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02-2647

CHIEF JUSTICE: THE NEXT CASE ON THE COURT'S DOCKET THIS MORNING IS VERIZON FLORIDA INC. VERSUS JABER. IF COUNSELLOR READY TO PROCEED, YOU MAY PROCEED.

MAY IT PLEASE THE COURT. I AM MARVIN BARKIN, TOGETHER WITH KIM CASWELL AND MARIE TOMASE. REREPRESENT VERIZON FLORIDA. THIS IS ON AN ORDER KNOWN AS UNBUNDLED NETWORK --

CAN YOU HELP WAS THE STANDARD OF REVIEW THAT WE SHOULD APPLY TO THE ISSUES THAT YOU HAVE RAISED IN THIS APPEAL?

YES, YOUR HONOR. THIS IS NOT A TYPICAL RATE OF RETURN OR RATE MAKING CASE. THIS IS A STRANGE, UNUSUAL PROCEEDING. IT IS ONE IN WHICH --

THE FIRST TIME WE HAD AN ADMISSION IN A PSC, STRANGE AND UNUSUAL PROCEEDING.

THIS IS A PROCEEDING UNDER, WE ARE APPLYING FEDERAL LAW. WE ARE APPLYING IT IN THE CONTEXT OF AN APPLICATION BY COMPETITIVE CARRIERS, WHO USE THE FACILITIES OF LOCAL CARRIERS.

HOW MUCH FACT FINDING AND DISCRETION DOES THE COMMISSION HAVE OVER ISSUES LIKE THIS?

I THINK I WOULD ACKNOWLEDGE, YOUR HONOR, THAT ON FACTUAL MATTERS, THE COMMISSION HAS ITS FORM AL -- ITS NORM AT FACT FINDING AND YOUR HONORS WOULD DEFER TO THAT FACT FINDING AND WOULD CARRY A PRESUMPTION OF CORRECTNESS. WHAT WE ARE GOING TO TRY TO BRING TO YOU TODAY, THOUGH, IS A LITTLE BIT DIFFERENT BECAUSE WE ARE GOING TO TALK ABOUT PROCEDURAL PRORTS AND THE ABSENCE OF SUBSTANTIAL EVIDENCE TO SUPPORT THE CONCLUSIONS, AND WE ARE GOING TO TALK ABOUT SITUATIONS IN WHICH THE COMMISSION RELIED ON COMMISSION STAFF FOR MATTERS BEYOND THE PREROGATIVE OF COMMISSION STAFF.

SO YOU HAVE A VARIETY OF ISSUES, DEPENDINGS ON WHAT THE ISSUE S.

YOUR HONOR, I BELIEVE, DEPENDING ON THE ISSUE, I BELIEVE THE DE NOVO STANDARD WOULD BE APPROPRIATE. NOW, AGAINST THIS BACKGROUND THE COURT PLEADS FEDERAL STANDARDS IS WHAT ARE THE COSTS OF VERIZON FOR PROVIDING THE SERVICES THAT ARE IN QUESTION, AND THE COSTS ARE DETERMINED PIE LOOKING AT A NUMBER OF MATTERS OF -- DETERMINED BY LOOKING AT A NUMBER OF MATTERS OF VERIZON'S KNOWN OBLIGATIONS. WE HAVE A PROBLEM AND IT IS A LONG ORDER. WE HAVE A PROBLEM WITH A COUPLE OF AREAS IN THE ORDER WHICH DO HAVE AN EFFECT -- A MATERIAL EFFECT, PERHAPS AS MUCH AS 25 PERCENT OF WHAT THEY CAN BE. FIRST OF ALL, SETTING EXPENSE AND OTHER ITEMS BASED ON STUDIES THAT WERE DONE FOR BellSouth, NOT FOR VERIZON, IN ANOTHER PROCEEDING, WITHOUT THE FACTUAL PREDICATE FOR THOSE PROCEEDINGS BEING BROUGHT TO THE VERIZON HEARING. SECONDLY, WE ARE CONCERNED ABOUT A DETERMINATION OF COST OF CAPITAL.

SET THE STAGE FOR US, IF YOU WOULD, MR. BARKIN, AS TO HOW THIS APPARENTLY DEALS WITH A NUMBER OF COMPANIES. IS THAT CORRECT?

IT STARTED OFF DEALING WITH A NUMBER OF COMPANIES, YOUR HONOR, AND THEN IT GOT BIFURCATED OR SEVERED.

OKAY.

SO ULTIMATELY THE PROCEEDING OF VERIZON WAS A VERIZON-SPECIFIC PROCEEDING, BUT IT FOLLOWED A PROCEEDING WHICH RELATED TO BellSouth AND PERHAPS TO OTHER COMPANIES, TOO.

SPRINT HAD ONE.

YES, SIR. AND THESE ARE SEPARATE PROCEEDINGS.

OKAY. THEY ARE SEPARATE PROCEEDINGS, BUT ARE THE ISSUES WHICH WERE PRESENTED TO THE COMMISSION, THE SAME ISSUES, OR --

THEY ARE SIMILAR ISSUES, YOUR HONOR, BUT THE FACTUAL PREDICATE IS DIFFERENT, BECAUSE IN EACH INSTANCE WE ARE CONCERNED WITH THE COSTS OF THAT PARTICULAR UTILITY. FOR EXAMPLE, IN THE BellSouth MATTER, THE CONCERN WOULD BE WHAT ARE BellSouth'S COSTS. IN THE VERIZON SITUATION, THE QUESTION IS WHAT ARE VERIZON'S COSTS.

COULD YOU HELP ME OUT ON THAT PART. IS IT THE ACTUAL COSTS OR IN THIS FORMULA, ISN'T IT SUPPOSED TO BE, WHEN THEY SAY FORWARD-LOOKING COSTS.

I HAVE TROUBLE WITH THAT, TOO, YOUR HONOR.

SO DOES IT MEAN THAT, IF YOU ARE LESS EFFICIENT THAN BellSouth, YOU GET TO CHARGE MORE, OR DO THEY LOOK AND ARE YOU SUPPOSED TO BECOME EFFICIENT?

I WOULD HOPE IT WOULD NOT BE A MATTER OF EFFICIENCY BUT IT MIGHT WELL BE A MATTER OF PLANT, AGING PLANT, OBSOLESCENCE OF PLANT, PLART OF THE AREA IN WHICH MORE SERVICES ARE RENDERED. -- PECULIARITY OF THE AREA IN WHICH MORE SERVICES ARE RENDERED. LIGHTNING STRIKES, COSTS OF THAT NATURE.

WE CAN LOOK AND SEE, THE FINANCIALS, WHAT HAS BEEN SPENT ON WHAT, AND THAT IS SORT OF, DO WE HAVE THAT HERE, IN TERMS OF WHAT THIS FORMULA IS, IN ORDER FOR THE COMMISSION TO RESOLVE THIS?

IF I UNDERSTAND YOUR HONOR'S QUESTION, I BELIEVE THE RECORD DOES SUBSTANTIATE VERIZON'S VIEW OF WHAT APPROPRIATE COSTS FOR THEM TO BE ENTITLED TO CHARGE WOULD BE, AND, OF COURSE, THE OTHER SIDE OF THAT COIN IS THAT IT IS VERIZON'S VIEW THAT THERE WAS NO RECORD SUPPORT IN OUR PROCEEDING, FOR THE POSITIONS THAT WERE TAKEN BY THE COMMISSION ON THESE SEVERAL VERY IMPORTANT MATTERS. THEY ARE COST OF CAPITOL, APPRECIATION, LOADING FACTORS AND COMPUTATIONAL ERRORS.

GOING TO THE COST OF CAPITOL, IT APPEARS THAT THERE WAS SEVERAL DIFFERENT VIEWS ON THAT. WOULD YOU HELP US A LITTLE BIT AS, IT APPEARS THAT YOUR VIEW, YOU HAD SOME DIFFERENT PERCENTAGES THAT WE WERE LOOKING AT, AND WHY THAT THIS RANK IS NOT A -- THIS RANGE IS NOT A POSSIBILITY. WHAT YOU ARE SAYING IS THAT, AS MATTER OF LAW, VIRTUALLY, THAT YOU HAVE TO ACCEPT "X" NUMBER, AS OPPOSED TO CONSIDERING THIS RANK AINK THAT STAFF CAME UP -- THIS RANGE THAT STAFF CAME UP WITH IN ADDRESSING THAT PARTICULAR REPORT.

LET ME COME BACK TO WHERE WE WERE IN TERMS OF RANGE. MR. VAN DER WEIDE TESTIFIED TO SOMETHING LIKE 12.5 PERCENT. A MR. FORD, I BELIEVE, WHO WAS AN EXPERT FOR, PERHAPS, ONE

OF THE OTHER COMPANIES, TESTIFIED TO A RANGE OF NOT GREATER THAN 8.5 PERCENT. THERE WAS ANOTHER GENTLEMAN, I THINK HIS NAME WAS ANCOMB. MR. ANCOMB TESTIFIED AS TO SEVERAL DIFFERENT RATES IN THE MIDDLE. THE MIDDLE RATE WAS IMPORTANT BECAUSE THEY PICKED 9.63. HE HAD NOT DONE STUDIES FOR COST OF CAPITOL BUT INSTEAD -- OF CAPITAL BUT INSTEAD OF RATES THAT HE PICKED OUT OF OTHER CARRIER'S RATES AND BENCHMARKING THAT THE PSC, ITSELF, SAID SHOULD NOT BE FOLLOWED, SO WHAT WE HAVE HERE IN TERMS OF ACTUAL EVIDENCE, WAS EVIDENCE ON OUR PART, AFTER RATE OF MORE THAN 12 AND-A-HALF PERCENT, RATE ON OPPONENT'S PART OF 8 AND-A-HALF OR LESS AND A FIGURE PICKED IN THE MIDDLE, AND WE SAY THAT CAN'T BE. THAT IS A QUOTIENT VERDICT. THAT IS AN AVERAGEING, A DECISION NOT PREDICATED UPON RECORD TESTIMONY IN THIS PROCEEDING.

SO YOU ARE SAYING THAT THEY SHOULD HAVE PICKED ONE OR THE OTHER OF THESE, BASED ON THE TESTIMONY THAT WAS GIVEN?

BASED UPON THE TESTIMONY, YOUR HONOR, THEY HAD TO PICK SOMETHING THAT WAS SUPPORTED BY TESTIMONY.

SO IF THEY HAD PICKED THE ONE THAT WAS 11 PERCENT, SAY, THAT WOULD HAVE BEEN FINE. WE WOULDN'T BE HERE TODAY, OR ARE YOU SAYING THAT ONLY THE EVIDENCE THAT YOU PRESENTED OF, I BELIEVE, 14.75 PERCENT, IS WHAT THE COMMISSION SHOULD HAVE PICKED.

OUR POSITION IS THAT THEY SHOULD HAVE PICKED A NUMBER THAT WAS SUPPORTED BY TESTIMONY BEFORE THEM. THEY PICKED A NUMBER THAT HAD NO TESTIMONIAL SUPPORT, NO COMPETENT TESTIMONIAL SUPPORT.

DIDN'T MR. DRAPER TESTIFY TO THE PERCENTAGE THAT THE COMMISSION ACTUALLY PICKED?

THAT GETS BACK TO THE HEART OF THE PROBLEM. MR. DRAPER TESTIFIED IN HIS PREFILED, PREHEARING TESTIMONY, THAT HE WAS USING A COMPARATOR OF COMPANIES WITH MORE THAN 75 PERCENT OF THEIR BUSINESS INTEL HE COMMUNICATIONS, AND IN DOING THAT HE -- IN TELECOMMUNICATIONS AND HE CHOSE, IN DOING THAT, NOT TO LOOK AT A MAJOR TELECOMMUNICATIONS COMPANY, AND IN DOING THAT HE LOOKED AT SOMETHING CALLED VALUE LINE. OUR ADMINISTRATION SAID THAT IS WRONG, THAT SPC IS A WELL-ESTABLISHED, BIG TELECOMMUNICATIONS COMPANY, MORE THAN 75 PERCENT OF THEIR REVENUE FROM TELECOMMUNICATIONS.

WHEN YOU SAY MR. DRAPER PICKED, ARE YOU SAYING THAT THEY ARE NOT --

I AM SAYING THAT THESE ARE MR. DRAPER'S INITIAL NUMBERS. MR. DRAPER WAS THEN OPPOSED PRIOR TO THE HEARING AND HE RECALLED AND AGREED THAT SPC SHOULD HAVE BEEN INCLUDED IN HIS COMPARATOR AND SPC WAS NOT INCLUDED.

YOU SAID, IN ANSWER TO JUDGE ANSTEAD'S QUESTION, THAT THIS IS NOT OUR NORMAL PSC APPEAL BECAUSE WE ARE NOT TALKING ABOUT FACTUAL MATTERS, BUT IT SOUNDS TO ME, AND MAYBE YOU CAN PICK OUT FOR US BECAUSE YOU HAVE SEVERAL POINTS, WHAT IS THE LEAST FACTUAL MATTER THAT YOU SAY IS A DE NOVO ISSUE, BECAUSE IT SEEMS THAT, WHETHER YOU PUT SBC IN AND EXCLUDE AT&T, THAT, I MEAN, THAT IS NOT A MATTER OF LAW TYPE OF SITUATION THAT WE WOULD HAVE THE ABILITY TO REVIEW DE NOVO.

WELL, YOUR HONOR, I BELIEVE THAT THE DRAPER MATTER AND COST OF CAPITAL IS CLEAR, BUT SPECIFICALLY MY BEST CASE IS THE APPRECIATION LOADING FACTORS CASE, AND BOTH APPRECIATION AND LOADING FACTORS, THE COMMISSION CHOSE TO GO TO BellSouth'S FINAL LINE, BOTTOM LINE NUMBER AND USED THAT BECAUSE THEY CLEARLY WANTED TO BRING US IN LINE WITH BellSouth, WITHOUT EVIDENCE IN THE RECORD TO SUPPORT A COMPARISON BETWEEN OUR COMES -- OUR COSTS --

ONE OF THEIR ARGUMENTS IS THAT YOU DIDN'T PROVIDE SUFFICIENT EVIDENCE ON YOUR OWN, CONCERNING COSTS OF DEPRECIATION. DO YOU DISPUTE THAT?

WE DO, YOUR HONOR AND BROUGHT IN SUBSTANTIAL EVIDENCE THAT IS WHAT IS CALLED GAP COMPLIANT. WE WERE OFFERING DEPRECIATION LINES THAT WERE OUR OWN. THAT IS OUR -- THAT IS ON OUR BOOKS. THAT IS WHAT WE LIVE BY, AND IT IS ESSENTIAL FOR US, IN TERMS OF WHAT DEPRECIATION SHOULD BE. NOW, THE COMMISSION ALSO SAYS THAT SOMEHOW WE HAD A BURDEN TO DO MORE THAN THAT, AND WE DIFFER ON THAT.

ISN'T THAT GETTING BACK TO THE ISSUE TO WHETHER YOU CAN ACTUALLY LOOK AT YOUR ACTUAL COMESS HAD IN THE PAST, OR WHETHER, IN SETTING THIS RATE ACCORDING TO THIS TELRIC FORMULA, THAT THERE IS EXTRAPOLATION ABOUT THE FUTURE.

WELL, I THINK THAT IS HARD TO DEAL WITH THE FUTURE, WITHOUT DEALING WITH THE PAST.

WELL, BUT IT CAN'T JUST BE THE PAST, OR ELSE WE WOULD BE SAYING YOU LOOK AT WHAT YOUR ACTUAL COSTS ARE AND THAT IS THE RATE, AND YOU KNOW, IN TERMS OF SAYING THAT THIS IS A FORMULA THAT THE FCC REQUIRES, HOW DOES A AN AGENCY DECIDE, IN LOOKING AT THE FUTURE, EXCEPT TO MAKE SOME EXTRAPOLATION ABOUT LOOKING AT COMPARATIVE COMPANIES?

WELL, THIS IS THE FORMULA THAT WE LIVE BY GOING FORWARD. THESE ARE OUR GAP DEPRECIATION LINES GOING FORWARD. THEY ARE NOT JUST HISTORICAL.

NOW, ARE THERE ALTERNATIVE METHODS, THOUGH, IN THE ORER, THEY MENTIONED THAT THERE -- IN THE ORDER, THEY MENTIONED THAT THERE IS AN ALTERNATIVE FORMULA BY ALTC THAT IS PROPOSED AND THEY CHOSE TO GO THE ALTERNATIVE FORMULA.

THEY CHOSE TO GO THE BellSouth ROUTE, WHICH I DON'T THINK IS VIABLE, OF COURSE, BUT IT IS ONE THEY USED. I DON'T THINK THERE IS ANYTHING ON THE TABLE THAT WOULD JUSTIFY WHAT TO USE GOING FORWARD.

YOU SAY BellSouth. ARE THEY JUST USING BellSouth'S INDIVIDUAL NUMBERS OR THE DEPRECIATION INPUTS, THE SAME FORMULA AS THEY USED IN BellSouth?

THEY USED BellSouth'S LINES, WHATEVER THEY MAY HAVE BEEN, AND MY UNDERSTANDING IS THEY CAME TO THE SAME CONCLUSION AS THEY WOULD HAVE COME TO, IF BellSouth'S EVIDENCE WOULD HAVE BEEN OUR EVIDENCE, SO THEY BASICALLY TAILORED THE FORMULA TO GO WITH THE BellSouth'S RESULTS.

DID THEY USE BellSouth NUMBERS AND THE BellSouth FORMULA OR TAILOR IT?

YOUR HONOR, I DON'T HAVE THAT IN MIND. I AM SORRY I CAN'T HELP YOU. I THINK IT IS ESTABLISHED BY THE RECORD REFERENCES IN OUR BRIEF, BUT I DON'T HAVE IT.

WHEN YOU SAY THEY USED BellSouth'S LIVES, YOU SAY THAT IF A BUILDING WAS DEPRECIATED AT FOR YEARS IN BellSouth -- AT 30 YEARS IN BellSouth, IT WOULD BE DEPRECIATED AT 30 YEARS, AND IF A PLANT WAS DEPRECIATED AT 15 YEARS FOR BellSouth, IT WOULD BE DEPRECIATED AT 15 YEARS IN THIS CASE?

IT WOULD BE DISADD VAN BE STAGE US TO US, IN -- DISADVANTAGEOUS TO US. OUR EXPENSES WOULD BE HIGHER THAT WAY.

I AM TRYING TO CLARIFY WHAT YOU MEAN BY LIVES, IN BellSouth LIVES.

THE PERIOD OF TIME DURING WHICH AN ASSET WOULD BE USABLE.

RIGHT.

AND HAVE UTILITY. I THINK.

ARE YOU GOING TO ADDRESS THE, HOW, ARE YOU GOING TO GET BACK UP TO DISCUSS THE CROSS APPEAL THAT AT&T HAS BROUGHT?

YOUR HONOR, WE WILL LEAVE THAT TO THE PUBLIC SERVICE COMMISSION. I WOULD SAY THAT WE HAVE ATTEMPTED TO DISTINGUISH WHAT IS ON THE TABLE FOR BellSouth, EXCUSE ME, WHAT IS ON THE TABLE FOR THE AT&T APPEAL AND WHAT IS ON THE TABLE FOR US. WE HONOR THE CONCEPT ON FACTUAL MATTERS, THAT THIS COURT PAYS DEFERENCE TO THE PSC.

ONLY REASON I SAY IS BECAUSE AT&T BRINGS UP THAT YOU WEREN'T USING THE MOST EFFICIENT TECHNOLOGY AND THAT THEY IMPROPERLY USED THIS DIGITAL LOOP CARRIER, WHATEVER, TECHNOLOGY, WHATEVER THAT IS, AND THAT, YOU KNOW, SO, GOING BACK TO LOOKING AT THE, DO WE LOOK AT THE OVERALL FAIRNESS OF HOW THIS IS SET? THEY GAVE YOU THE BENEFIT OF SOME DOUBTS BUT OVERALL, IT LOOKS LIKE A FAIR RATE?

YOUR HONOR, I THINK THE QUESTION, THE QUESTION OF REASONABLENESS IS WHAT IS A REASONABLE WAY TO VIEW WHAT WAS ON THE RECORD, BUT THE QUESTION OF THE STANDARD IS A QUESTION OF A SPECIFIC RULE AND STATUTE STANDARD, WHICH IS OUR COSTS AND SOME REASONABLE FACTOR OF PROFIT, BUT BASICALLY OUR COSTS, AND IT IS NOT SOMEBODY ELSE'S COSTS, IT IS NOT OBJECTIVE COSTS. AS I UNDERSTAND IT, IT OUR COSTS.

CHIEF JUSTICE: THE MARSHAL HAS REMINDED US THAT YOU ARE IN YOUR REBUTTAL TIME, IF YOU WANT TO PAUSE.

I THANK THE COURT.

CHIEF JUSTICE: GOOD MORNING.

GOOD MORNING. MAY IT PLEASE THE COURT. EXCUSE ME. I AM FLOYD SELF OF THE MESSER CAPARELLO AND SELF LAW FIRM HERE, IN TALLAHASSEE, AND I AM HIM REPRESENTING THE CROSS APPELLANT, AT&T. I WILL ADDRESS TWO MATTERS. FIRST, AND VERY BRIEFLY, WE WILL REST ON OUR BRIEF AND THE PUBLIC SERVICE COMMISSION BRIEF, WITH RESPECT TO THE ISSUES THAT VARIETIESIZE ONE HAS RAISED IN ITS APPEAL, AND INSTEAD I WILL FOCUS MY DISCUSSION ON THE ISSUES RAISED BY THE AT&T CROSS APPEAL.

COULD YOU JUST, THE GENERAL QUESTION, ARE WE LOOKING AT OBJECTIVE COSTS OR ACTUAL COSTS HAD, IN THIS TYPE OF A RATE SET SOMETHING.

THAT IS AN EXCELLENT QUESTION. THE UNITED STATES SUPREME COURT HAS AFFIRMED THE FCC'S RULES, WHICH SAID THAT THE COMMISSION IS TO LOOK AT HYPOTHETICAL COSTS, NOT ACTUAL COSTS. THE EIGHTH CIRCUIT COURT OF APPEALS HAD ORIGINALLY REVERSED THE FCC'S DETERMINATION OF THESE HYPOTHETICAL COSTS, WHICH THE FCC ADOPTED THOSE RULES, IN ORDER TO IMPLEMENT THE FORWARD COST REQUIREMENTS OF THE 1996 TELECOMMUNICATIONS ACT.

SO WHAT HAPPENS, IF A CARRIER IS NOT USING THE MOST EFFICIENT TECHNOLOGY, AND THEN THE IDEA IS THE CARRIER THEN, IF THEY HAVE TO USE THE MOST EFFICIENT TECH KNOWLEDGE, DO YOU THEN FACTOR IN THE FACT THAT THEY HAVE TO ACQUIRE THAT TECHNOLOGY AND RECONFIGURE YOUR THEIR LINES?

NO, MA'AM. WHAT YOU ARE TRYING TO DO ON THIS IS SET THE PRICES THAT COMPANIES LIKE AT&T PAY COMPANIES LIKE VERIZON, TO UTILIZE CERTAIN OF THE NETWORK COMPONENTS THAT VERIZON HAS. AT&T, MCI, KMC, ALL OF THE OTHER COMPETITIVE LOCAL COMPANIES, ARE NOT GOING TO BUILD FACILITIES TO EVERY HOUSE AND EVERY BUSINESS IN AMERICA. NO ONE CAN DO THAT. SO YOU PAY THE INCUMBENT, IN THIS CASE VERIZON, FOR THE USE OF SOME OF THE PIECE PARTS OF THE NETWORK, IN PARTICULAR THAT LOOP THAT GOES FROM THE CENTRAL OFFICE TO YOUR HOUSE OR TO YOUR BUSINESS. THE STATUTE, THE FEDERAL STATUTE, REQUIRES THAT THE --

THEY ARE REQUIRED TO DO THIS, EVEN THOUGH IF THEY ARE UTILIZING ALL OF THEIR FACILITIES, THEY ARE REQUIRED TO GIVE SOMETHING UP.

THAT'S CORRECT. THAT'S CORRECT. AND THE FCC HAS SAID, IN ORDER TO IMPLEMENT THE FEDERAL STATUTES COST REQUIREMENT, THE WAY THAT THE STATES, THE PUBLIC SERVICE COMMISSION OF FLORIDA, ARE TO SET THOSE RATES, ARE BASED UPON FORWARD LOOKING COSTS WHICH THEY DEFINE AS A HYPOTHETICAL NETWORK NOT AN ACTUAL NETWORK. IT DOES NOT MEAN --

BUT THEY ARE ENTITLED TO A PROFIT.

YES. THAT'S CORRECT.

SO, AGAIN, IF THEY HAVE OUTMODED TECHNOLOGY, AND YOU DON'T CONFIGURE IN SOMETHING TO ALLOW THEM TO USE SOME OF THAT TECHNOLOGY, THEN HOW DOES THAT WORK? AM I NOT MAKING MYSELF CLEAR?

YES. YOU ARE MAKING YOURSELF VERY CLEAR. THE PROBLEM HERE IS, WHEN WE SET THE PRICES, YOU DON'T LOOK AT WHAT THEIR EMBEDDED OR EXISTING COSTS ARE. YOU SIMPLY LOOK AND SAY GIVEN THE PRESENT LOCATION OF THE WIRE CENTERS, WHAT IS THE MOST EFFICIENT TECHNOLOGY TO PUT THERE AND IN THIS CASE, IT IS VERY CLEAR FROM THE RECORD, THAT IT IS NOT THE GTD-5 SWITCH THESE VERIZON HAS, AND SO THE PROBLEM THAT THE COMMISSION HAD WAS THAT THEY ACCEPTED THOSE SWITCHES, WHICH VERIZON ADMITTED, IF THEY WERE BUILDING THAT NETWORK TODAY, THEY WOULD NOT PUT THOSE IN. ON A GOING FORWARD BASIS, THEY WOULDN'T USE THAT, AND THAT IS WHY IT IS A HYPOTHETICAL. IT IS NOT SUPPOSED TO REFLECT WHAT THEIR ACTUAL COSTS ARE.

BUT IF THEY WERE TO USE THE MOST EFFICIENT TECHNOLOGY, THEN THEY WOULD HAVE TO TAKE OUT THESE SWITCHES AND PUT THE OTHER SWITCHES IN? IS THAT WHAT YOUR POSITION IS?

THAT WOULD BE TRUE IN REALITY BUT THAT IS NOT WHAT IS REQUIRED FOR SETTING THE PRICE THAT WE PAY VERIZON.

THEN THEY ARE PENALIZED FOR NOT BEING AS EFFICIENT.

THAT WOULD BE CORRECT. YES. EFFECTIVELY. BUT THE UNITED STATES --

HOW DO YOU ACHIEVE A FORMULA THAT STRIKES A BALANCE THEN, AS FAR AS WHAT THESE GOALS ARE AND WHAT FORMULA WAS INVOLVED HERE, THAT THE COMMISSION COULD UTILIZE?

WELL, AGAIN --

IS IT A NOTICEABLE METHOD? BECAUSE YOU ARE -- IS IT A NOTICEABLE METHOD? BECAUSE -- IS IT A KNOWABLE AUTHORITY? BECAUSE THE COMMISSION, THEY CAN MIX AND MATCH THE TECHNOLOGY IN ORDER TO BECOME MORE EFFICIENT, SO HELP US. SURELY IT IS NOT A STANDARDLESS.

AGAIN, IT IS A HYPOTHETICAL STANDARD, AND THEY VERY MUCH CAN MIX AND MATCH, BECAUSE THEY ARE NOT TRYING TO PAY VERIZON WHAT ITS ACTUAL COSTS TODAY ARE, BECAUSE THOSE ARE BASED UPON 100 YEARS OF THE DEVELOPMENT OF THEIR NETWORK.

WHAT IS THE FOCUS OF YOUR CROSS APPEAL?

THE FOCUS OF OUR APPEAL IS THE COMMISSION, IN ITS ORDER, ACKNOWLEDGES THAT MR. TUCHECK, THE WITNESS FOR VERIZON, USED ACTUAL COSTS, THAT THE MOD HE WILL THAT THEY -- THAT THE MODEL THEY PRESENTED WAS A MODEL BASED ON ACTUAL PRESENT COSTS, AND THAT DOES NOT MEET THE STANDARD.

NOW, THE MARSHAL IS TRYING TO FOLLOW THE TIME SCHEDULE THAT YOU GAVE TO HIM, AND THAT IS WHY HE HAS TURNED ON THE LIGHT, IT THAT YOU HAVE THE USED, SO YOU CAN RESPOND TO THE QUESTION.

SURE.

IF WE ACCEPTED YOUR POSITION THAT THEY IMPROPERLY USED THIS DIGITAL LOOP CARRIER TECHNOLOGY, WHAT IS THE REMEDY? DID THE WHOLE THING, DO WE, THE WHOLE THING GETS SET ASIDE AND WE START --

YES, MA'AM.

-- THE PROCESS AGAIN?

YOU SEND IT BACK TO THE COMMISSION. THEY HAVE TO CONDUCT A NEW PROCEEDING THAT RESULTS IN TELRIC COMPLIANCE, THAT IS THE STANDARD.

THEN THAT WOULD MAKE MR. BARKIN HAPPY, IF HE COULD PUT ON HIS NEW --

IN THE INTERIM, YES, THEN THE COMMISSION USES FCC RATES.

CAN I ASK YOU ONE QUESTION, YOU ARE TALKING ABOUT THE HYPOTHETICAL COSTS, HOW DOES THAT RELATE TO THE ARGUMENT THAT IS BEING MADE ON THE COST OF CAPITAL, IN THAT YOU MAY HAVE DIFFERENT OPINIONS BUT YOU CAN'T JUST PICK ONE OUT OF THE AIR, THAT YOU CAN'T SOMEHOW MAGICALLY COME UP WITH A NUMBER, THAT YOU HAVE TO WORK WITH SOMETHING. HOW DOES THE ARGUMENT, YOUR STATEMENT THAT WE HAVE TO COME UP WITH HYPOTHETICALS, FIT INTO THAT ARGUMENT?

IT IS A LITTLE DIFFERENT, THE COST OF CAPITAL VERSUS THE EQUIPMENT THAT YOU ARE DEPLOYING IN THE NETWORK, WITH -- AND WITH RESPECT TO THE COST OF CAPITAL WITHIN THE NETWORK, THEY HAVE THE RANGE OF AUTHORITY TO PICK SOMETHING. WITH RESPECT TO THE SWITCHES AND THE DIGITAL LOOP CARRIERS, THE EQUIPMENT THAT IS OUT IN THE NETWORK, REALLY, IT IS UP TO THE PARTIES TO PRESENT WHAT THEY BELIEVE IS THE MOST EFFICIENT EQUIPMENT FOR THAT MODEL TO USE.

SO THAT DOESN'T APPLY, THEN, TO COST OF CAPITAL ANALYSIS, IS WHAT YOU ARE SAYING.

THAT'S CORRECT.

IT IS A VERY DIFFERENT KIND OF ISSUE. THANK YOU, YOUR HONORS.

CHIEF JUSTICE: GOOD MORNING.

GOOD MORNING. MAY IT PLEASE THE COURT. I AM DAVID SMITH, REPRESENTING THE FLORIDA

PUBLIC SERVICE COMMISSION.

LET ME ASK YOU TO COME BACK AND SORT OF ADDRESS JUSTICE WELLS'S FUNDAMENTAL QUESTION THAT HE ASKED AT THE OUT SET. YOU KNOW, A LOT OF PEOPLE SAY THAT ONE OF THE GREAT THINGS ABOUT HAVING A JURY SYSTEM IS THAT IT REALLY REQUIRES LAWYERS TO BREAK THINGS DOWN AND EXPLAIN THEM VERY SIMPLY. SO THAT THE JURY WILL UNDERSTAND AND THAT WE HAVE GOT THE TRUCK DRIVER AND AN ATOMIC SCIENTIST ON THE JURY. WE DON'T HAVE ANY ATOMIC SCIENTISTS ON THE PANEL TODAY, AT THIS COURT, SO WOULD YOU START BACK WITH JUSTICE WELLS'S QUESTION, AND TRY TO FRAME THE ISSUES THAT HAVE BEEN RAISED HERE, BOTH IN THE CROSS APPEAL AND IN THE MAIN APPEAL, AND EXPLAIN WHAT THE COMMISSION WAS ABOUT, HERE, AND WHAT GUIDELINES THE COMMISSION WAS ENTITLED TO UTILIZE, IN RESOLVING THESE ISSUES.

YOUR HONOR, I WILL DO MY BEST TO ATTEMPT THAT.

TAKE ME AS THE TRUCK DRIVER.

OKAY. THE FCC HAS DETERMINED THAT, IN ORDER TO ESTABLISH THE COST OF, WHOLESAL COST FOR LEASED ELEMENTS OF THE INCUMBENT TELECOMMUNICATIONS COMPANY'S NETWORK, THAT THE METHODOLOGY THAT SHOULD BE USED, IS A METHODOLOGY WHICH THEY HAVE CALLED THE TOTAL ELEMENT LONG-RUN INCREMENTAL COSTING METHOD, WHICH LOOKS AT WHAT A, IF A TELEPHONE COMPANY WERE BUILDING THAT NETWORK TODAY, WHAT THAT COMPANY WOULD UTILIZE, IN TERMS OF THE MOST EFFICIENT TECHNOLOGY AND THE LEAST COST TECHNOLOGY AVAILABLE. THE IDEA IS TO GET AWAY FROM THE EMBEDDED COST.

THIS IS A HYPOTHETICAL.

THIS IS HYPOTHETICAL, BUT IT IS TIED TO REALITY, IN THE SENSE THAT THE METHODOLOGY -- THE TOWERING METHODOLOGY -- A FUNDAMENTAL PRINCIPLE SAYS THAT, WHEN YOU ARE GOING TO PERFORM THIS KIND OF ANALYSIS, YOU TAKE ONLY THE EXISTING WIRE CENTER OR THE CENTRAL OFFICES OF THE TELEPHONE COMPANY, AS EXISTING TODAY, AND THE MODELS THAT PERFORM THE TELRIC EXERCISE -- THE TELRIC EXERCISE, YOU HAVE THE CENTRAL OFFICES LOCATED AND PHYSICAL EXISTENCE, NUMBER OF LINES, NUMBER OF CUSTOMERS THAT ARE THERE TODAY, AND THEN IT MODELS THE NETWORK OUT TO THE EXISTING CUSTOMERS, USING THE MOST EFFICIENT TECHNOLOGY AVAILABLE, MOST UP-TO-DATE TYPES OF SWITCHING, THE MOST UP-TO-DATE TYPES OF DEVICES, LIKE THIS DLC THING WE TALKED B.

SO IN ESSENCE, WHAT HAPPENS IS THE RATE IS SET, BASED ON A VERY EFFICIENT SYSTEM, BUT YOU END UP WITH A SYSTEM THAT REALLY ISN'T THAT EFFICIENT, AND YOU CAN'T ADD IN THE COST TO MAKE IT THAT EFFICIENT. ISN'T THAT WHAT ENDS UP HAPPENING HERE?

WELL, THE IDEA IS TO DESIGN THE SYSTEM FOR THAT TELEPHONE COMPANY, WHICH WOULD REFLECT ITS MOST EFFICIENT, LEAST COST SYSTEM IN THE FUTURE, AND I AM NOT SURE I QUITE UNDERSTAND YOUR QUESTION.

WELL, AS I UNDERSTOOD WHAT YOU ARE SAYING, IS THAT YOU HAVE TO BASE THESE RATES ON WHAT IS, WOULD BE THE MOST EFFICIENT SYSTEM, CORRECT, THE NEW TECHNOLOGY OR NEWER TECHNOLOGY. YET, IF THE SYSTEM THAT YOU ARE LOOKING AT HAS OLDER TECHNOLOGY, YOU CANNOT FACTOR IN THE COST OF MAKING THAT SYSTEM THE NEWER SYSTEM. IS THAT WHAT YOU SAY SOMETHING.

THAT IS THE IDEA, AND THE ARGUMENT IN ALL OF THESE, I MEAN, THIS OPERATION OF DETERMINING TELRIC COSTS, IS PERFORMED BY ENORMOUSLY COMPLEX COMPUTER MODELS, AND THE ARGUMENT HAS BEEN, FROM DAY ONE, BETWEEN THE INCUMBENT COMPANIES AND THE COMPETITORS, ABOUT WHETHER OR NOT THE INPUTS INTO THOSE MODELS REFLECT THEIR

ACTUAL EXISTING NET PORTIONS, OR WHETHER THEY ARE REALLY GEARED TOWARD THE MOST EFFICIENT, LEAST COST NETWORK, LOOKING ON A FORWARD-LOOKING BASIS, SO THAT IS THE BATTLE ALWAYS, AND THAT IS WHY AT&T IS UNHAPPY. THEY ARE SAYING THIS IS REFLECTING EMBEDDED COSTS, NETWORK, THAT LOOKS LIKE THEIR OLD NETWORK AND THE COSTS ASSOCIATED WITH IT, AND THAT IS A DLC.

SO DOES THE COMMISSION THEN, SET ABOUT TO SET UP A PROCEDURE OR STANDARDS BY WHICH IT WAS GOING TO MAKE THESE DETERMINATIONS, IN RESPECT TO ALL OF THESE CARRIERS? SOMETHING IT WAS GOING TO BE A UNIFORM THING, ACROSS THE SPECTRUM?

YES, SIR, YOUR HONOR, BACK IN, I GUESS, 1998 ORIGINALLY, A GROUP OF THE COMPETITORS CAME TO THE COMMISSION AND SAID, LOOK, WE ARE HAVING TROUBLE IMPLEMENTING THESE INTERCONNECTION AGREEMENTS THAT WE HAVE. THE RATES ARE NOT UNIFORM. WE WANT YOU TO INITIATE A PROCEEDING FOR ALL OF THE LOCAL, LARGE LOCAL INCUMBENT COMPANIES, BellSouth, VERIZON AND SPRINT, AND DETERMINE, ONCE AND FOR ALL, WHAT THEIR FORWARD-LOOKING WHOLESALE COSTS SHOULD BE, SO WE CAN GO FORWARD AND HAVE A REASONABLE BASIS, A CERTAIN BASIS TO ENTER INTO THESE AGREEMENTS, AND THAT COMPETITION WILL BE FOSTERED BY HAVING WHOLESALE RATES THAT REALLY IMITATE THE COMPETITIVE ENVIRONMENT THAT WOULD EXIST OR WOULD BE REFLECTED IN A TRULY COMPETITIVE ENVIRONMENT, AND THAT WAS THE PROCESS THAT, THE MOTIVE THAT THE COMMISSION WAS DRIVEN BY IN INITIATING THE PROCEEDING. AS IT WENT ALONG, VERIZON AND SPRINT FELT THAT THEY MIGHT WE WILL HAVE TO REVISE THEIR COST STUDIES, BECAUSE THERE WERE SOME OF THESE THINGS GOING ON IN THE SUPREME COURT, NAMELY THE UPHOLDING OF THIS TELRIC METHODOLOGY. THERE WERE FIGHTS THAT WENT ON FOR YEARS ABOUT WHETHER OR NOT TELRIC WAS A PROPER OR LEGAL METHODOLOGY TO IMPOSE IN THIS CONTEXT, AND ONCE THAT WAS RESOLVED, VERIZON FELT THAT THEY NEEDED TO REVISE THEIR COST STUDIES BASICALLY, BECAUSE THEY DIDN'T THINK THEY WERE TELRIC COMPLIANT, SO THE WHOLE THING STARTED OUT AS A UNIFIED PROCEEDING, AND CERTAINLY THE RESULTS THAT WERE ACHIEVED IN THE BellSouth PROCEEDING, IN A FORUM, THE JUDGMENT OF THE COMMISSION THROUGHOUT THE REST OF THE PROCEEDINGS FOR VERIZON AND SPRINT TO A CONSIDERABLE DEGREE.

NOW, ONE OF THE CLAIMS THAT THE APPELLANT MAKES HERE, IS THAT WHAT YOU ENDED UP WITH, THAT THERE IS NO COMPETENT, SUBSTANTIAL EVIDENCE TO SUPPORT WHAT YOU ACTUALLY ENDED UP WITH.

WELL, WE TOTALLY DISAGREE WITH THAT, AND I WILL ADDRESS THOSE SPECIFIC CLAIMS. FIRST OF ALL, THE COST OF CAPITAL, THERE WERE THREE WITNESSES WHO TESTIFIED ABOUT THE HE CAN WIDE AND THERE WERE WITNESSES WHO TESTIFIED ABOUT THE COST OF CAPITAL. THE ISSUE IS LOSS OF EQUITY. I AGREE WITH MR. BARKIN THAT THE COMMISSION DIDN'T HAVE DISCRETION TO CHOOSE WITHIN THE RANGE OF TESTIMONY THAT IT HAD. WE HAD ONE WITNESS, MR. FORD, THAT TESTIFIED THAT TLRB BE A 10 PERCENT -- THAT THERE SHOULD BE A 10 PERCENT COST OF EQUITY AND DR. VAN DER WEIDE SAID 14.75 AND THE STAFF OF THE COMMISSION WITNESS SAID 14.7224. I BE BELIEVE THAT THE DISCRETION OF THIS COURT, THE COMMISSION WOULD HAVE HAD THE DISCRETION TO CHOOSE BETWEEN THAT RANGE AND COME UP WITH THE LEVEL THAT IT D.

IS THAT A USUAL THING, THAT STAFF TESTIFY AS A WITNESS?

ON OCCASION, STAFF DOES TESTIFY AS A WITNESS. IT IS NOT OFTEN.

THEY HAVE THE SAME, THEY HAVE TO BE QUALIFIED AS AN EXPERT?

THAT'S RIGHT, AND THERE IS NO QUESTION ABOUT MR. DRAPER'S QUALIFICATIONS AS AN EXPERT, AND JUST SO YOU UNDERSTAND, YOUR HONOR, THE STAFF WITNESS WHO TESTIFIES, HAS NO PART IN FORMULATION OF THE RECOMMENDATION OR COMMUNICATIONS WITH THE COMMISSIONERS, BEFORE THEY ACTUALLY MAKE THE DECISION.

THEY ARE AN EMPLOYEE OF THE PSC? YES?

I AM SORRY.

THEY ARE EMPLOYED BY THE PSC.

THAT'S CORRECT. THAT'S CORRECT.

WITH REGARD TO THIS, THE EQUITY CONCEPT, IT APPEARS THAT THAT IS NOT SOME HYPOTHETICAL NUMBER. IT IS BASED ON SOMETHING IN FACT, IS THAT CORRECT?

ABSOLUTELY.

AND IF IT IS BASED ON SOMETHING IN FACT, AND WE MUST TAKE A NUMBER DERIVED FROM FACT, IS THERE ROOM, WITHIN THAT, FOR EVIDENCE OF Z AND EVIDENCE OF A, THAT A COMMISSION CAN JUST COME UP AND SAY EVEN THOUGH THERE IS NO EVIDENCE, NO WITNESS HAS EVER TESTIFIED TO M, AND THEY CAN SELECT M FOR UTILIZATION? IN THIS PROCESS. IF IT, THAT, IT SEEMS TO ME, BECOME AS HYPOTHETICAL NUMBER, BECAUSE YOU CAN JUST PICK WHAT YOU WANT.

YOUR HONOR, THAT IS, FIRST OF ALL, IF YOU LOOK AT THE GULF POWER CASE WHICH WE HAVE CITED IN OUR BRIEF, THE COMMISSION WAS FACED WITH TESTIMONY ON THE PROPER COAL INVENTORY. ONE WITNESS SAID 60 DAYS AND THE OTHER SAID 90. THE COMMISSION DIDN'T BELIEVE EITHER, BUT IT KNEW IT HAD A DUTY TO MAKE SOME KIND OF DECISION. IT COULDN'T SAY, WELL, GULF, TOO BAD, YOU DON'T GET ANY COAL INVENTORY. THE COMMISSION HAS TO SERVE THE PUBLIC INTEREST IN MAKING ITS DETERMINATION AND HAS TO BE REASONABLE IN ITS RESULT AND HAS AN OBLIGATION TO MAKE A DECISION, AND THIS COURT SAID, I THINK IT WAS 30, THE COMMISSION SAID 60, THIS COURT SAID THAT IS OKAY. IT WAS WITHIN THE COMMISSION'S DISCRETION -- DISCRETION FACED WITH TESTIMONY THAT IT COULD NOT ACCEPT ON ANY EXTREME, BUT IT HAD A DUTY, AN OBLIGATION AND DISCRETION TO CHOOSE IN THIS CASE. IT WAS NOT NECESSARY BECAUSE WE HAD COMPETENT TESTIMONY OF A STAFF WITNESS, WHO HAD HIS PROXY MODEL, AND JUST LIKE THE OTHER COMPANIES HAD, VERIZON, THE COALITION HAD ITS PROXY MODELS, OR ACTUALLY Z, AND HE BASED THAT ON COST OF EQUITY, WHICH THE COMMISSION SAID OKAY. THEY SEEMED TO HAVE READ THE COMMISSION'S MIND AND SAID THAT THEY WERE RELYING ON THE PRESENTATION OF THE STAFF WITNESS OR THE STAFF MEMBER WHO WAS MAKING THE RECOMMENDATIONS TO THE COMMISSION, TO OVERLOOK OR IMPROPERLY WEIGH THE EVIDENCE, AND THAT IS WHAT WE ARE TALK ABOUT IN ALL OF THESE THINGS. WE ARE TALKING ABOUT THE COMMISSION'S WEIGHING OF THE EVIDENCE. THAT IS ALL THEY ARE ARGUING ABOUT.

THE FIGURE THERE WAS 11.42 PERCENT?

THAT WAS, YES, THE COST OF EQUITY.

SO THAT IS A VERY SPECIFIC, AND THAT WAS MR. DRAPER'S NUMBER?

THAT WAS HIS CALCULATION.

CALCULATION BASED ON LOOKING AT VERIZON'S ACTUAL COSTS.

NO. IT WAS BASED ON THE COST OF EQUITY AS DETERMINED BY CHOOSING A GROUP OF PROXY COMPANIES AND SAYING WHAT THE REASONABLE COST OF EQUITY WOULD BE, FOR SOMEONE OPERATING THE WAY THAT VERIZON DOES.

OKAY, AND SO THAT IS WHERE THE VERIZON SAYS YOU DIDN'T OR MR. DRAPER SHOULD HAVE INCLUDED SBC IN THE PROXY GROUP.

RIGHT.

AND WHAT IS YOUR ANSWER TO THAT? IS THAT A DISCRETION AGAIN, IS THAT REALLY NOT A MATTER OF LAW? THAT IS REALLY UP TO THE COMMISSION'S DISCRETION.

THEY SAY THAT MR. DRAPER, THEY SAID MR. BARKIN SAID MR. DRAPER RECANTED HIS TESTIMONY. THAT IS NOT TRUE. HE SAID, IN DEPOSITION, HE WAS ASKED THE QUESTION, WELL, WOULD YOU AGREE THAT THAT ABC WOULD MEET YOUR CRITERIA OF A 75 PERCENT REVENUE, GETTING 75 PERCENT REVENUES FROM TELECOMMUNICATIONS, AND HE SAID, YEAH, SUBJECT TO CHECK, SO HE NEVER REALLY SAID I AGREE, AND YOU ARE RIGHT. SBC SHOULD HAVE BEEN INCLUDED, AND THE COMMISSION HEARD ALL OF THIS AT THE AGENDA WHERE THE RECOMMENDATION WAS MADE TO THEM, SO THEY WEREN'T IN THE DARK ABOUT WHAT THE EFFECT OF INCLUDING OR LEAVING OUT SBC WAS. THEY WERE FULLY INFORMED, AND IT WAS IN THEIR JUDGMENT, AND THEIR WEIGHING OF THE EVIDENCE, THAT THEY SHOULD ACCEPT THE TESTIMONY FOR THE NUMBER OF MR. DRAPER, 11.24.

I AM CONCERNED ABOUT, AND IT SEEMS LIKE THE PSC ADMITTED IN ITS ORDER ABOUT IMPROPERLY USING THE DLC TECHNOLOGY AS AN EMBEDDED COST. ARE YOU GOING TO --

WELL, NO, THE COMMISSION DIDN'T ADMIT THAT DLC WAS NOT APPROPRIATE IN THIS CASE. THE ISSUE IS HOW THE COMPUTER MODEL WOULD PLACE THESE DLT UNITS, WHICH ARE BASICALLY DEVICES -- THESE DLC UNITS, WHICH ARE BASICALLY DEVICES THAT CONCENTRATE TELEPHONE TRAFFIC AND MAKE IT MORE EFFICIENT TO SHIP IT OUT IN DIGITAL FORM TO THE CENTRAL OFFICE, OKAY, SO THE ISSUE WAS WHERE THESE WERE PLACED, AND AT&T SAID IF YOU LOOK AT VERIZON'S TESTIMONY, IT IS CLEAR THAT THEY ARE JUST MODELING THEIR EXISTING MET YORK. - NETWORK. THAT IS NOT RIGHT, UNDER TELRIC. YOU ARE SUPPOSED TO BE LOOKING AT THE MOST EFFICIENT NETWORK, AND IT DOESN'T MIMIC THE ACTUAL NETWORK. THE COMMISSION SAID THIS IS A CLOSE CALL, BUT ON BALANCE, LOOKING AT, FIRST OF ALL, IF YOU DO A TELRIC ANALYSIS, IT IS NOT PUTTING ONE ISSUE UNDER THE MICROSCOPE AND SAYING, WELL, LOOK, HERE IS ONE THING THAT IS WRONG. EVERYTHING IS WRONG. THAT IS NOT THE WAY IT WORKS. THE ISSUE IS DETERMINING THE MOST EFFICIENT, LEAST COST NETWORK IN THE AGGREGATE, AND THE COMMISSION SAID FIRST OF ALL, THE MOST, I THINK PROBABLY THE KEY FACTOR FOR THE COMMISSION WAS, IT LOOKED AT THE AGO CAT -- AGGREGATE NETWORK AND FOUND THAT THE LINKS TO THE LINES, THE MILEAGE, THE SHEATH MILEAGE, IT IS CALLED, WAS 22 PERCENT LESS THAN THE ACTUAL NETWORK THAT VERIZON HAS IN PLACE TODAY. SO CLEARLY, THE MODELING OF THE NETWORK ITSELF, INCLUDED THESE DLC UNITS, WAS NOT, WAS AT LEAST INTENDED TO BE FORWARD-LOOKING AND TO COMPLY WITH TELRIC, SO BASICALLY THAT WAS THE KEY FACTOR. IT WAS A CLOSE CALL FOR THE COMMITTEE.

YOU HAVE GOT TO LOOK AT THE WHOLE PICTURE, AS TO --

THAT'S CORRECT. THAT'S CORRECT. WHILE WE ARE ON THAT SUBJECT, AS FAR AS THE GTD-5 SWITCH IS CONCERNED, THE COMMISSION IS EMPOWERED OR IS ALLOWED UNDER THE APPLICATION OF THE TELRIC METHODOLOGY, TO CONFIGURE THE SPECIFIC CONFIGURESRATION AND TECH -- CONFIGURATION AND THE TECHNOLOGY THAT IS AVAILABLE TO THE TELEPHONE COMPANY, WHOSE CALL IT IS TO ANALYZE IT, AND THE GTD-5, THE COMMISSION DETERMINED ON THE EVIDENCE BEFORE IT, IT IS THE FORWARD-LOOKING TECHNOLOGY FOR VERIZON. IT MIGHT NOT BE FOR SOME OTHER TELEPHONE COMPANIES.

HOW IS THAT, IF A NETWORK IS USED, GTD-5 SWITCHES, AND THEN THE NEXT MONTH, THE MOST, YOU KNOW, MUCH MORE EFFICIENT TECHNOLOGY COMES OUT, AND EVERY OTHER COMPANY SWITCHES TO THAT TECHNOLOGY, BUT VERIZON DOESN'T, IS THAT, THEN, LOOKED AT

DIFFERENTLY, OR IS IT, AGAIN, BECAUSE THEY HAVE ALREADY USED THIS TECHNOLOGY, THAT THAT MAKES IT THE MOST EFFICIENT FOR THEM, AND ISN'T THAT GOING BACK TO --

IT, YOU KNOW, OF COURSE, AT&T IS SAYING THAT THEY WERE USING THAT TECHNOLOGY, AND IS OUTDATED AND SO ON, AND AGAIN, A MORE WHIZ BANK SWITCH AND THE COMMISSION OUGHT TO REQUIRE THEM TO DO THAT, BUT THAT IS NOT REALLY THE REQUIREMENT OF TELRICT SAYS, GIVEN THIS TELEPHONE COMPANY'S SYSTEM, WHAT IS THE MOST EFFICIENT TECHNOLOGY, FORWARD-LOOKING TECHNOLOGY, LEAST COST, CURRENTLY AVAILABLE TO THIS, TO, AND GT, VERIZON MADE THE CASE THAT IN THE FUTURE, THIS WOULD BE THE MOST EFFICIENT, LEAST COST TECHNOLOGY, EVEN THOUGH THE SWITCH, THEY ACTUALLY HAVE --

LEAST COST TO THEM? YOU SAY MOST EFFICIENT, LEAST COST TO THEM. LEAST COST TO THEM.

THAT'S RIGHT. THAT'S RIGHT. SO JUST TO CONCLUDE, I THINK BASICALLY WHAT YOU ARE BEING ASKED TO DO IS TO REWEIGH THE COMMISSION'S DECISION AND WE ASK YOU TO FIND THAT THE COMMISSION HAD REASONABLE BASIS FOR ITS DECISION AND TO AFFIRM THE COMMISSION.

CHIEF JUSTICE: THANK YOU. MR. MARSHAL, HOW MUCH TIME FOR REBUTTAL? A COUPLE OF MINUTES.

THE FOCUS, WE SUBMIT, IS PROCEDURAL. EVEN THOUGH THIS IS AN IDIO SIN KRAT I CAN PROCEEDING, IT IS -- AN I.D. IOSYNCRATIC, WE HAVE DUE PROCESS, AND THAT MEANS A RECORD THAT SUPPORTS THE CONCLUSIONS THAT WERE REACHED. WE SUBMIT THAT, ON THE SEVERAL LIMITED MATTERS THAT WE BROUGHT TO THE COURT, THE RECORD DOES NOT SUPPORT THEM, ANDED IN THERE IS AN OPEN ATTEMPT TO STRUCTURE A RESULT, PREDICATED UPON CONSIDERATIONS THAT ARE NOT OF RECORD IN THIS PROCEEDING. A COUPLE OF SPECIFIC POINTS. THE RANGE DISCUSSION, I THINK IT IS UNDERSTOOD NOW THAT, THE NUMBER THEY PICKED, WAS NOT A NUMBER THAT WAS SUPPORTED SPECIFICALLY BY ANY PARTICULAR WITNESS. MOREOVER, THE IDEA OF RANGE IS AN AFTERTHOUGHT BY COUNSEL, AS I REMEMBER THE ORDER THAT THE COURT ENTERED, RATHER THAT THE COMMISSION ENTERED, RANGE IS NOT THE WAY THEY BASE THE NUMBER THEY PICKED. THAT IS SOMETHING THAT ALL OF US ADVOCATES TRY TO FIND, IN ORDER TO COME OUT TO WHERE WE WANT TO COME OUT. MR. DRAPER DID, IN FACT, HAVE AN OPPORTUNITY TO PROTECT THE DEPOSITION TESTIMONY. HE SIGNED THE DEPOSITION. HE DIDN'T CORRECT ANYTHING. IT WAS UNDERSTOOD, I THINK, THAT THERE WAS A RECANTATION IN THE TESTIMONY. OTHERWISE, MR. LESTER, THE COMMISSION COUNSEL, STAFF PERSON, WOULD NOT HAVE HAD TO CHARACTERIZE IT AS A MISS SPEAK. THIS IS AN AFFIRMATIVE ADMISSION THAT THERE WAS SOMETHING SAID IN THE DEPOSITION, THAT WAS CONTRARY TO WHAT WAS SAID IN THE PREFILED TESTIMONY. OF COURSE, WE ACKNOWLEDGE AND RECOGNIZE, NOT ONLY THE LATITUDE OF THE PSC ON MATTER THAT ARE FACTUAL. WE SAY THIS IS NOT FACTUAL. THIS IS PROCEDURAL IN DE NOVO. WE ALSO ACKNOWLEDGE THE STAFF HAS A FUNCTION TO PERFORM BUT THAT FUNCTION IS NOT TO AND ADVOCATE AND IS CERTAINLY NOT TO BE A WITNESS AFTER THE HEARING IS OVER AND THE RECORD CONCLUDED. I THANK THE COURT AND I ASK THAT THIS MATTER BE RETURNED TO THE PSC, FOR A DETERMINATION ON AN APPROPRIATE RECORD OF THE COMES INS QUESTION.

CHIEF JUSTICE: THANK YOU. THANK -- OF THE COSTS IN QUESTION. THANK YOU. THANK YOU ALL, VERY MUCH.