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THE NEXT CASE IS GTC, INC. VERSUS JOE GARS I A MR. WIGGINS.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS PATRICK WIGGINS. I REPRESENT GTC, INC.. I WOULD LIKE TO RESERVE FIVE MINUTES, IF POSSIBLE, FOR REBUTTAL. YOUR HONOR, THIS CONCERNS DISPUTES OVER 12 OR 15 YEARS AND TWO DISTINCT STATUTORY SCHEMES AND IT LINK BRINKS WITH IT SOME FORM OF COMPLICATION. JUDGING FROM THE BRIEFS, THIS CASE IS NO EXCEPTION, BUT IN HEART THIS IS A SIMPLE CASE THAT CAN BE OUTLINED IN THREE WORDS, ENTITLEMENT, RAD FIX, AND REPUDIATION. FOR IT IS ENTITLEMENT, RATIFIED OVER 0 YEARS, THAT THIS COMMISSION -- OVER 20 YEARS, THAT THIS COMMISSION VARIED OVER A PROPER COURSE AS IS ESSENTIAL BY LAW. I WOULD LIKE TO BEGIN WITH ENTITLEMENT, BECAUSE THIS IS THE HEART OF THE CASE. IN 1984, SAINT JOE TELEPHONE COMPANY, PREDECESSOR TO GTC WAS NOT OVER EARNING. UNDER RATE OF REGULATION, IT WAS THERE FOR ENTITLED TO EVERY PENNY IT WAS RECEIVING AS A RESULT OF COMPANY-SPECIFIC LOCAL RATES AND COMPANY-SPECIFIC ACCESS CHARGES. IN THAT SAME YEAR, THE COMMISSION BEGAN TO IMPLEMENT A SYSTEM OF ACCESS CHARGING CALLED BUILD AND KEEP, DESIGNED TO OPEN THE STATE TO LONG-DISTANCE COMPETITION. NOW, UNDER THAT SYSTEM, THEY DECIDED TO BUT DID NOT HAVE TO, IMPOSE STATEWIDE AVERAGE ACCESS CHARGES. THIS MEANT THERE WOULD BE WINNERS AND LOSERS, WINNERS SUCH AS SOUTHERN BELL AND GENERAL TELEPHONE COMPANY, WOULD NOW BE ABLE TO CHARGE ACCESS CHARGES GREATER THAN THEY WOULD HAVE UNDER COMPANY SPECIFIC. THERE WOULD BE LOSERS, SUCH AS THE SMALLER COMPANIES LIKE SAINT JOE. THEY WOULD HAVE TO USE ACCESS CHARGES LESS THAN THEY WOULD HAVE WITH COMPANY-SPECIFIC ACCESS CHARGES. IN SAINT JOE'S CASE, THIS WOULD COST THEM \$1.A 5 MILLION A YEAR. IN -- 1.5 MILLION A YEAR. IN A 1994 ORDER, KICKING ALL THIS OFF --

1994?

EXCUSE ME, SIR. '84. ALTHOUGH I WOULD LIKE TO GET TO 1994 AS SOON AS POSSIBLE. IN 1984, THE COMMISSION ACKNOWLEDGED THIS ENTITLEMENT AND RATIFIED IT BY INVITING THE COMP THE COMPANIES WHO WERE USES USERS TO CREATE TARIFFS OUTSIDE THE LOCAL RATE CASE FORM THE LANGUAGE INSIDE THAT ORDER WAS OUR BASIC POLICY TO KEEP THESE COMPANIES IN THE SAME FINANCIAL POSITION THEY WOULD BE PRIOR TO BUILD AND KEEP. SAINT JOE RESPONDED TO THIS AND FILED TARIFFS TO INCREASE THEIR LOCAL RATES AND THE COMMISSION RENEGED. IN 1985, THE COMMISSION ISSUED THE ORDER MUCH UNDER DISCUSSION HERE, SAYING WE, AS A SUBSTITUTE FOR THIS LOCAL RATE INCREASE, ARE GOING TO SUBSTITUTE AN INTERLATTE REGULATION. THIS BASICALLY KEEPS THE COMPANY IN THE SAME FINANCIAL WAS PRIOR TO THE BUILD-AND-KEEP, AND IN THIS WAY THE RATES GENERATED BY THE INTERALATA SUBSIDY MECHANISMS ARE THE SAME AS GENERATED BY THE LOCAL RATE INCREASE, BECAUSE IF THEY ARE NOT, AND THIS IS ABSOLUTELY CRITICAL, IF THEY ARE NOT, THE COMPANY IS NOT IN THE SAME POSITION.

I KNOW YOU ARE GOING TO COMMENT ON IT ANYWAY.

YES, SIR.

COULD YOU COMMENT AT THIS POINT ON AFFORD-LOOKING VIEW OF HOW LONG THAT PARTICULAR PLAN WOULD BE KEPT INTO EFFECT, AND THEN COMPARE THAT WITH, IN FACT, WHAT HAPPENED TO OTHER CARRIERS AROUND THE STATE, IN TERMINATING THAT. START WITH WHAT THE FORWARD FORWARD-LOOKING, PERHAPS, PLAN WAS AT THAT TIME, ABOUT HOW LONG THAT WOULD LAST AND THEN, IN FACT, WHAT OCCURRED.

CLEARLY THE MECHANISM WAS INTENDED TO BE TRAEMPLT IN OTHER WORDS THE COMMISSION CONTEMPLATED THAT CHANGES IN THE EARNINGS OF THE COMPANY WOULD ALLOW THEM TO CHANGE THE DISPLACEMENT REVENUES AND CLEARLY THE COMMISSION WAS CORRECT. FIVE THE SIX COMPANIES WERE -- FIVE OF THE SIX COMPANIES WERE ABLE TO, OVER THE NEXT TEN YEARS, KEY WITH THEIR REPLACEMENT REVENUES, BUT THE KEY IS THAT WOULD BE EXACTLY THE SAME METHOD THAT WOULD HAVE BEEN USED, HAD THESE RATES BEEN GENERATED OVER THE LOCAL RATE INCREASE. IN OTHER WORDS USED TO DISPLACE THESE. NOT A SINGLE DOLLAR WAS USED FROM THE INTERLATA SUBSIDY AMERICANISM.

IS THAT UNDISPUTED ON THE RECORD?

I BELIEVE IT IS, YOUR HONOR. IN 1989, IN FACT, GTC'S OR SAINT JOE'S \$1.5 MILLION SUBSIDY WAS REDUCED TO \$300,000, DUE TO OVER EARNINGS, DOWN TO \$1.2 MILLION, THE AMOUNT IN DISPUTE NOW. THE LAST TIME THIS COMPANY LOOKED AT AN INTERLATA SUBSIDY REGULATION, WAS IN 1995, AND THAT WAS WITH ALL TELL, AND THEIR MEANS OF SUBSIDY WAS DISPLACED DUE OVER EARNINGS. THAT SAME YEAR THE LEGISLATURE REVISED CHAPTER 64, TO ALLOW PRICE CAP REGULATION. COMPANIES, LOCAL TELEPHONE COMPANIES, COULD NOW ELECT TO DISCONTINUE REGULATION THROUGH EARNINGS TO REGULATION UNDER PRICE CAP. THEY HAD TO AGREE TO FREEZE THEIR RATES. EARNINGS BECAME IRRELEVANT. THEIR MARKETS BECOME OPEN TO COMPETITORS. THEY ARE FREED FROM THE HEAVY HAND OF EARNINGS REVIEW, TO COMPETE, TO WIN OR LOSE, BASED ON THEIR OWN BUSINESS AC YOU MEN.

IS IT YOUR -- ACUMEN.

IS IT YOUR POSITION THAT THE PSC, WHEN IT DETERMINED SUBSIDY, DMOOT -- THEY WERE WRONG IN NOT LOOKING AT EARNINGS OR THAT THEY HAVE NO AUTHORITY, NOW, BECAUSE YOU HAVE SWITCHED TO THE PRICE CAP REGULATION, TO EVER TERMINATE THE SUBSIDY?

NO, MA'AM. ACTUALLY, JUSTICE PARIENTE, OUR POSITION ARE NEITHER OF THOSE TWO OPTIONS. OUR POSITION IS VERY STRAIGHTFORWARD, THAT THEY HAVE THE SAME POWER OR AUTHORITY OVER THE REPLACEMENT REVENUES WE ARE RECEIVING, AS IF WE WERE RECEIVING THEM UNDER LOCAL RATES, BECAUSE THAT IS WHAT THE COMPANY ASKED FOR IN 1984, AND THE BASIC POLICY WAS TO KEEP THEM IN THE SAME POSITION. THE FUNDAMENTAL ERROR HERE IS THAT WE TEND TO MISTAKE THE MECHANISM FOR THE ENTITLEMENT. SO --

TEND TO WHAT?

MISTAKE THE MECHANISM FOR THE ENTITLEMENT.

WHAT DO YOU MEAN, EXACTLY, BY THAT?

IF WE GO BACK TO WHEN THIS WAS CREATED, THE PUBLIC SERVICE COMMISSION RECOGNIZED THAT THIS COMPANY, SAINT JOE, WOULD LOSE \$1.5 MILLION, UNDER THE BUILD-AND-KEEP SYSTEM. AT THAT POINT, TO AVOID AN UNLAWFUL TAKING OF THAT MONEY, THE COMMISSION HAD TWO OPTIONS, HAVE A RATE CASE AND RESET THE CLOCK, OR TO CREATE SOME SOURCE OF REVENUE TO DISPLACE, TO REPLACE THE \$1.5 MILLION BEING LOST. THE COMMISSION SAID, INITIALLY, WELL, WE WILL JUST DO THAT WITH A LOCAL RATE INCREASE. FILE YOUR TARIFFS. WE WILL INCREASE YOUR LOCAL RATES. SAINT JOE DID THAT, AND THEN THE COMMISSION SAID NO. AS A SUBSTITUTE FOR THAT, WE ARE GOING TO DO THIS INTERLATA SUBSIDY AMERICANISM. -- MECHANISM.

WHAT IS IT, EXACTLY, THAT THE COMMISSION SHOULD HAVE DONE, IN ORDER TO REMOVE THE SUBSIDY?

THEY SHOULD HAVE DONE EXACTLY WHAT THEY DID OVER TEN OR TWELVE YEARS, WHICH WAS

WHENEVER THERE WAS A SUBSIDY, WHENEVER THERE WAS AN OVER EARNING, DISPLACE THE SUBSIDY MECHANISM. IF YOU ARE ASKING WITH RESPECT TO THIS COMPANY?

YES.

OKAY. THEY HAVE THE OPTION BELOW, SUGGESTED BY THEIR STAFF, TO ALLOW THE COMPANY TO RAISE ITS ACCESS CHARGES TO DISPLACE THE REVENUE FROM THE INTERLATA SUBSIDY AMERICANISM. THE COMMISSION REJECT --

I GUESS I DON'T QUITE UNDERSTAND, BECAUSE I THOUGHT THAT THEY HAD GONE TO A FIXED RATE SYSTEM NOW, THAT THE COMMISSION COULD NO LONGER DO THAT.

YES, MA'AM. THE DISTINCTION, THAT, IN FACT, IS IN PART WHAT THE COMMISSION SAID, IS THAT THEY COULD NOT TOY WITH ACCESS CHARGES OR ALLOW US TO RAISE OUR ACCESS CHARGES BECAUSE OF RESTRICTION IN HIS THE STATUTE. STAFF WITNESS SUGGESTED THAT THESE COULD BE TREATED NOT AS RAISING ACCESS CHARGES BUT AS REALLOCATION, BUT THAT DID NOT GO WITH THE COMMISSION. THE QUESTION OF WHAT TO DO WITH THIS MONEY, AND WE ARE SAYING THAT IT SEEMS THEY ARE POWERLESS TO DO ANYTHING ABOUT IT AND WE GET TO KEEP IT FOREVER, AND THAT IS THE CASE, YOUR HONOR, AND IT IS THE WEAKNESS IN OUR CASE, CANDIDLY, BECAUSE IT DOESN'T MAKE A LOT OF SENSE THAT YOU SHOULD HAVE BellSouth SHIPPING US MONEY, EVEN WITH BellSouth COLLECTING IT FOR US FORM THE PROBLEM IS THAT THIS SOLUTION CANNOT BE PLACED ON THE SHAREHOLDERS OF GTC.

YOU JUST MADE A STATEMENT ABOUT "COLLECTING IT FOR US". I THOUGHT THERE WAS A DISPUTE ABOUT WHETHER OR NOT THEY WERE COLLECTING IT FOR YOU, BUT YOU HAVE MADE IT AS IF THAT IS A FACT IN THE RECORD.

YES, MA'AM. LET ME GO BACK TO THE PRICE CAP STATUTE IN THE ELECTION, AND I THINK I CAN MAKE THAT CLEAR. TO ELECT -- TO ENTER INTO THIS PRICE CAP REGULATION, ALL ONE HAD TO DO WAS FILE A NOTICE OF ELECTION. THE STARTING LINE REVENUES THAT, ONE, WENT INTO THIS COMPETITION WITH, WENT INTO THE EARNINGS OF THE REVENUES THAT YOU WERE RECEIVING AT THE TIME YOU FILED YOUR NOTICE.

INCLUDING THE SUBSIDY.

OF COURSE THAT IS OUR CONTENTION, BUT THE COMMISSION OBVIOUSLY DISPUTS THAT, BUT WE BELIEVE, BECAUSE OF THE SUBSIDIES, THOSE ARE THE REPLACEMENT REVENUES THAT THIS COMPANY HAD BEEN BEEN ENTITLED TO SINCE 1984, AND SINCE THEY HAD NEVER BEEN THROUGH AN OVERALL RATE CASE, IT REMAINED AN ESSENTIAL COMPONENT OF THEIR RATES, SO WHEN WE FILED THE NOTICE, THERE WAS NO WHISPER OF A PROBLEM HERE. THE PROBLEM BECAME A YEAR LATER, WHEN BellSouth FILED THEIR PETITION TO BE RELIEVED OF THE OBLIGATION, IN WHICH THEY ALLEGED THAT THEY WERE NO LONGER COLLECTING THE EXCESS ACCESS CHARGES FOR US. THE COMMISSION DISPUTED THAT ON THE RECORD AND SAID THAT THEY ARE COLLECTING IT BUT, INDEED, THE MECHANISM SHOULD BE TERMINATED, AND THE COMMISSION SYSTEM TO DETERMINING THE MECHANISM WAS VERY SIMPLE. THEY JUST REMUDIATED THE -- REPUDIATEED THE ENTITLEMENT. THEY SAID IT IS AN ACNISM, AND IN DOING -- AN AKRONISM, AND IN DOING THAT THEY NEVER RELATED TO 1984, WHICH IS THAT THEY WERE GOING TO ALLOW THE GENERAL RATE INCREASE, AND CHANGED THE 1994, WHICH SAID HERE, TAKE THESE INTERLATA SUBDISAND REPLACE THEM AS YOUR REVENUE.

SHOULDN'T IT BE OBLIGATED IN THE RECORD TO SHOW THAT YOU ARE NOT OVER EARNING? I AM NOT HEARING, IN ANSWER TO MY QUESTION OR JUSTICE QUINCE'S QUESTION, WHAT IT IS, IF YOU ARE NOT ENTITLED TO IT IN PERPETUITY, AND YET WE HAVE GOT THIS PRICE CAP, NOW, WHICH PREVENTS THE PSC SUPPOSEDLY LOOKING AT EARNINGS, YOU DON'T HAVE A SOLUTION FOR WHAT THE ALTERNATIVE WOULD BE.

OH, YES, MA'AM WE DO HAVE A COMMISSION. THE SOLUTION IS GO TO THE LEGISLATURE AND GET SPECIAL DISPENSATION TO ALLOW US TO RAISE OUR LOCAL RATES. THE FUNDED AMOUNTAL PROBLEM HERE -- THE FUNDAMENTAL PROBLEM, HERE, YOUR HONOR, WITH ALL DUE RESPECT, IS THAT, AS I POINTED OUT, THIS COMPANY WAS NOT OVER EARNING AT THE RATE OF DETERMINATION AT ALL. THAT IS WHETHER IT IS EARNING AT CEILING OR MIDPOINT, IT IS ENTITLED TO THAT, BASED ON NEED. RATIFIED IN TEN YEARS, WE BELIEVE, WHEN THE LEGISLATURE SAID THESE ARE YOUR STARTING LINE REVENUES. MOVE FORWARD, AND OUR DISPUTE TO THE ENTITLEMENT OF THE REVENUES, NOT THE MECHANISM, WAS NOT RAISED UNTIL AFTERWARDS, WHEN BellSouth BROUGHT THIS A PETITION.

SO AS LONG AS YOU ARE NOT OVER EARNING, YOU CAN CONTINUE TO GET THIS SUBSIDY. IS THAT BECAUSE ARE SAYING?

NO, MA'AM. WHAT I AM SAY O'CLOCK, THIS IS EXTREMELY IMPORTANT, UNDER RATE OF RETURN REGULATION, AS LONG AS YOU ARE NOT OVER EARNING, YOU ARE ENTITLED TO EVERY PENNY THAT YOU ARE GENERATING. IF THE COMMISSION, UNDER RATE OF RETURN REGULATION, WISHED TO ELIMINATE THIS ESSENTIAL WAY THAT WE WERE GETTING THAT MONEY, THAT IS FINE. THEY CAN DO. THAT BUT THE PROBLEM BECAME, WITH PRICE CAP REGULATION, THEIR ABILITY TO REPLACE IT AND OUR ABILITY TO REPLACE IT BECAME CONSTRAINED.

YOU ARE SAYING IT SHOULD HAVE BEEN ADDRESSED BACK THEN.

YES, MA'AM.

AND BECAUSE IT WASN'T, SHORT OF A LEGISLATIVE CHANGE.

OR MOVE TO AN ACCESS CHARGE. NO, MA'AM. I ACTUALLY BELIEVE THAT THE COMMISSION JUST ABANDONED ITS OTHER FUNDAMENTAL POLICY A LITTLE TOO QUICK.

DOESN'T THE COMMISSION, THOUGH, SAY THAT THERE IS STILL A SAFETY VALVE THERE, BUT UNDER THE SAFETY VALVE, THAT YOU HAVE THE OBLIGATION, NOW, TO COME.

YES, SIR. THEY SAY THAT WE DO NOT HAVE AN ENTITLEMENT TO APPROVE THE ENTITLEMENT, WE MUST PROVE A NEED, UNDER A RATE CASE THAT HAS NO STANDARDS, BECAUSE THIS IS UNDER THE NEW SYSTEM. THERE IS NO BOOKKEEPING. THERE IS NO CONCEPT OF EARNINGS OR OVERENTIAL EARNINGS. WE MUST CAME -- OVER OVER EARNINGS. WE MUST COME IN UNDER A FREE FORM AND PROVE A NEED TO GET AN ENTITLEMENT, THE ENTITLEMENT WHICH WAS ESTABLISHED IN 1984 AND RECOGNIZED ALL THE WAY UP TO THE TIME THAT WE FILED THE NOTICE FOR PRICE CAP ELECTION. THAT IS SHEER ERROR.

SURELY SOMEWHERE IN BETWEEN THE POSITIONS OF YOUR VERY KABD I HAD CONCESSION -- CANDID CONCESSION AT THE OUTSIDE THAT -- AT THE OUT SET THAT THIS SUBSIDY WAS NOT INTENDED TO BE A FOREVER KIND OF THING AND YET IT IS CUTOFF ARBITRARILY, WITHOUT LOOKING AT YOUR EARNINGS, SURELY THERE HAS GOT TO BE SOME MIDDLE GROUND IN THERE THAT WOULD REMEDY THIS SITUATION. WHAT DO YOU PROPOSE IS THE MIDDLE GROUND?

I PROPOSE THREE DISTINCT OPTIONS. ONE IS THE ONE REJECTED BY THE COMMISSION. ALLOW THE COMPANY TO RAISE ITS ACCESS CHARGES. UNDER THE THEORY THAT THESE EXCESS, THE SUBSIDY MECHANISMS WERE AN AMERICAN OF ACCESS CHARGES. THIS WAS ESTABLISHED. TWO, GO BACK TO THE LEGISLATURE AND GET DISPENSATION TO RAISE THE RATES OR THREE, I WILL GO WITH FOUR, DECLARE THAT WE ARE ENTITLED TO THIS MONEY AND UNDER THAT RAISE OUR LOCAL RATES, AND, FOUR, STAY WITH THE POLICY THAT THEY ORIGINALLY MADE, WHICH IS THAT CHANGING REGULATORY CONDITIONS WOULD ULTIMATELY REMOVE THE COMPANY'S CLAIM TO ENTITLEMENT TO THESE REVENUES, AND I THINK SOME BENIGN NEGLECT WOULD BE

USEFUL HERE. THERE WAS NO CRYING PROBLEM TO -- CRIME PROBLEM TO BE SOLVED HERE, NO CUSTOMERS BEING HURT, AND YOU ARE ASKING ME IS IT CONJECTURE IN THE RECORD AND I CLEARLY ADMIT THAT, IN THE FETION THREE OR FOUR YEARS, THIS COMPANY -- IN THE NEXT THREE OR FOUR YEARS, THIS COMPANY IS GOING TO HAVE TO DO IT, ANYWAY. I THINK, TO GO BACK TO SUMMARIZE THIS RATHER PROCEDURALLY AND EVEN CONCEPTUALLY COMPLICATED CASE, THE COMMISSION COMMITTED REVERSIBLE ERROR, BECAUSE IT, IN EFFECT, REVIVED A TAKING OF PROPERTY. IT SAID IN 1984 IT COULD NOT DO. AND IT DID THIS BY REPUDIATED AN ENTITLEMENT THAT IT ACKNOWLEDGED AT THAT POINT THAT, IT RATIFIED IN EVERY TREATMENT OF THESE REVENUES FOR TEN OR TWELVE YEARS, AND IN SO DOING, IT EXCEEDED THE AUTHORITY GRANTED UNDER CHAPTER 364, AND IT, ALSO, REVERSED A RATE POLICY WITHOUT ADEQUATE RECORD FOUNDATION, PAW IT NEVER ADDRESSED THIS ESSENTIAL LINK BETWEEN THE ORIGINAL AND UNLAWFUL TAKING AVOIDED, THE LOCAL RATE INCREASE DENIED, AND THE SUBSTITUTE MECHANISM. FOR THIS REASON, THE COURT MUST REVERSE. THANK YOU.

THANK YOU.

MAY IT PLEASE THE COURT.

I UNDERSTAND YOU ARE TAKING EIGHT MINUTES. AND TWO FOR REBUTTAL ON THE CROSS APPEAL. RECALL CANTERO REPRESENTING BellSouth -- RAUL CANTERO, REPRESENTING BellSouth. I AM NOT SURE WHICH TABLE TO SIT AT, BECAUSE I HAVE TROUBLES WITH BOTH OF THESE PARTIES, BUT I FLIPPED A COIN AND SAT WITH THE PSC. FIRST, I WOULD LIKE TO ADDRESS A COUPLE OF ISSUES ON THE APPEAL. I THINK IT IS IMPORTANT TO UNDERSTAND THE UNDERLYING BASIS OF THE ORIGINAL SUBSIDY. BEFORE THE ACCESS CHARGES AND BEFORE THE BILLOW AND-KEEP SYSTEM, AFTER AT&T WAS DIVEST AT THE TIME -- DIVESTED, THERE WAS A POOLING OF INTEREXCHANGE CARRIERS, SUCH AS AT&T BY, THEN, THE BELL OPERATING COMPANIES AND, LATER, THE OTHER LEC'S THAT CAME INTO THE PICTURE. IN 1985, THERE WERE ABOUT 13 OF THESE LOCAL EXCHANGE COMPANIES THAT WERE RECEIVING ACCESS REVENUES, AND EVERYTHING WAS GIVEN INTO ONE POOL AND EVERYBODY PUT IN THEIR EXPENSES, AND THEN THE PROFIT WAS DISTRIBUTED AMONGST 13 COMPANIES, ACCORDING TO THEIR INVOLVEMENT IN THE ACCESS REGIME. AND CERTAIN COMPANIES MADE MORE THAN OTHER COMPANIES. IN 1985, THE PSC DECIDED TO GO TO A BILLOW AND-KEEP SYSTEM, WHICH MEANS YOU -- TO A BILL AND KEEP SYSTEM, WHICH MEANS YOU KEEP WHATEVER MONIES YOU CHARGE TO THE ISC'S, HOWEVER THIS IS GOING TO PROVIDE INEQUITY TO SOME OF THE LEC'S, BECAUSE THEIR EXPENSES WERE TOO HIGH AND THEREFORE UNDER THE NEW REGIME, THEY WERE GOING TO MAKE LESS MONEY THAN THEY HAD UNDER THE POOLING SYSTEM, WHERE IT WAS DISTRIBUTED MORE EVENLY, SO THE PSC SAID WE ARE GOING TO INSTITUTE A TRAINING MECHANISM. THIS WILL IT WILL BE LIKE A WEANING PERIOD FOR THE LEC'S. THERE WERE SIX OF THEM BACK THEN. WE ARE GOING TO INTRODUCE A SUBSIDY IN WHICH THE SEVEN WINNERS ARE GOING TO BE ESSENTIALLY TAXED, AND THEY WILL HAVE TO GIVE PART OF THEIR REVENUE TO THE LOSING LEC'S FOR A PERIOD OF TIME. AS GTC CONCEDES, THIS WAS INTENDED TO BE A TEMPORARY MECHANISM, AND AS THE PSC FOUND IN ITS ORDER, IT WAS GOING TO LAST ONLY UNTIL EACH OF THESE LEC'S WAS ABLE TO BE LOOKED AT IN A PARTICULAR CASE AND SEE WHERE IT STOOD. NOW, WHEN PRICE REGULATION CAME INTO EFFECT, WELL, BEFORE PRICE REGULATION, OTHER LEC'S WERE WEANED OFF. FIVE OTHER LEC'S HAD ALREADY BEEN WEANED OFF OF THE SUBSIDY BY 199 A, AND MOST OF THE WINNING -- 1995, AND MOST OF THE WINNING LEC'S NO LONGER HAD TO PAY A SUBSIDY, SO THAT NOW IT WAS ONLY BellSouth PAYING A SUBSIDY TO GTC, AND GTC WAS THE ONLY COMPANY STILL RECEIVING A SUBSIDY. AT THE TIME THAT THE OTHER LEC'S HAD BEEN WAEND OFF, THE -- WEANED OFF, THE BASIS HAPPENED TO BE THAT THEY WERE OVER EARNING, BUT THE PSC ALWAYS SAID THAT THE OVERRIDING CRITERION IS WHETHER THERE IS A CHANGE OF CIRCUMSTANCES, SO THAT YOU NO LONGER NEED THE SUBSIDY. WHEN GTC ELECTED PRICE REGULATION, PSC SAID YOU HAVE NOW ELECTED TO GO INTO THE COMPETITIVE ARENA. YOU HAVE BEEN UNDER THE SUBSIDY FOR 13 YEARS. YOU ARE THE LAST LEC TO HAVE A SUBSIDY. IT IS ABOUT TIME YOU GOT WEANED OFF THE SUBSIDY. AND THAT IS WHAT HAS

HAPPENED IN THIS CASE.

BUT JUST SO WE UNDERSTAND, THE TIME CHRONOLOGY, IT WASN'T WHEN THE GTE WENT TO THE PRICE CAP REGULATION, WHEN THAT WAS APPROVED, THAT THIS DECISION WAS MADE COME EXTENSIVE WITH IT. WE ARE GOING TO APPROVE THIS BUT THAT, AND I GUESS THEY FILED A NOTICE OF ELECTION.

THAT'S RIGHT.

THERE WASN'T ANY RESPONSE AT THAT TIME. IT WASN'T UNTIL BellSouth CAME IN AND FILED ITS SUBSEQUENT PETITION THAT, THEN, PSC LOOKED AT THIS RETROSPECT I FEEL AND SAID, REALLY - - RETROSPECTIVELY AND SAID, REALLY, THAT IS WHAT WE WERE DOING WHEN WE LET YOU GO INTO THE FREE MARKET. IT DOESN'T MAKE SENSE FOR YOU TO HAVE A SUBSIDY.

WHAT HAPPENED WAS THE ACT WAS ENTERED IN 1995, AND IT ALLOWED LEC'S TO EFFECT PRICE REGULATION. IN 1996, GTC DID EFFECT PRICE REGULATION, AND THEN BellSouth PETITIONED THE PSC TO REMOVE THE SUBSIDY, BASED ON GTC'S ELECTION OF PRICE REGULATION, AND IT WASN'T UNTIL THE HEARING IN 1998 THAT, THEN, THE PSC SAID THAT WE BELIEVE YOUR ELECTION OF PRICE REGULATION AND YOUR DECISION TO ENTER THE COMPETITIVE ARENA IS CHANGED CIRCUMSTANCES SUFFICIENT TO REMOVE THE SUBSIDY THAT HAS ALWAYS BEEN ACKNOWLEDGED TO BE TEMPORARY AND WHICH YOU HAVE BEEN RECEIVING FOR 13 YEARS. IF THE COURT ADOPTS GTC'S ARGUMENT, I THINK JUSTICE PARIENTE, WHEN YOU ASKED YOUR QUESTION, YOU WERE RIGHT ON POINT IF YOU DON'T GTC'S ARGUMENT, WHAT YOU ARE SAYING IS WE CAN NEVER ELIMINATE THE SUBSIDY, BECAUSE IF YOU READ GTC'S BRIEF, IT SAYS, WELL, THE BASIS FOR ELIMINATING THE SUBSIDIES BEFORE WAS OVER EARNINGS. WE ELECTED PRICE CAP REGULATION, SO YOU CAN'T DO IT ON THE BASIS OF OVER EARNINGS. YOU CAN'T CONSIDER OUR EARNINGS, AND IN FACT IT REFUSED TO PRODUCE ANY DISCOVERY THAT WOULD DIVULGE ITS EARNINGS, AND SO THEREFORE YOU CAN'T TAKE AWAY OUR SUBSIDY, BECAUSE YOU CAN'T CONSIDER OVER EARNINGS, AND THAT IS THE ONLY CRITERIA USED BEFORE. SO IF YOU ADOPT THAT POSITION, THEN THEY WILL HAVE THE SUBSIDY FOREVER, AND THEY WILL NEVER BE WEANED OFF, AND THE TEMPORARY SUBSIDY --

HOW ABOUT THEIR ARGUMENT THAT, REALLY, YOU GOT TO GO TO THE LEGISLATURE?

I AM SORRY.

THAT THE LEGISLATURE HAS GOT TO ADDRESS THIS ISSUE.

I DON'T THINK THE LEGISLATURE HAS TO, BECAUSE THE -- THEY AGREE, NUMBER ONE, THAT IT WAS A TEMPORARY SUBSIDY. THEY AGREE THAT THE PSC HAD THE AUTHORITY TO INSTITUTE A TEMPORARY SUBSIDY, AND IF THE PSC HAS THE AUTHORITY TO INSTITUTE A TEMPORARY SUBSIDY, THEN IT, ALSO, HAS THE AUTHORITY TO DETERMINE WHEN THAT SUBSIDY WILL END.

BUT ISN'T, ORDINARILY, THE DECISION TO END A SUBSIDY IN ANY FINANCIAL SETTING USUALLY DETERMINED ON THE BASIS OF THE UNDERLYING FINANCIAL INFORMATION THAT IS RELEVANT TO MAKING A DECISION LIKE THAT? AND THAT IS WHAT, NOW, YOU HAVE SAID THAT THEY REFUSED TO PARTICIPATE IN DISCOVERY. WAS THERE EVER A TIME WHEN YOU ASKED THE PSC TO COMPEL THEM TO GIVE DISCOVERY, SO THAT ALL THIS INFORMATION WOULD BE IN A RECORD, SO THAT, FOR INSTANCE, WE COULD COMPARE THEIR OPERATION TO THE PREVIOUS ONES THAT, BECAUSE THEY WERE OVER EARNING, YOU KNOW, LOST THE SUBSIDY? IN OTHER WORDS DID IT REACH THAT POINT, OR WAS THE DECISION MADE WITHOUT THAT?

I DON'T THINK IT REACHED THAT POINT, BECAUSE OUR PETITION WAS BASED NOT ON OVER EARNINGS BUT ON THE FACT THAT THEY HAD ELECTED PRICE REGULATION, AND I BELIEVE THE PSC DECIDED THAT, BECAUSE THEY HAD ELECTED PRICE REGULATION, THAT OVER EARNINGS

WAS NO LONGER THE ISSUE. BUT THEY, ALSO, DECIDED THAT OVER EARNINGS WAS NOT THE ONLY CRITERION THAT IT HAD ESTABLISHED, IN ORDER TO ELIMINATE THE SUBSIDY THAT, IN THE PAST, WHEN IT INSTITUTED THE SUBSIDY AND IN ORDERS SINCE THEN, WHEN IT HAD ELIMINATED OTHER SUBSIDIES, IT REITERATED THAT CHANGED CIRCUMSTANCES WAS THE BASIC CRITERION TO DETERMINE WHETHER TO ELIMINATE A SUBSIDY, AND IN THOSE OTHER CASES, THE CHANGED CIRCUMSTANCES HAPPENED TO BE OVER EARNINGS, BUT THEY ARE NOT THE EXCLUSIVE CRITERION.

BUT ISN'T THERE SORT OF AN IMPLIED FACT, HERE, THAT IF YOU MAKE THIS ELECTION FOR THE CAP, THAT EVERYTHING ELSE STAYS THE SAME. THAT IS THAT YOU LOOK AT YOUR FINANCIAL SITUATION AND WHAT IS GOING OUT AND WHAT IS COMING IN AND WHAT YOUR RATES ARE, AND YOU MAKE THAT ELECTION FOR THE CAP, AND THOSE THINGS STAY THE SAME. AND THAT IF YOU MAKE A SUBSTANTIAL CHANGE AFTER THAT, THEN IT REMOVES THE SOUNDNESS OF THEIR DECISION-MAKING TO ELECT THE CAP, YOU KNOW, TO BEGIN WITH.

I CAN RESPOND TO THAT, JUSTICE. FIRST, THE 1995 ACT DOES NOT GUARANTEE A CERTAIN REVENUE. NOWHERE IN THE ACT DOES IT GUARANTEE A REVENUE TO THE COMPANIES NOR CAN IT, BECAUSE REVENUES ARE GOING TO CHANGE FROM YEAR TO YEAR. PEOPLE ARE GOING TO MAKE CALLS ONE YEAR MORE THAN THE NEXT. ACCESS LINES MAY INCREASE. YOU CANNOT GUARANTEE A CERTAIN REVENUE, AND THAT IS NOT WHAT THE ACT DOES. THE ACT GUARANTEES A CERTAIN RATE, AND THERE IS NOTHING DONE TO GTC'S RATES. THERE HAS BEEN SOMETHING DONE TO BellSouth APPEAL AND THAT IS THE BASIS OF OUR BASIS OF THE CROSS APPEAL.

IF WE ARE TALKING ABOUT RATES, OBVIOUSLY RATES ARE THE MAIN WAY THAT YOU HAVE INCOME. RIGHT? YOU SET YOUR RATES.

YES, SIR.

THAT IS WHAT YOUR INCOME IS. AND SO YOU MAY SET YOUR RATES AT ONE THING, TO BE EVEN MORE COMPETITIVE, YOU KNOW, AND TO GET MORE INCOME, IF YOU HAVE GOT THIS OTHER SUBSIDY THAT ALLOWS YOU TO SET THEM. PRESUMABLY AT A LOWER RATE, TO BE MORE COMPETITIVE. BUT IF YOU LOSE THAT SUBSIDY, THEN YOU MAY WANT YOUR RATES TO BE HIGHER, TO MAKE UP FOR THE LOST SUBSIDY THAT YOU HAVE, SO I KNOW YOU HAVE RESPONDED TO THIS AT LEAST ONE WAY IN YOUR BRIEFS, BY SUGGESTING THAT, WELL, THEY CAN GO BACK TO THE COMMISSION ABOUT THIS, BUT HELP ME WITH THAT BASIC PROBLEM THAT THIS, THE WAY THAT THIS HAPPENED IN ELECTING THE --

WE RESPONDED TWO WAYS, JUSTICE FORM THE FIRST RESPONSE, WE SAID IN OUR BRIEF AND WHICH I REITERATE NOW, IS THAT THIS SUBSIDY HAS BEEN IN EFFECT SINCE 1985. IT IS A TEMPORARY SUBSIDY, SO GTC, IN 1995 OR '96, WHEN ELECTED PRICE REGULATION, WAS THE ONLY ONE OUT OF SIX SUBSIDY RECIPIENTS TO REMAIN AS A LEC RECIPIENT. IT HAD TO KNOW THAT, AT SOME POINT, IT COULD NO LONGER RELY ON THIS SUBSIDY. IT WAS A WEANING PERIOD. IT WAS TEMPORARY. THEY ADMIT IT WAS TEMPORARY. TEMPORARY MEANS NOT PERMANENT.

IT WAS AN AWFUL LONG TEMPORARY PERIOD, WAS IT NOT?

ESPECIALLY AS TO GTC, JUSTICE. IT WASN'T VERY LONG AS TO OTHERS, AND THAT IS ANOTHER REASON WHY THE PSC WAS PERFECTLY WITHIN ITS DISCRETION TO ELIMINATE IT.

YOU SAID YOU HAD TWO. GO AHEAD.

THE SECOND REASON IS THAT, IF GTC CLAIMS THAT NOW THEIR SUBSIDY HAS BEEN ELIMINATED AND THAT SUFFICIENTLY CHANGED CIRCUMSTANCES, THEY CAN PETITION FOR A RATE INCREASE, UNDER 364.051-5. THEY HAVEN'T ATTEMPTED TO DO. THAT ALL THEY HAVE TRIED TO DO IS GET A DECLARATORY STATEMENT, BUT THE STATUTE SPECIFICALLY SAYS THAT YOU HAVE TO HAVE A

HEARING, AND SO THE PSC REJECTED A DECLARATORY STATEMENT AS THE METHOD BY WHICH TO DETERMINE WHETHER THERE HAS BEEN CHANGED CIRCUMSTANCES.

YOU HAVE USED TEN MINUTES. IF YOU WISH TO SAVE ANY TIME, YOU MAY DO SO.

I WOULD LIKE TO SAVE SOME TIME. THANK YOU.

MS. MOORE.

MAY IT PLEASE THE COURT. I AM CHRISTIANA MOORE, AND I REPRESENT THE PUBLIC COMMISSION. THERE ARE TWO POINTS I WOULD LIKE TO ADDRESS FOR THE COMMISSION'S AUTHORITY AND TO DETERMINE BellSouth'S COLLECTION OF THE REF NUINGS -- REVENUES, AS IT PASSES THROUGH A SUBSIDY PAYMENT. ONE IS ELIMINATION OF THE SUBSIDY MECHANISM IN NO WAY VIOLATES THE PRICE CAP STATUTE, AND, TWO, THE DECISION FITS IN WITH THE PURPOSE AND INTENT OF THE LEGISLATURE. AND IT IS NOT INCONSISTENT WITH THE NEW PRICE CAP REGULATION STATUTE. I THINK YOU HAVE HEARD BOTH PARTIES HAVE SPOKEN ABOUT THE TEMPORARY NATURE OF THE SUBSIDY FROM THE VERY BEGINNING, BUT, ALSO, THAT SUBSIDY PAYMENT AND FOR BOTH PARTY'S PART WAS CONDITIONAL. SINCE ITS INSTITUTION, IT WAS CONDITIONAL.

BUT WE HAVE A FACT TRAIL, SORT OF, WITH THE OTHERS, AND THEIR SUBSIDY, THAT SHOW THAT THEY WERE OVER EARNING, YOU KNOW, AND SO THEY LOST THE SUBSIDY, AND SO THERE IS SOMETHING VERY APPEALING, THEN, BY SAYING, WELL, IF THAT WAS THE CIRCUMSTANCE THAT CONTROLLED THE LOSS OF THE SUBSIDY FOR THE OTHERS, THEN WHY WOULDN'T THAT BE THE FOCUS OF ATTENTION IN CONSIDERING WHETHER THE SUBSIDY SHOULD GO ON OR NOT, WITH REFERENCE TO THIS COMPANY?

WELL, BECAUSE THEY ARE NOT -- THEY ARE NOW PRICE CAP REGULATED BY CHOICE. THEY NO LONGER REPORT THEIR EARNINGS, AND IT WAS CONDITIONAL. THE GTC'S RECEIPT OF THE SUBSIDY WAS ALWAYS CONDITIONAL ON ITS REPORTING ITS EARNINGS AND BEING SUBJECT TO EARNINGS REVIEWS. IT WAS ONLY SUPPOSED TO LAST UNTIL THOSE EARNINGS MADE IT UP OR UNTIL THEY COULD COME IN FOR A RATE CASE, AND THE COMMISSION MADE THAT EXPLICIT, BUT,000 THAT THEY ARE NOT -- BUT NOW THAT THEY ARE NOT REPORTING THEIR EARNINGS, THEY HAVE MADE IT CONDITION SPECIFIC.

AT THE POINT WHEN THEY ELECTED PRICE RATES?

YES. YES. THERE WERE MAJOR CHANGES IN THE LAW THAT HAPPENED THAT YEAR, AND THAT PROBABLY WAS NOT ONE OF THE MORE PROMINENT GLITCHES THAT HAD TO BE FIXED AT THE TIME.

WHAT DO YOU SAY ABOUT THEIR ARGUMENT, THOUGH, THAT, WELL, THAT IS A PART OF OUR INCOME AT THE TIME, AND SO PRESUMABLY WAS PART OF OUR DECISION-MAKING TO GO WITH THE PRICE CAP.

I THINK IT WAS A BAD DECISION.

TAKE AWAY, NOW YOU HAVE THROWN US A REAL CURVE HERE.

THEIR REVENUES WERE NOT GUARANTEED. THEIR RATES WERE CAPPED, AND I THINK IT WAS A BAD DECISION NOT TO -- THEY WERE -- EITHER OVERLOOKED IT OR THEY HOPED TO LOCK IN THE SUBSIDY, BUT THAT SUBSIDY WAS ALWAYS TEMPORARY AND ALWAYS CONDITIONAL. AND ONLY TO LAST FOR THAT TRANSITION PERIOD, WHICH HAD PASSED. WE ARE NOW IN ANOTHER TRANSITION. IT IS NOT A PART OF THE REVENUE, AND THAT IS ANOTHER POINT I WOULD LIKE TO MAKE ABOUT BellSouth. THE COMMISSION, IN TERMINATING ITS RECEIPT OF THE SUBSIDY



PAYMENT, TELLING IT THAT IT CAN NO LONGER COLLECT THE MONEY, IS NOT A RATE-BASED RATE OF RETURN REGULATION IN THE TRADITIONAL SENSE. IT IS NOT COMPENSATION FOR A SERVICE THAT BellSouth IS PROVIDING ITS CUSTOMERS, AND IT IS NOT A RETURN ON ITS EQUITY. IT IS MERELY A PASS-THROUGH TO GTC, AND THAT ONCE IT HAS NO LONGER GOT TO MAKE THAT PAYMENT TO GTC, IT BECOMES A WINDFALL TO BellSouth.

DOES THE RECORD SHOW US THAT?

YES. THERE IS --

THAT THERE IS A DIRECT COLLECTION FOR THIS PURPOSE AND THEN A PASS-THROUGH ONLY? IN OTHER WORDS IS THERE A PAPER TRAIL? EARMARKED DOLLARS?

I AM NOT SURE THAT THE DOLLARS ARE ANY LONGER EARMARKED. NO. WHEN BellSouth INITIALLY BECAME A CONTRIBUTOR TO THE POOL, IT HAD EXCESS REVENUES FROM THE ACCESS CHARGE, AND THAT IS WHY IT WAS A CONTRIBUTOR. OVER THE YEARS, HAD IT NOT HAD, PRIOR TO PRICE CAP REGULATION, IF THE SUBSIDY PAYMENT TO GTC IN THIS CASE BUT ANY OTHER ELECTIVE RECEIVED IT, HAD EVER BEEN TERMINATED, THE COMMISSION ALWAYS REDUCED OR IN SOME WAY RECOGNIZED THAT BellSouth NO LONGER HAD THE OBLIGATION TO PASS THAT THROUGH. WHETHER YOU CAN IDENTIFY THE PARTICULAR DOLLARS AT THIS POINT, I AM UNCERTAIN, BUT BellSouth, THE DAY IT STOPS PAYING THE SUBSIDY TO GTC, UNLESS IT STOPS COLLECTING THOSE REVENUES TO FUND IT, ITS EARNINGS INCREASE. IT HAS THE EFFECT OF A RATE INCREASE FOR BellSouth, UNLESS --

HOW DO WE KNOW THAT, UNLESS WE HAVE ALL THE FINANCIAL INFORMATION TO PRECISELY EXAMINE?

WELL, THE COMMISSION FOUND THAT THE REVENUE COMES IN, AND IT IS, THEN, PAID TO GTC. AS SOON AS IT IS A PASS THROUGH.

THERE ARE NO FACTS IN THE RECORD HERE.

I THINK THERE WAS TESTIMONY, NOT AS --

FROM BellSouth?

YES. YES. THAT IT WOULD BE A WINDFALL. THERE WAS STAFF WITNESS TESTIMONY AND, ALSO, AT AND T'S WITNESS.

IS IT FACT-BASEED?

THAT THERE WOULD BE A WINDFALL, YES.

IS IT A SUMMARY CONCLUSION THAT IT WOULD BE A WINDFALL OR WHAT ARE THE EXACT NUMBERS?

I DON'T BELIEVE SO. THERE WOULD BE A WINDFALL OF THE EXACT AMOUNT THAT THEY HAVE BEEN PASSING THROUGH TO GTC. IT WOULD BE THAT SAME AMOUNT.

SO WHY IS THE OPPOSITE OF IT THAT TRUE THAT, THEN, THIS WOULD BE A REDUCTION IN RATE FOR GTC? I MEAN, IF THAT IS GOING TO BE AN INCREASE FOR BellSouth, WHY ISN'T THE OPPOSITE OF THAT TRUE, THAT IT WOULD HAVE BEEN A REDUCTION?

IT IS A REDUCTION IN GTC'S REVENUES.

IT IS YOUR POSITION, THEN, THAT THEY HAVE TO GO AND SEEK AN INCREASE. YOU CAN'T DO

ANYTHING ABOUT THAT.

THAT'S CORRECT. THEY HAVE TO ASK FOR A RATE INCREASE -- FOR A RATE INCREASE, AND THE COMMISSION IS REQUIRED TO ACT ON. THAT I WOULD LIKE TO ADDRESS, QUICKLY, THE PURPOSE OF THE STATUTE AND THE INTENT OF THE LEGISLATURE, AND WHY THIS CONTINUATION OF THE SUBSIDY MECHANISM DOESN'T FIT IN WITH IT. THE PURPOSE OF PRICE CAP REGULATION, AS A TRANSITION TO COMPETITION, IS TO BENEFIT CONSUMERS BY COMPETITION IN THE LOCAL MARKET. IT IS NOT MEANT TO BENEFIT THE LOCAL PHONE COMPANIES, IN DEROGATION OF THE PUBLIC INTEREST. BY FREEING BellSouth AND GTC FROM RATE-BASED RATE OF RETURN REGULATIONS, THEY ANTICIPATED THAT THAT WILL ENCOURAGE THESE COMPANIES TO DEVELOP NEW SERVICES, CUT COSTS, AND IMPROVE IN EFFICIENCY. BECAUSE IF THEY DO THAT, THEY WILL BE ABLE TO RETAIN THE PROFITS FROM THOSE ACTIVITIES. THAT IS HOW THEY ARE SUPPOSED TO BENEFIT. THEY ARE NOT MEANT TO BENEFIT OR TO INCREASE THEIR PROFITS IN THE MANNER THAT BELL SEEKS, BY A WINDFALL, BY USING ITS EXEMPTION FROM RATE-BASED RATE OF RETURN REGULATION, TO GET THE COMMISSION TO ELIMINATE A SUBSIDY, AND THEN KEEP COLLECTING THE REVENUES FROM THEIR CUSTOMERS, AND IT IS CUSTOMERS OF BellSouth THAT ARE PAYING, AND THAT IS TANTAMOUNT TO GIVING BellSouth AN INCREASE. FOR GTC, IT IS INCONSISTENT WITH THE STATUTE, BECAUSE THIS SUBSIDY, THIS SEPARATE REVENUE STREAM THAT COMES TO THEM ALLOWS IT TO KEEP ITS RATES ARTIFICIALLY LOW. -- LOW. AND BY KEEPING ITS RATES ARTIFICIALLY LOW, IT DOES HAVE A COMPETITIVE ADVANTAGE. THAT IS WHY I THINK THE COMMISSION HAD TO GET STARTED AND GET THE POT RIGHT FOR THE NEW REGULATORY SCHEME, AND IT DOES HAVE OVERSIGHT REGULATORY AUTHORITY TO DO THAT, AND THERE IS A REMEDY FOR GTC. I BELIEVE MY TIME IS UP. THANK YOU. I WOULD ASK THAT YOU AFFIRM THE COMMISSION'S ORDER.

THANK YOU VERY MUCH. THANK YOU.

IN RESPONSE, IT SEEMS OBVIOUS THAT THERE IS A FUNDAMENTAL DISAGREEMENT AMONGST PARTIES HERE, AND I BELIEVE THAT THE CONFUSION ON BOTH BellSouth AND THE COMMISSION'S PART, AS TO, AGAIN, THE DISTINCTION BETWEEN THE MECHANISM, THE INTERLATA SUBSIDY MECHANISM AND ENTITLEMENT, BUT ALSO AS BETWEEN RATES, BECAUSE WHAT YOU HAVE HEARD BOTH THE COMMISSION AND BellSouth SAY IS THAT WE ARE NOT ENTITLED TO ANY LEVEL OF REVENUES GOING FORWARD. THAT DOESN'T WORK. ALL WE ARE ENTITLED TO IS THE RATES THAT WE WERE CHARGING. THE PROBLEM WITH THAT STATEMENT, AND, AGAIN, THIS IS KEY, IS THAT, IN 1985, THE COMMISSION DENIED SAINT JOE THE RATE INCREASE IT NEEDED TO GENERATE THE 1.5 MILLION. IT IS THE COMMISSION THAT SAID THE 1.5 MILLION IS THE SAME AS THE RATE LEVEL. THIS IS ALL THE COURT HAS TO DO IS ANSWER THIS QUESTION. IF THE COMMISSION HAD ALLOWED THE LOCAL RATE INCREASE SAINT JOE ASKED FOR IN 1984, WOULD WE BE HERE TODAY, AND THE ANSWER IS NO.

WHAT IS WRONG WITH THE ALTERNATIVE. THAT IS A THAT, BECAUSE OF THAT, AND THIS IS SORT OF AN UNIQUE CONFLUENCE OF FACTORS, VERY UNIQUE, I GUESS.

YES, MA'AM. HOPEFULLY WE WON'T SEE IT AGAIN.

THAT YOUR BEING ABLE TO PETITION FOR A RATE INCREASE WOULD SOLVE ANY IN EQUITY RESULTING FROM THE ELIMINATION OF THE SUBSIDY? ISN'T THAT -- WHY ISN'T THAT AN APPROPRIATE WAY TO DEAL WITH IT?

IT IS AN EXCELLENT QUESTION, YOUR HONOR, AND THE ANSWER IS IT WOULD BE. IF WE COULD DO IT NO PROTUNC, UNDER THE RATE OF RETURN REGULATION. IF WE COULD GO BACK TO JUNE 24, THE DAY BEFORE THE COMPANY FILED, AND DO A RATE CASE OR EARNINGS REVIEW, WE COULD DO THAT, AND THE COMPANY MIGHT BE WILLING TO DO THAT, BUT WHAT WE CAN'T DO IS FILE A NOTICE OF ELECTION, DO AWAY WITH EARNINGS REVIEW, DO AWAY WITH ALL

REGULATORY SURVEILLANCE MECHANISMS THAT HAVE BEEN IN PLACE. THERE ARE NO RULES AND NO RATE CASE APPROACH THERE. IS NOTHING OUT THERE. IT IS JUST AVOID AND SAY COME IN AND PROVE YOU NEED THE MONEY.

HOW WOULD YOU, NOW, GET A RATE INCREASE? WHAT IS IT THAT YOU HAVE TO SHOW UNDER THE NEW STATUTE?

NO STANDARD. COMPELLING IS WHAT I RECALL.

THIS IS COMPELLING.

WE THOUGHT SO. THAT IS WHY WE FILED A DECLARATORY STATEMENT. CANDIDLY WE FELT THAT WE HAD AVOIDED THE ARGUMENT OF ADMINISTRATIVE REMEDIES. WE BELIEVE THEY NEVER THOUGHT THEY HAD AN ENTITLEMENT. WE BELIEVE WE REPUDIATED THE ENTITLEMENT. THEY CAME BACK AND SAID, YOU KNOW ACTION YOU ARE NOT ENTITLED TO THIS MONEY. IF YOU CAN PROVE THAT YOU REPUDIATED THIS NEED, WE WILL CONSIDER ENTITLEMENT.

THANK YOU. MR. CANTERO, I WILL GIVE YOU A MINUTE FOR REBUTTAL.

THANK YOU, YOUR HONOR. WE HAVE TWO ISSUES ON CROSS APPEAL. THE FIRST IS THAT THE AUTHORITY HAD NO -- THE COMMISSION HAD NO AUTHORITY TO REDUCE OR RATES, BECAUSE WE ARE EXEMPT FROM PRICE REGULATION, AND WE ARE EXEMPT FROM ALLOWING THE PSC TO CHANGE RATES. SECONDLY I WOULD LIKE TO ADDRESS JUSTICE ANSTEAD'S QUESTIONS ABOUT FUNDS THAT WERE EARMARKED. THERE IS NO RECORD WHATSOEVER THAT BellSouth COLLECTED EARMARKED FOR GTC. WHAT IT DID IS COLLECTED REVENUES FOR ITSELF, JUST LIKE EVERYBODY ELSE, AND THEN IT WAS TAXED, AND WE JUST HAVE TO GIVE \$1.2 MILLION OF OUR MONEY TO GTC. PERIOD. IT WASN'T FROM ANY FUND, AND THE EVIDENCE WHY IT WASN'T ANY FUND IS THAT THE PSC, ITSELF, SAID THAT YOU CAN REDUCE ANY RATE YOU WANT. YOU DON'T HAVE TO REDUCE ANY PARTICULAR RATE OR EVEN REDUCE ACCESS RATES. YOU HAVE TO REDUCE ANY RATES YOU CAN TO BENEFIT THE CUSTOMERS, AND IF THERE WAS AN EARMARKED FUND, WE WOULD HAVE HAD TO REDUCE THAT EARMARKED FUND. THANK YOU.

THANK, COUNSEL. THANK YOU ALL FOR YOUR ASSISTANCE.