINESS, WOULDN'T YOU?

YOUR HONOR, WE HAVE SURVIVED SO FAR. WE WOULD HOPE TO CONTINUE TO DO SO, BUT I UNDERSTAND, BUT THAT IS NOT THE KIND OF CONSIDERATION THAT IS REALLY ON THE TABLE HERE. ON THE TABLE HERE IS THE QUESTION OF WHETHER --

IT IS ON THE TABLE, BECAUSE WE HAVE TO DISCERN WHAT THE INTENT OF THE LEGISLATURE WAS HERE, AND I THINK THAT IS PART AND PARCEL OF IT. I THINK YOU CAN'T IGNORE THE PRACTICALITY OF IT.

YOUR HONOR, I ACKNOWLEDGE THE FORCE OF YOUR HONOR'S COMMENT. LET ME APPROACH IT THIS WAY. FIRST OF ALL, WE THINK THE STATUTE HAS TO BE INTERPRETED ON ITS FACE, AND TO THE EXTENT THAT IT IS CLEAR ON ITS FACE, LEGISLATIVE INTENT IS NOT MATERIAL, BUT TO THE EXTENT THAT LEGISLATIVE INTENT IS MATERIAL, WE THINK THE OPERATIVE STATUTE IS 350.113. AND 350.113, IF I CAN STUMBLE TO IT, I THINK DOES PROVIDE THE RATIONALE FOR THE REGULATORY ASSESSMENT FEE, AND AGAIN I WOULD USE JUST WHAT I THINK IS IRRELEVANT LANGUAGE. SUB3. EACH REGULATED COMPANY, UNDER THE JURISDICTION OF THE COMMISSION, SHALL PAY TOE COMMISSION A FEE, BASED UPON THE GROSS OPERATING REVENUES FOR SUCH PERIOD, SUBJECT TO THE LIMITATIONS OF THIS SUBSECTION. A FEE SHALL, TO THE EXTENT PRACTICABLE, BE RELATED TO THE COST OF REGULATING SUCH TYPE OF REGULATED COMPANY, SO A POINT IS THAT, IF THERE IS A LEGISLATIVE INTENT, IT IS THAT A REGULATED COMPANY SHOULD PAY A FEE DIRECTED TO THE COST OF ITS REGULATION. THE PUBLIC SERVICE COMMISSION DOES NOT REGULATE VERIZON DIRECTORIES. IT DOES NOT REGULATE THE YELLOW PAGES.

SO BASICALLY WHAT YOUR POSITION IS, IS THAT THOSE SERVICES THAT ARE REQUIRED UNDER THE STATUTORY AND REGULATORY SCHEME, COULD NOT BE SPUN OFF, AS THE YELLOW PAGES.

THAT IS ABSOLUTELY RIGHT, YOUR HONOR.

THAT IS ESSENTIALLY WHERE YOU DIVERGE HERE, AND THEY SEEM TO SAY, WELL, YOU DELIVER AND PACKAGE AND PUT EVERYTHING TOGETHER, AND IT IS ALL DONE AS ONE, AND REALLY ALL YOU ARE DOING IS SPINNING OFF THE INCOME NOT REALLY WHAT IS HAPPENING.

YOUR HONOR, WE HAVE NO PRETENSION OF NOT PAYING FEES ON WHAT WE DO, WHAT WE RECEIVE, WHAT OUR REQUIRED SERVICES ARE. WE DO. THERE IS A FORM THAT IS, THEY SENT TO US THAT HAS 40-PLUS CATEGORIES OF FEES, AND WE REPORT ON ALL THOSE 40 CATEGORIES OF FEES. SOME OF THEM, I UNDERSTAND, ARE TARIFF. SOME OF THEM ARE REGULATED, BUT WE REPORT ON THEM. NOW, WHAT WE ARE TALKING ABOUT HERE, WE ARE TALKING ABOUT NONREGULATED SERVICES. THAT IS YELLOW PAGES. WE ARE TALKING ABOUT A NONREGULATED COMPANY. THAT IS VERIZON DIRECTORIES. WE ARE TALKING ABOUT A FEE ON US WITH ARE -- WITH REGARD TO THE SISTER COMPANY. NOW, THIS WAS POSSIBLE, ARGUABLY UNDER THE OLD STATUTE, 364.037, BECAUSE THE STATUTES SPECIFICALLY ALLOWED FOR THE IMPUTATION OF INCOME FROM THE DIRECTORY COMPANY TO THE OPERATING COMPANY. THAT IS NO LONGER POSSIBLE. THAT STATUTE WAS EXPRESSLY RENEGE LATED BY 364.051.

IS IT ALSO YOUR POSITION THAT THE COMMISSION HAS ACTED INCONSISTENTLY WITH OTHER COMPANIES?

IT IS, YOUR HONOR. WHAT IS THAT CASE SCENARIO THAT YOU HAVE BEEN ABLE --

I DON'T HAVE THE RECORD REALLY COMPLETE ON THAT FOR OUR PURPOSES, BUT I THINK THERES AT LEAST A FEELING THAT AN ALTERNATIVE LOCAL EXCHANGE COMPANY, WHICH WOULD HAVE A SEPARATE COMPANY DOING DIRECTORIES, WOULD NOT BE SUBJECT TO THE SAME APPROACH, AND THERE, ALSO, IS AT LEAST THE CASE THAT WE CITED IN OUR SUPPLEMENTAL AUTHORITY, THE LEVEL THREE CASE, IN WHICH THE COMMISSION IN JUST LAST FEW MONTHS SAID, LOOK, WE ARE NOT INTERESTED IN THE SERVICE. WE ARE INTERESTED IN THE REVENUE. IF YOU GET THE REVENUE, THEN A FEE FOLLOWS. SO WHETHER OR NOT IT IS A SERVICE THAT YOU ARE REQUIRED TO PROVIDE IS NOT AS SIGNIFICANT AS THE REVENUE. THAT CASE IS IN OUR SUPPLEMENTAL AUTHORITY. WE THINK THAT THE PSC THERE WAS INCONSISTENT, WITH ITS DECLARATORY STATEMENT IN OUR CASE. THE LONG AND SHORT OF IT S THAT WE THINK THAT WE ARE LIVING IN A TIME WARP. THAT WE ARE CONTINUING TO BE BURDENED WITH A FEE THAT HAD ITS ORIGIN AND ITS PURPOSE AND ITS REASONS IN A DIFFERENT ERA. AND WE THINK THE HISTORICAL PRECEDENT DOES NOT CONTROL. WE THINK THE STATUTES HAVE CHANGED. AND WE THINK THAT THERE IS IN THERE IS -- THERE IS NO OTHER STATUTORY FOR WHAT THEY WANT TO DO. THEY CAN'T CREATE THEIR OWN JURISDICTION, AND THAT IS WHAT THEY HAVE DONE HERE. THEY HAVE TAKEN THE WORD "ITS" ASAP APPLIES TO US AND MADE "ITS" EVERYBODY WHO IS AN AFFILIATED COMPANY. THAT IS BEYOND WHAT THE STATUTES DO, AND OF COURSE THE SUGGION THAT TE LEGISLATURE DIDN'T AMEND 364.336, WHEN THEY PUT IN THE PRICE CAP COMPANIES, IS AN ARGUMENT THAT I HAVE DIFFICULTY FOLLOWING, CAUSE WE WERE NOT SUBJECT TO THE TAX BEFORE. WE PAY THE TAX AS WE ARE REQUIRED TO PAY IT. THERE WAS NOTHING TO AMEND. THERE IS NOTHING IN 364.336 WHICH THE LEGISLATURE WOULD HAVE HAD TO AMEND, TO TAKE THE YELLOW PAGE ADVERTISING OFF OUR BACK, BECAUSE IT WAS NEVER THERE. SO THE LONG AND SHORT OF ALL OF THIS IS THAT WE SUBMIT THAT WE HAVE BEEN PUT IN A SITUATION WHERE WE ARE REQUIRED TO PAY A TAX, WHICH THE YEAR 2000, A FEE, FOR THE YEAR00, WITH SOME \$300,000, MAYBE A LITTLE BIT LESS, AND IT IS AN ONGOING FEE. WE SUBMIT THAT IS BEYOND THE AUTHORITY AND JURISDICTION OF THE PSC AS THE STATUTES NOW STAND. WE THINK THE DECLARATORY STATEMENT MISCONSTRUED 364.336, AND WE WOULD RESPECTFULLY SUBMIT THAT IT SHOULD BE REVERSED AND THE MATTER SET BACK FOR AN PPROPRIATE ORDER BEING ENTERED. THANK THE COURT. MR. CHIEF JUSTICE

MS. MOORE.

THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT. I AM CHRISTIANA MOORE. I REPRESENT

THE FLORIDA PUBLIC SERVICE COMMISSION.

MS. MOORE, WHY ISN'T THIS EQUIVALENT, FOR INTERNAL REVENUE PURPOSES, OF TAX AVOIDANCE? THEY FOUND A LOOPHOLE AND THEY ARE TAKING ADVANTAGE OF IT.

WELL, I THINK --

AND THEY SEEM TO BE LEGALLY WITHIN THE LAW, IF YOU READ IT WORD FOR WORD. THERE SEEMS TO BE SOME LOOPHOLE THERE.

I THINK, IN THE REGULATORY CONTEXT, YOU HAVE TO LOOK AT THE REAL NATURE OF THE RELATIONSHIP THERE AND WHAT THEY ARE DOING. AND THE REGULATORY LAW HOLDS THAT YOU CANNOT EVADE REGULATION BY CONTRACTING AWAY A SERVICE OR REVENUES TO AN UNREGULATED AFFILIATE. THAT IS ALL THAT THIS COURT HELD IN THE HILLER CASE.

BUT IT SEEMS -- GO AHEAD, JUSTICE QUINCE.

THAT IT CARVES OUT THE YELLOW PAGES AS BEING SEPARATE AND APART FROM THE REGULATED ACTIVITIES. THAT SEEMS TO BE, REALLY, THE THRUST OF THIS WHOLE ARGUMENT. IF THIS WERE REGULATED, THEN THAT WOULD BE PART OF THE SERVICE. IT IS REGULATED, AND IT IS PART OF THE WAY THAT WE ARE GOING TO CAP THE FEE, AND I DON'T THINK THE ARGUMENT IS THAT, IF WE WOULD SPIN OFF A REGULATED ACTIVITY THAT WE DO, THAT THAT, ALSO, WOULD BE EXEMPT FROM THE CALCULATIONS. SO IT SEEMS TO ME THAT IS THE HEART AND THE GUTS OF THIS ARGUMENT.

WELL, I THINK YOU HAVE TO LOOK AT THE STATUTE, SECTION 364.336 IS PLAIN, EXCEPT IN LIGHT OF THE FACTS HERE, BUT THE STATUTE SAYS IT DOESN'T LIMIT THE FEES TO REGULATED OR REQUIRED SERVICES. ALL IT SAYS IS GROSS OPERATING REVENUES FROM, DERIVED FROM INTRASTATE BUSINESS. AND THAT IS ITS ONLY LIMITATION, EXCEPT FOR FEES, REVENUES PAID TO ANOTHER TELEPHONE COMPANY, BECAUSE THEY, IN TURN, WOULD BE ASSESSED, BUT THAT IS THE ONLY LIMITATION. IT DOESN'T SAY GROSS OPERATING REVENUES FROM REGULATED OR REQUIRED SERVICES.

BUT ACTUALLY IT SAYS ITS GROSS.

ITS. THAT'S CORRECT.

SO WOULD YOU RESPOND TO MR. BARKIN'S ARGUMENT THAT WE ARE REALLY DEALING WITH WHAT "ITS" MEANS.

I AM SORRY.

WHAT "ITS" MEANS. ISN'T THAT WHAT WE ARE BOILED DOWN TO?

YES, AND THE COMMISSION FOUND THAT IT WAS REASONABLE TO IMPUTE THE REVENUES TO VERIZON, BECAUSE IF YOU LOOK AT THE RELATIONSHIP, THEY ARE AN AFFILIATE, AND TWO RELATED CORPORATIONS, IN THE DIRECTORY SERVICE AND THE FURNISHING OF TELEPHONE SERVICES IS REALLY SEPARATE. YOU WOULDN'T FIND THESE CIRCUMSTANCES OTHERWISE. IF THERE WERE AN INDEPENDENT COMPANY, THE INDEPENDENT COMPANY WOULD CONTRACT WITH THE PUBLISHER. THE INDEPENDENT COMPANY, LIKE VERIZON, BILLS THE REVENUES. THEY BILL FOR ADVERTISING CHARGES. THEY COLLECT THE REVENUES. IF IT WAS AN INDEPENDENT COVER COMPANY, THEY WOULD COLLECT -- IF IT WAS AN INDEPENDENT COMPANY THEY WOULD COLLECT, THEY WOULD PAY FEES ON ALL THOSE REVENUES, BECAUSE THE EXPENSES ARE NOT DEDUCTED AT WHICH TIME IS THE GROSS OPERATING REVENUES. THEY KEEP THE PROFITS, TOO. THEY WOULDN'T PASS THE REVENUES ON TO AN UNRELATED CORPORATION.

BUT THAT IS A DIFFERENT RESPONSE THAN YOU GAVE TO JUSTICE LEWIS, IN THAT IT DOESN'T REALLY COME DOWN TO WHETHER THEY ARE CONTRACTING OUT A REGULATED SERVICE. IT COMES DOWN TO WHETHER "ITS" IS REFERRING TO ALL OF THE UMBRELLA OF COMPANIES WITHIN THE VERIZON. DOESN'T IT? I MEAN, ISN'T THAT WHERE WE ARE REALLY COMING DOWN --

IT IS FROM AND DIRECTLY RELATED TO THE PROVISION OF TELEPHONE SERVICE. THE COMMISSION WOULDN'T ASSESS FEES ON OTHER AFFILIATES' INCOME. THAT IS IF IT WAS UNRELATED TO THE PROVISION OF TELEPHONE SERVICE.

ISN'T THE COMMISSION, HERE, SORT OF IGNORING TWO BARRIERS TO ITS ACTING. ONE IS THAT YOU ARE IGNORING THE CORPORATE STRUCTURE. RIGHT? YOU HAVE ACKNOWLEDGED THAT.

THAT'S CORRECT.

YOU ARE GOING THROUGH THE SECOND ONE IS THAT YOUR OPPONENT IS CORRECT THAT THEY HAVE NO OBLIGATION TO PROVIDE YELLOW PAGES, UNDER THIS SCHEME. IS THAT CORRECT? AND IF THEY HAD NO OBLIGATION TO PROVIDE THOSE SERVICES, THEN HOW IS IT THAT YOU GET TO THE REGULATION AND THE TAXING OF THE SERVICES THAT ARE PROVIDED, THEN IN THOSE YELLOW PAGES, BY A SEPARATE CORPORATION? THAT IS AN AWKWARD -- IT SEEMS TO ME THAT THERE ARE TWO BARRIERS THERE, TO, THAT YOU ARE IGNORING TO GET HERE. THEY ARE NOT OBLIGATED TO PROVIDE YELLOW PAGES.

NO, THEY ARE NOT. AND THE STATUTE DOESN'T LIMIT FEES TO REQUIRED SERVICES OR REGULATED SERVICES, BUT I THINK YOU, ALSO, LOOK AT THE UTE --

THAT COMES BACK TO THE "ITS".

THE LEGISLATURE HAS NEVER LIMITED EITHER THE COLLECTION OF REGULATORY ASSESSMENT FEES OR RATE SETTING TO REVENUES FROM REGULATED SERVICES. THAT IS WHAT --

BUT AREN'T YOU EXPECTING TOO MUCH OUT OF THE LEGISLATURE, HERE, IN TERMS OF HOW DETAILED, WITH THE SHIFT IN THE WAY THAT THE REGULATION --

I DON'T THINK SO. I THINK THE LEGISLATURE WAS WELL AWARE THAT THE COMMISSION CONSIDERED YELLOW PAGE REVENUES. IT HAS NEVER REGULATED THE YELLOW PAGES PER SE. THE COMMISSION WAS WELL AWARE THAT THE COMMISSION -- THE LEGISLATURE WAS WELL AWARE THAT THE COMMISSION CONSIDERED THOSE REVENUES. BACK IN 1983, IT ADOPTED A STATUTE THAT PROVIDED THAT SOME OF THOSE REVENUES WOULD NOW GO TO THE BENEFIT OF THE SHAREHOLDERS, BUT DESPITE THE FACT THAT THE COMMISSION HAS NEVER REGULATED YELLOW PAGES, THOSE REVENUES HAVE ALWAYS BEEN CONSIDERED BOTH FOR REGULATORY ASSESSMENT FEES AND FOR RATE SETTING. NOW, THE LEGISLATURE, NOW TY ARE NOT CONSIDERED FOR RATE SETTING, OF COURSE, FORICE CAPGULATED SERVICES, BUT THERE IS NOTHING THE LEGISLATURE HAS DONE TO CHANGE THE FACT THAT IT IS CONSIDERED FOR REGULATORY ASSESSMENT FEE PURPOSES.

HAS THAT EVER BEEN LITIGATED? HAS THERE EVER BEEN A CHALLENGE TO INCLUDING THE YELLOW PAGES FEE IN THE GROSS REVENUES FOR PURPOSES OF THE ASSESSMENT FEE?

NOT. THE COMMISSION HAD AN ORDER, IN 1989, THAT I HAVE CITED IN MY BRIEF, INVOLVING UNITED, ON JUST THAT SUBJECT, AND UNITED HAD AN AFFILIATE, THE SAME FACTS HERE HE IS ESSENTIALLY.

SO IT IS CLEAR THAT, IF VERIZON WAS, IN FACT, DOING EVERYTHING TO PRODUCE THESE YELLOW PAGES, AND THERE WAS NO SEPARATE COMPANY, THAT THESE FEES WOULD BE INCLUDED, THESE MONIES WOULD BE INCLUDED AS A PART OF THEIR GROSS NUE.

THAT'S CORRECT. WHAT THEY HAVE DONE HERE IS THEY HAVE TAKEN \$190 MILLION AND, BY CONTRACT, BY AN AGREEMENT WITH THE RELATED COMPANY, THEY HAVE LOST THAT \$190 MILLION, ACCORDING TO THEM. AND IN THAT CASE, YOU KNOW, THE LAW AND THE REGULATORY ANALYSIS, NOT JUST A RATE-SETTING ANALYSIS. IT IS A REGULATORY ANALYSIS THAT PERMITS THE COMMISSION TO LOOK BEYOND THE CORPORATE STRUCTURE.

I GUESS I AM STILL HAVING A PROBLEM HERE, WITH THE FACT THAT A COMPANY COULD, IN FACT, DECIDE THEY DON'T WANT TO PROVIDE THAT KIND OF SERVICE ANYMORE AND GET OUT OF THAT PARTICULAR BUSINESS.

AND NOT FURNISH, YOU MEAN NOT FURNISH YELLOW PAGES AT ALL?

AND ISN'T THAT IN ESSENCE WHAT VERIZON HAS DONE HERE, BY ALLOWING SOME OTHER COMPANY TO PROVIDE THE SERVICE, THEY HAVE GOTTEN OUT OF IT.

NO. THERE IS STILL A YELLOW PAGES, VERIZON, TELEPHONE -- YELLOW PAGES, VERIZON, TELEPHONE DIRECTORY PACKAGED WITH VERIZON PURCHASERS, AND THE ADVERTISERS ADVERTISING IN THAT DIRECTORY KNOW THAT IT IS BACKED BY THAT COMPANY AND THAT EVERY CUSTOMER WHO HAS A TELEPHONE IN THAT SERVICE AREA IS GOING TO GET THAT DIRECTORY. YOU SEE, THE SMALLER COMPANIES WHO DO NOT HAVE AN AFFILIATE, ALSO THEY HAVE TO PUBLIC THE DIRECTORY, NUMBER ONE, AND THEY TAKE THAT OPPORTUNITY TO SELL YELLOW PAGES ADVERTISING.

DO THE DIRECTORIES DO YELLOW PAGES, SEPARATE AND APART FROM VERIZON COMMUNICATIONS, I GUESS IT, THIS COMPANY? COULD SOME OTHERS DIRECTORY DO -- COULD VERIZON'S DIRECTORY DO A YELLOW PAGES, WITHOUT ANY ASSOCIATION WITH THE COMPANY THAT IS BEFORE US NOW?

I BELIEVE THEY COULD BUT THEY DON'T AND HISTORICALLY THEY HAVEN'T, AND I THINK THE LEGISLATURE HAS ALWAYS INTENDED TO HAVE AND, IN FACT, AT ONE POINT GAVE THEM AN INCENTIVE TO INCREASE THEIR REVENUES FROM THAT. ON THE FACTS OF THIS CASE, THEY HAVE A TELEPHONE DIRECTORY PACKAGED WITH THE YELLOW PAGES, AND THEY BILL AND COLLECT THOSE REVENUES, \$190 MILLION ANNUALLY.

WHO BILLS AND COLLECTS THEM ANNUALLY.

VERIZON DOES. VERIZON THE TELEPHONE COMPANY BILLS AND COLLECTS AND APPARENTLY BY CONTRACT PASSES THOSE REVENUES ON. AND IT IS NOT CLEAR --

THE BENEFIT OF THE STANDARD OF REVIEW, THE CLEARLY ERRONEOUS AND DEFERENCE TO AN AGENCY, AND JUST LOOKING AT THE LETTER OF THE LAW, WOULDN'T YOU HAVE TO SAY THAT THEY HAVE COMPLIED WITH THE LETTER OF THE LAW, AND THEIR POSITION IS SOUND. NOW, IF WE GET INTO THE CLEARER OWNERSHIP AND THE DEFERENCE AND SO FORTH, WE MIGHT BE INTO ANOTHER.

THAT IS THE STANDARD.

I UNDERSTAND THAT IS THE STANDARD OF REVIEW.

AND THE LITERAL MEANING OF THE STATUTE. THE LITERAL WORDS OF THE STATUTE THE COURT IS NOT REQUIRED TO FOLLOW, WHEN IT LEADS TO AN UNREASONABLE RESULT AND IS INCONSISTENT WITH THE HISTORY OF THE STATUTE. AND I WOULD LIKE TO POINT OUT THAT VERIZON CLAIMS THE COMMISSION'S DECISION VIOLATES THE PURPOSE OF THE STATUTE, BECAUSE THE COMMISSION DOESN'T INCUR ANY COSTS TO REGULATE THE DIRECTORY

ADVERTISING, BUT THE STATUTE VERIZON CITES, SECTION 350.113-SUB3, WHICH THAT IS THE STATUTE APPLICABLE TO ALL INDUSTRIES AND REGULATORY ASSESSMENT FEES, IT SAYS THAT THE FEE SHALL, TO THE EXTENT PRACTICABLE, BE RELATED TO THE COST OF REGULATING SUCH TYPE OF REGULATED COMPANIES. THAT MEANS THE GROUP OF COMPANIES, IT IS EACH INDUSTRY, WHETHER IT BE TELEPHONE, ELECTRIC, GAS, WATER OR WWATER, AND IS NOT PRACTICAL TO TIE THE FEE TO THE COST OF REGULATING A PARTICULAR COMPANY OR EVEN A PARTICULAR SERVICE. OBVIOUSLY THAT COST N Y TREMENDOUSLY, FROM YEAR TO YEAR, AND THE AMOUNT OF REGULATORY ACTIVITY IS NOT ALWAYS, NOT NECESSARILY RELATED TO THE AMOUNT OF REVENUES THE COMPANY GENERATES. MR. CHIEF JUSTICE

JUSTICE SHAW HAD A QUESTION.

THE STATUTE DOESN'T REQUIRE THAT.

IF THERE IS ANOTHER COMPANY IN THE VERIZON FAMILY THAT DID SOMETHING ELSE, OTHER THAN THE YELLOW PAGES, AND VERIZON DERIVED REVENUE FROM THAT ENDEAVOUR OF THIS INDEPENDENT CORPORATION IN THE FAMILY, WOULD SOMEHOW THE COMMISSION HAVE SOME SAY SO OVER THE REVENUE DERIVED FROM THAT?

IF VERIZON THE TELEPHONE COMPANY DERIVED SOME INCOME FROM IT?

RIGHT.

WELL, THEN, IT WOULD BE ITS GROSS OPERATING REVENUES, IF IT WAS FROM INTRASTATE BUSINESS. IF THE TELEPHONE COMPANY, IT IS ALL REVENUES BEFORE EXPENSES.

YOU ARE TRYING TO ASSESS THE ENTIRE \$192 MILLION. IS THAT WHAT YOU SAID?

.15 PERCENT OF THE \$190 MILLION.

BUT YOU ARE TRYING TO DO AN ASSESSMENT ON THE TOTAL OPERATIONS OF VERIZON DIRECTORIES. CORRECT? NOT WHAT VERIZON COMMUNICATIONS MADE, THEIR SHARE OF THE PROFITS OR WHATEVER.

WELL, THE WAY, THAT IS THE WAY THE STATUTE WORKS. IT IS THE GROSS OPERATING REVENUE, AND ALL THE TELEPHONE COMPANIES PAY ON THEIR GROSS OPERATING REVENUES, WHICH IS DEFINED AS BEFORE ANY EXPENSES.

DOESN'T THISEM EYOU ARIN ESSENCE, MAKING VERIZON DIRECTORIESA TELECOMMUNICATIONS COMPANY THAT IS BEING LICENSED BY THE DEPARTMENT?

. NO. IT IS NOT. AND ANY -- NO, IF VERIZON, IF THE DIRECTORY PUBLISHER PUBLISHES DIRECTORIES FOR OTHER COMPANIES, THEN THOSE REVENUES AREN'T SEEN BY THE COMMISSION FROM VERIZON THE TELEPHONE COMPANY. IT IS ONLY VERIZON THE TELEPHONE COMPANY'S DIRECTORY AND THE REVENUES FROM IT. AN INDEPENDENT PUBLISHER. ANOTHER TELEPHONE COMPANY MIGHT CONTRACT WITH INDEPENDENT PUBLISHER. AND THAT INDEPENDENT PUBLISHER, IT MIGHT BE INDEPENDENT, FOR INSTANCE, GTC TELEPHONE COMPANY THAT SERVES WEST OF HERE MIGHT BE TOO SMALL TO HAVE AN AFFILIATE PUBLISHER. THEY WILL CONTRACT WITH AN INDEPENDENT PUSHLISHER, OR THEY MIGHT CONTRACT WITH VERIZON DIRECTORIES, BUT GPC WILL PAY, WILL GET ALL THE REVENUES. THEY, ON THEIR CUSTOMER BILLS, WILL BILL FOR ADVERTISING. THEY COLLECT THAT MONEY. THEY REPORT IT FOR REGULATORY ASSESSMENT FEES, BECAUSE THOSE ARE ITS GROSS OPERATING REVENUES REVENUES.

SO DO YOU HAVE OTHER TELECOMMUNICATIONS COMPANIES WHO CONTRACT OUT TO EITHER A SUBSIDIARY OR AFFILIATE OR SOME INDEPENDENT COMPANY AND INCLUDE THOSE REVENUES AS

A PART OF THEIR GROSS REVENUES FOR PURPOSES OF ASSESSMENT?

ALL OF THEM HAVE, FOR AS LONG AS THERE HAVE BEEN TELEPHONE DIRECTORIES AND REGULATORY ASSESSMENT FEES. BellSouth HAS AN AFFILIATE, AND SOME OTHER COMPANIES MIGHT. BellSouth AND VERIZON HAVE AN AFFILIATE PUBLIC -- PUBLISHER. IT IS PRIMARILY THE SMALLER COMPANIES THAT CONTRACT WITH AN INDEPENDENT PUBLISHER.

ARE THERE ANY RULES OR REGULATIONS THAT OUTLINE THE PROGRAMERS -- THAT OUTLINE THE PARAMETERS OF WHAT MAY OR MAY NOT BELEDS PAT OF A VERIZON BILL THAT COMES TO A SUBSCRIBER?

THERE IS THE REGULATORY ASSESSMENT FEE RULE THAT INCORPORATES, BY REFERENCE, A FORM, AND ON THE FORM, ITSELF, IT LISTS MISCELLANEOUS, UNDER MISCELLANEOUS REVENUES, THE FIRST ONE WAS TO THIS -- THE FIRST ONE LISTED IS DIRECTORY REVENUES, GROSS BILLING, AND THE ACCOUNT FORM AND UNIFORM SYSTEM OF ACCOUNTS. RENT REVENUES, CUSTOMER OPERATIONS AND PLANT OPERATIONS.

I MEAN ON THE BILLING THAT GOES TO THE PARTICULAR SUBSCRIBER. ARE YOU SUBSCRIBING THOSE WITH A PARTICULAR SUBSCRIBER?

I AM REFERRING TO THE FORM THAT IS USED BY THE TELEPHONE COMPANY TO REPORT.

I AM TALKING ABOUT A BILL THAT THEY WOULD SEND OUT. LET'S START WITH. THAT ARE THE PARAMETERS WHAT THEY MAY OR MAY NOT INCLUDE ON THAT BILL?

THE WELL, WE DO HAVE A BILL BILLING RULE THAT SAYS, WELL, I AM NOT CERTAIN WHAT THE BILL WILL LIST IN ADVERTISING CHARGE. IT DOES NOT LIST, TO MY KNOWLEDGE, A SEPARATE REGULATORY ASSESSMENT FEE.

NO. NO. I AM JUST ASKING FOR THE -- FOR EXAMPLE, IF THE SUBSIDIARY HAD DECIDED THAT OUR SUBSCRIBERS WOULD LOVE TO HAVE A REAL ESTATE PUBLICATION, AND WE WILL HAVE THIS PAID FOR BY JUST ADDING IT ON TO YOUR PHONE BILL. ARE THERE PROHIBITIONS AGAINST OTHER KINDS OF SERVICES BEING INCLUDED FOR THE SUBSCRIBERS?

I AM NOT AWARE OF PROHIBITIONS. THE COMMISSION WOULD -- HASN'T ADDRESSED --

BECAUSE A REAL ESTATE PUB INDICATION WOULD NOT BE -- A REAL ESTATE PUBLICATION WOULD NOT BE A REGULATED --

IF THEY BILL FOR ANOTHER PUBLISHER? NO. NO. NO. THAT WOULDN'T BE INCLUDED.

M SAYING IF A SISTER COMPANY DECIDED IF WE ARE GOING TO PUBLISH YELLOW PAGES, WELL, LET'S DO A REAL ESTATE PUBLICATION.

THEY WOULD ONLY PAY A REVENUE FEE FOR WHAT THEY ARE BILLED FOR THAT, A BILLING AND COLLECTING SERVICE.

SO IF THEY BILLED FOR A REAL ESTATE PUBLICATION, IT WOULD BE PART OF ITS GROSS REVENUES, IS WHAT YOU ARE SAYING.

THE AMOUNT THAT THEY ARE BILL BILLING AND THE AMOUNT PROVIDED TO THE TELEPHONE COMPANY. >UTEREU ARE INCLUDING THE ENTIRE AMOUNT. YOARE NOTUSTCEIVING ON THE ENTIRE BILLING, ARE YOU?

NO. BECAUSE IT IS THE TELEPHONE DIRECTORY, AND IT IS REVENUES THAT HAVE TRADITIONALLY

BEEN IN THERE, GROSS OPERATING REVENUES, AND THE LEGISLATURE HASN'T CHANGED T THE LEGISLATURE IS AWARE OF IT. THE LEGISLATURE HAS, AND IN FACT IN 1995, WHEN THEY LISTED FOR PRICE CAP REGULATED COMPANIES, THE STATUTES THAT THE COMPANIES WOULD BE EXCLUDED FROM, THEY LISTED THE YELLOW PAGE REVENUE ONE. FOR RATE-SETTING PURPOSES ONLY THOUGH.

WOULD YOU RESPOND TO THE ASSERTION THAT THE COMMISSION HAS ACTED INCONSISTENTLY IN OTHER APPLICATIONS DEALING WITH AFFILIATES.

VERIZON SAYS THERE IS NOT MUCH IN THE RECORD THERE. THEY MADE THAT ALLEGATION IN THEIR PETITION FOR DECLARATORY STATEMENT. AND THE COMMISSION, IN ITS ORDER SAID THAT THEY ARE NOT AWARE OF THAT HAPPENING. IF IT WAS THE PUBLISHING OF A PHONE DIRECTOR ORTIZING, ADVERTISING REVENUES WOULD BE CONSIDERED IN THAT TELEPHONE COMPANY, SO, NO, I AM NOT AWARE OF ANY INCONSISTENCY.

IS THERE AN ANALOGOUS SITUATION THAT ECONOMIST EXIST THE -- SITUATION THAT EXISTS THAT YOU KNOW OF?

THE STATUTE DOES NOT LIMIT THE FEES, EXCEPT TO INTERSTATE SERVICES, AND THE FACT THAT A SERVICE IS NOT REQUIRED OR NOT REGULATED IS NOTRT. THT DST DETERMINE WHETHER A FEE IS COLLECTED, AND THAT WAS THE HOLDING, THAT WAS THE FINDING OF THE COMMISSION IN THE LEVEL THREE CASE, SO I DON'T SEE THAT AS INCONSISTENT AT ALL. THERE WASN'T AN ISSUE OF THE SUBSIDIARY OR AN AFFILIATE RELATIONSHIP THERE.

IN THE REAL WORLD, IF AN INDEPENDENT COMPANY PUBLISHES THE YELLOW PAGES, TOTALLY SEPARATE FROM THE TELECOMMUNICATIONS COMPANY, WHO DOES THE BILLING? DOES THE TELEPHONE COMPANY BILL THE CUSTOMER, OR DOES THE INDEPENDENT COMPANY BILL THE CUSTOMER?

I THINK THE INDEPENDENT COMPANY, BECAUSE YOU ARE TALKING ABOUT ONE THAT IS NOT RELATED TO THE TELEPHONE COMPANY, SO THE TELEPHONE COMPANY IS ARRANGING TO PUBLISH ITS OWN DIRECTORY, BECAUSE IT IS REQUIRED TO FURNISH A DIRECTORY, A WHITE PAGE DIRECTORY.

A WHITE PAGE DIRECTORY.

RIGHT. MR. CHIEF JUSTICE

YOU ARE OUT OF TIME, MS. MOORE.

I AM SORRY? MR. CHIEF JUSTICE

YOU ARE OUT OF TIME.

THANK YOU. MR. CHIEF JUSTICE

THANK YOU VERY MUCH. MR. BARKIN.

WE ASK THAT YOU AFFIRM THE ORDER AND FIND THAT THE COMMISSION'S ORDER IS NOT ERRONEOUS. MR. CHIEF JUSTICE

THANK YOU.

MAY IT PLEASE THE COURT. LET ME START WITH THE LEVEL THREE CASE. LEVEL THREE AT PAGE 5 MAKES THIS STATEMENT. THE REGULATORY ASSESSMENT FEE STATUTES DO NOT TIE THE FEES

TO SERVICES OF ANY PARTICULAR KIND AT ALL BUT TO A REGULATED COMPANY'S, QUOTE, INTRASTATE BUSINESS, END QUOTE. WE SUBMIT THAT IS IN CONSISTENT WITH THE APPROACH THEY HAVE TAKEN IN THIS CASE, WHICH IS TO TIE THE FEE TO THE YELLOW PAGE SERVICE, WHICH THEY REALLY HAVE NO RIGHT TO REGULATE. THE OTHER MATERIAL IN THE PRESENTATION JUST MADE WAS THE UNITED TELEPHONE PUBLIC SERVICE COMMISSION OF 1989. THAT WAS A CONSENT ORDER. THAT WAS NOT ADJUDICATED OR APPEALED, SO THERE IS REALLY NO COURT PRECEDENT, IF THE COURT PLEASE, THAT HELPS US OUT IN THIS SITUATION. WHAT WE DO TELL THE COURT IS THAT WHAT WE GET FROM BEING A BILLING AND COLLECTING AGENT IS MONEY PURSUANT TO CONTRACT. THAT MONEY IS PART OF OUR REVENUES. WE WILLINGLY PAY A FEE ON IT. NO QUESTION. NO PROBLEM. I, ALSO, WOULD SAY T,IN THE EVENT THAT WE SPUN OFF A REGULATED SERVICE, THAT THE COMPANY TO WHICH WE SPUN IT OFF WOULD BE A REGULATED COMPANY, AND THEREFORE SUBJECT TO A REGULATORY ASSESSMENT FEE, SO YOU CAN'T ESCAPE THE SERVICE OBLIGATIONS BY ANY KIND OF SPIN OFF, AND WE HAVE NOT TRIED TO DO SO. AGAIN, I SAY THERE IS NO STATUTORY AUTHORITY TO SUPPORT IMPUTEATION. PERHAPS THE IRONY OF THIS SITUATION IS THAT 364.037, WHICH WAS A STATUTORY AUTHORITY FOR IMPUTEATION AND RATE OF RETURN, WHICH WE WERE EXEMPTED FROM IN 1995, IT IS NOT THERE ANY MORE. IF IT WERE THERE, MADAM JUSTICE, WE WOULD NOT HAVE HAD TO PAY ON THE FULL AMOUNT OF THE \$190 MILLION, BECAUEPOION IT UNDER 037 WAS NOT SUBJO THE REGULATORY ASSESSMENT FEE. THE POSITION THEY TAKE NOW, WITHOUT THE BENEFIT OF ANY STATUTE AT ALL, IS THAT THE ENTIRE AMOUNT IS SUBJECT TO A REGULATORY ASSESSMENT FEE. I MIGHT, ALSO, SAY THAT THE QUESTION HAS COME UP OF WHETHER, WT OHER DIRECTORY COMPANIES DO. MY UNDERSTANDING IS THAT, IT IS ACROSS THE BOARD, THAT OUR DIRECTORIES COMPANY PUBLISHES FOR OTHERS. THAT THERE ARE OTHER COMPANIES FOR WHOM WE CCT, BILLING COLLECT, EVEN THOUGH THEY ARE NOT VERIZON COMPANIES, AND I BELIEVE JUSTICE SHAW AD AT FFILI COMPANIES. OBVIOUSLY VERIZON HAS A VARIETY OF AFFITEDPAN, INCLUDING, FOR EXAMPLE, A DATA SERVICES COMPANY THAT USED TO BE CALLED GTE DATA SERVICES NOW VERIZON DATA SERVICES. NOBODY MAKES AN EFFORT TO TRIBUTE THOSE REVENUES TO -- TO ATTRIBUTE THOSE REVENUES TO THE OPERATING LOCAL TELECOMMUNICATIONS COMPANY, BUT IT IS AN AFFILIATE, AND IF THERE IS UNBRIDLED DISCRN IF THEY CAN DO WHAT THEY WELL PLEASE, I SUPPOSE THEY COULD REACH OUT TO EVERY MEMBER OF THE REGULATORY FAMILY, BECAUSE IN A REGULATORY SERVICE, WE ALL AGREE THEY DON'T REGULATE YELLOW PAGES, SO I WOULD CONCLUDE HOPEFULLY WHERE I STARTED, WHICH IS TO SAY THIS, THE COMMISSION DELIVES ITS POWER FROM -- DERIVES ITS POWER FROM THE LEGISLATURE. THE COMMISSION CAN'T CREATEITS OWN DIRECTION. THE COURT HAS STATED THAT PSC IS NOT FREE TO ADD WORDS, THAT STATUTORY WORDING, PLAIN LANGUAGE DOESN'T APPLY. THE LEGISLATIVE INTENT IS DETERMINED PRIMARILY FOR THE -- FROM THE LANGUAGE OF THE STATUTE ITSELF. BASICALLY WE WOULD SUBMIT THAT THIS DECLARATORY STATEMENT IS ONE IN WHICH THE COMMISSION RAISED ITSELF BY ITS OWN BOOT STRAPS AND WE SUBMIT THAT IT IS INAPPROPRIATE AND SHOULD BE REVERSED. MR. CHIEF JUSTICE

THANK YOU, MR. BARKIN AND COUNSEL FOR YOUR ASSISTANCE.