

1 **APPEARANCES:**

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8 own behalf.

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P R O C E E D I N G S

(Hearing convened at 9:00 a.m.)

THE COURT: Are we ready to proceed, then?

MS. HELTON: Yes, sir.

THE COURT: Let's go on the record. We're here for the final hearing in the case entitled Chester Osheyack, Petitioner, versus Public Service Commission, Respondent. It's Division of Administrative Hearings Case No. 97-1628RX.

My name is J. Lawrence Johnston, the administrative law judge assigned to conduct the hearing and the proceedings, and at this time I would ask that the parties make their appearances for the record.

If you would, just state your name and address, Mr. Osheyack.

MR. OSHEYACK: I am Chester Osheyack. I live at 17850-A Lake Carlton Drive, Lutz, Florida, 33549.

THE COURT: Is that your -- I think I noticed -- I picked up in some of your correspondence that you were going to be changing your address; is that correct?

MR. OSHEYACK: We're moving as of July 1.

THE COURT: Okay. And what is the new

1 address going to be?

2 MR. OSHEYACK: Let's see if I can remember
3 it. It's 418 Kingstown Avenue, Brandon, Florida,
4 33511.

5 THE COURT: Okay.

6 MR. OSHEYACK: Apartment 2. I'll add that.

7 THE COURT: All right. And for the
8 Commission?

9 MS. HELTON: My name is Mary Anne Helton.
10 I'm representing the Commission. My address is 2540
11 Shumard Oak Boulevard in Tallahassee, 32399-0862.

12 THE COURT: All right. I have read the
13 prehearing stipulation that's been filed in the case,
14 and I recently received a -- and I have not had a
15 chance to even read this. I just picked it up in my
16 office this morning on my way here -- Petitioner
17 Chester Osheyack's motion for official recognition.

18 MS. HELTON: The Commission also filed a
19 second motion for official recognition.

20 THE COURT: Right. I think that was
21 indicated in the --

22 MS. HELTON: Prehearing stipulation.

23 THE COURT: Yes. Off the record.

24 (Discussion off the record.)

25 THE COURT: Okay. Back on the record.

1 (Pause) Off the record again. (Pause)

2 Let's go back on the record. First of all,
3 are there any preliminary matters that should be put
4 on the record at this time before proceeding with the
5 evidence?

6 MR. OSHEYACK: Well, just in relation to the
7 objections, I think I'd like to put a statement into
8 the record and then go on to -- with your permission,
9 to deal with the objections.

10 THE COURT: Well, actually, I don't know
11 that the objections were actually on the record, so
12 why don't you just go ahead and proceed, and as we get
13 to an objection, we'll deal with it at that time.

14 MR. OSHEYACK: All right. I think I must
15 admit to a sense of disquiet with respect to the
16 objections. You know, counsel readily invokes the
17 Administrative Code Chapter 60Q-2 when it --
18 (inaudible) --

19 THE COURT REPORTER: Excuse me. I'm having
20 trouble --

21 THE COURT: Just a minute, Mr. Osheyack.
22 The court reporter here is having a little difficulty
23 hearing you, so we're going to have to keep track of
24 that and make sure that your comments do get on the
25 record properly.

1 While we're off the record, let me help the
2 court reporter on one of the things you said that she
3 didn't catch. I believe that he was referring to
4 60Q-2. It's a provision of the rules.

5 Go ahead on the record.

6 **MR. OSHEYACK:** The Administrative Code,
7 Chapter 60Q-2.026(3) states, with respect to evidence,
8 that hearsay evidence may be used to supplement or
9 explain evidence.

10 Now, moreover, counsel knows or should know
11 that this is the same standard that applies in
12 hearings conducted by the Public Service Commission.
13 Yet out of 27 exhibits proposed, counsel objected to
14 15 on the grounds of hearsay.

15 It's my understanding, Judge, that this is
16 an adversarial hearing. It's not a trial. There are
17 no high crimes or misdemeanors in question. There are
18 facts and laws in dispute, and they ought to be
19 litigated and adjudicated.

20 We're here to find the truth as best we can,
21 and what may be construed to be extravagant use of
22 process to suppress evidence does not contribute
23 productively to that end.

24 After reviewing the scope and content of the
25 objections, one can only conclude that my adversary

1 believes that winning is more important than truth.
2 This is particularly disturbing to me because my
3 adversary is my government.

4 Your Honor, I hope we do not bring this
5 hearing down to a level of a game to be won or lost.
6 The health, safety and welfare of the public is at
7 stake here. Accordingly, I do herewith withdraw my
8 objections to all of the Commission's exhibit
9 submissions and I ask the Commission to do the same.
10 Let's let it all hang out.

11 **THE COURT:** For the record, you're referring
12 to the objections that are referred to in the
13 prehearing stipulation?

14 **MR. OSHEYACK:** Yes.

15 **THE COURT:** All right. Well, I'll accept
16 your withdrawal of your objection. I guess I'll ask
17 Ms. Helton what the Commission's position is on the
18 objections.

19 **MS. HELTON:** Judge, my understanding of
20 hearsay evidence is that it can be admitted into a
21 120.57(1) proceeding if -- to the extent that it
22 corroborates other evidence in the case. And I don't
23 know what is going to come out of the testimony here
24 today and I don't know whether that would be the case.

25 My understanding, also, of evidence taken in

1 a DOAH proceeding is that the rules of procedure and
2 the evidence code is not strictly followed. However,
3 those are used as guidelines, and what is followed is
4 what would a normal person or a reasonable person rely
5 on in the course of their activities throughout the
6 day.

7 Many of Mr. Osheyack's exhibits are
8 newspaper articles that I don't think -- I think are
9 truly hearsay. I don't think that they can be relied
10 on. The other items that Mr. Osheyack has offered are
11 correspondence from other federal agencies. We have
12 no way of verifying whether the information in that
13 correspondence is accurate and what context it was
14 provided to Mr. Osheyack.

15 I don't think that I can stipulate at this
16 point in time to allowing his exhibits to go into
17 record.

18 **THE COURT:** All right. Let's proceed, and
19 we'll deal with any objections to exhibits as they're
20 presented, Mr. Osheyack.

21 **MR. OSHEYACK:** All right. I'm prepared to
22 go forward on an exhibit-by-exhibit basis. Let's look
23 at Exhibit 1, the letter from George Hanna. Mr. Hanna
24 is the retired director of -- excuse me. Is that what
25 you want me to do --

1 THE COURT: Not -- no. We'll proceed with
2 the hearing, and as exhibits are presented, I'll deal
3 with any objections that are raised.

4 MR. OSHEYACK: Oh, I see.

5 THE COURT: In that regard, let me make
6 sure -- do I have a copy of your exhibits? Have you
7 sent me a copy of your exhibits?

8 MS. HELTON: They're right there. That's
9 both the Commission and Mr. Osheyack's exhibits.

10 THE COURT: All right. I have them here.
11 Let me make sure I've got -- I understand the
12 exhibits.

13 MS. HELTON: I maybe should add, too, that
14 to the extent that his exhibits are statutes, the
15 Commission doesn't object to the statutes being
16 officially recognized, except that as far as the
17 federal statutes go, it's our position that what the
18 federal law is is really not a relevant issue to this
19 case in that I don't believe that you have
20 jurisdiction to determine whether our rule is
21 permitted under the federal law.

22 MR. OSHEYACK: You know, Judge, in listening
23 to Ms. Helton, I don't see that there's any way to do
24 this without going through the exhibits one by one,
25 because -- if it's going to be refuted, and I want the

1 exhibits to be part of the record, but not necessarily
2 will they be a part of the trial. Or the hearing, I
3 should say.

4 THE COURT: Well, let me make this
5 suggestion: Are you planning on making -- on giving
6 your own testimony? Are you planning on testifying?

7 MR. OSHEYACK: I'll make an opening
8 statement and a closing statement.

9 THE COURT: Okay. And at what point do you
10 plan to introduce your exhibits? Through your witness
11 or --

12 MR. OSHEYACK: Right now.

13 THE COURT: Well, let's proceed in that
14 fashion. Why don't we proceed with your opening
15 statement and then we'll proceed with your evidence,
16 which would be the introduction of your exhibits and
17 then the testimony of your witness.

18 MR. OSHEYACK: All right. Fine.

19 THE COURT: Let me also say that if you're
20 not planning to testify, that's fine for you to make
21 an opening statement as to outline for me what you
22 expect the evidence to show, but if you --

23 MR. OSHEYACK: That would be my testimony.

24 THE COURT: Well, that's my point, is if you
25 are also going to testify, it might be -- often the

1 opening statement and testimony gets confused and
2 intermixed, and it may be -- it may be that you're
3 actually going to be giving some testimony during your
4 opening statement. I'm not sure what your plan is,
5 but my question is, should I go ahead and swear you
6 and consider your opening --

7 **MR. OSHEYACK:** Yeah, why don't you swear
8 me --

9 **MS. HELTON:** Judge, I have to object to
10 that. Mr. Osheyack and I have discussed numerous
11 times who his witnesses are going to be, and
12 Mr. Osheyack never, ever mentioned to me that he would
13 be a witness in this proceeding. He has listed three
14 staff members as witnesses. Those are Bev DeMello,
15 Mark Long and Julian O'Pry.

16 **THE COURT:** What about that, Mr. Osheyack?

17 **MR. OSHEYACK:** Well, as I understand it, in
18 60Q anybody can testify. But the fact is that I'm the
19 petitioner. I assume that anything I say is
20 testimony. I plan on bringing my case out in my
21 opening statement and through the witnesses, if I have
22 free access to the witnesses.

23 **THE COURT:** Okay. Why don't we -- Why don't
24 I just hear your opening statement. I'll swear you
25 for your own testimony at a later point. We'll deal

1 with that later.

2 MR. OSHEYACK: Fine. Your Honor, I have
3 filed this petition that's before you today for the
4 purpose of challenging the validity of the Public
5 Service Commission Rule 25.113(1)(f), which in simple
6 terms allows a local telephone company operating in
7 the state of Florida to deny, interrupt or disconnect
8 basic local telephone service for nonpayment of
9 interstate and intrastate long distance service.

10 In the position -- in the petition I take
11 the position that the current policy as expressed by
12 the rule contravenes current state law and the
13 principles of conduct as defined in federal statutes,
14 as well as applicable federal law.

15 In the prehearing stipulation I outline my
16 interpretation of some 13 issues of fact to be
17 litigated. Counsel for the Commission disapproved the
18 form in which they are presented. Now, with all due
19 respect, the matter of form over substance should
20 probably be one which is decided by your Honor.

21 However, I take counsel's point and I do
22 herewith suggest the following: I believe that the
23 substance of my positions have merit, but in order to
24 expedite what can be a long and tedious process -- and
25 I prefer to concentrate on what is the essence in my

1 case. And I am, with the Court's approval, prepared
2 to withdraw the 13 issues presented and limit the
3 scope of argument to five specific issues which
4 capsulize the 13 and which, in my opinion, are the
5 heart of the matter before you today.

6 With the Court's permission, I'll go on to
7 explain. The issues that I would request to be
8 litigated today in the hearing are as follows: (1);
9 Does the Public Service Commission have jurisdictional
10 and legislative authority to permit the denial,
11 interruption or disconnection of basic local exchange
12 telephone service for nonpayment of services not
13 regulated by the Commission, including but not limited
14 to interstate long distance service?

15 (2) --

16 **THE COURT:** Just a minute, Mr. Osheyack. I
17 just wanted to ask you, are you referring to issues
18 that are set forth in the prehearing stipulation? Is
19 that where you're reading from --

20 **MR. OSHEYACK:** Yeah, I've capsulized them.
21 I've capsulized them and limited the scope to five
22 instead of 13.

23 **THE COURT:** Well, the one that you just
24 referred to, for example, is that found under Section
25 G of the prehearing stipulation?

1 **MR. OSHEYACK:** Well, I'll have to get the
2 prehearing stipulation. (Pause) Yeah, it's -- it's
3 in here. It's in -- look; it's part of the 13, but
4 it's capsulized into five.

5 **THE COURT:** Well, I guess what I'm asking
6 is, we're -- which -- in other words, you're combining
7 the 13? I'm sorry --

8 **MR. OSHEYACK:** Combining the elements in the
9 13 and rephrasing them into five so that they're in
10 capsulized form. They accomplish the same thing.

11 I did, incidentally -- and I don't know
12 whether this is appropriate or not -- but I did talk
13 to Judy about this early on because some of the
14 evidence that was introduced by the Commission sort of
15 changed the whole picture, and I asked her if it would
16 be appropriate for me to limit the scope and how to do
17 it, by motion or whatever; and she said at the
18 hearing. And that in effect is what I'm doing today.

19 **MS. HELTON:** Judge, can I respond to that?

20 **THE COURT:** Yes.

21 **MS. HELTON:** I talked to Judy, who is your
22 secretary, after Mr. Osheyack expressed the same thing
23 to me to make sure --

24 **THE COURT:** I was wondering who Judy was.
25 Okay.

1 **MS. HELTON:** To make sure that I understood
2 what had been -- what he had been told. It's my
3 understanding that if you want to amend a pleading or
4 a petition before the Division of Administrative
5 Hearings or any other court in this state, that you
6 have to do so by motion, and that the presiding
7 officer or judge has to agree to do that.

8 What is my understanding that Judy told
9 Mr. Osheyack is that if he has decided that he wants
10 to limit the scope of the proceeding, he can limit it
11 to the extent of what evidence he presents to be
12 considered by you.

13 **MR. OSHEYACK:** Well, I am limiting it to the
14 extent of evidence, but at -- the definition of
15 evidence includes what I received from the Commission.
16 And my point was that the Commission submitted certain
17 evidence which is significant in making my case. The
18 adjustment in the case is merely an adjustment of
19 words.

20 It's an attempt to save time because as you
21 see, as I think along with my statement, you see that
22 there is a lot less to be argued and more in evidence,
23 hard evidence, presented by the Commission; and I'm
24 just trying to capsulize it, what has been written
25 here, and save time.

1 **THE COURT:** I appreciate --

2 **MR. OSHEYACK:** And I'm saying in effect that
3 there are five basic issues which capsulize all the
4 issues that I put forth in the 13 and are supported,
5 clearly supported, by evidence, mostly of which was
6 presented by the Commission.

7 **THE COURT:** Okay. Which of the 13 did you
8 just capsulize, or combine into your first --

9 **MR. OSHEYACK:** Well, we're talking here
10 about the jurisdictional element, and all through here
11 we're talking about jurisdiction. Is it appropriate
12 for a telephone company to deny or disconnect service.

13 Number 3, on to G. Interstate and
14 international telephone service is not regulated by
15 the Commission. That's jurisdiction.

16 Number 2 is jurisdictional. Number 1 is
17 jurisdictional. We're talking about jurisdictional in
18 at least the first three of these items. I've worded
19 them differently, but Ms. Helton objected to the way I
20 worded them, so I reworded them to accommodate her
21 needs.

22 I'm not a lawyer. Perhaps I don't follow
23 the right form, but the intent is honorable.

24 **THE COURT:** So what you've just attempted to
25 do is combine the first three issues into what you

1 just read?

2 MR. OSHEYACK: I combined all these
3 elements, and it addressed the question of
4 jurisdiction into one.

5 MS. HELTON: Okay. Could we have him reread
6 that?

7 THE COURT: Now that we -- it might be
8 helpful for us to follow you if you, each time, let us
9 know what it is that you're summarizing. So, for
10 example, could you now repeat how you have rephrased
11 those first three issues?

12 MR. OSHEYACK: All right. "Does the Florida
13 Public Service Commission have jurisdictional and
14 legislative authority to permit denial, interruption
15 or disconnection of basic local exchange telephone
16 service for nonpayment of services not regulated by
17 the Commission, including but not limited to
18 interstate long distance service?"

19 MS. HELTON: I object. Would you like me
20 to --

21 THE COURT: Yes, if you have an objection --

22 MS. HELTON: I object to the way that
23 particular issue is phrased and that it assumes that
24 the Commission does not have jurisdiction to allow
25 disconnection for nonpayment of interstate toll, and

1 the Commission does not agree with that.

2 THE COURT: Well, that apparently is the
3 issue. That's your --

4 MR. OSHEYACK: Okay. If they agreed --

5 THE COURT: That's your jurisdictional
6 issue.

7 MR. OSHEYACK: -- it wouldn't be an issue.

8 THE COURT: Yeah. Okay. Your objection --

9 MR. OSHEYACK: I --

10 THE COURT: -- is noted. You may proceed.

11 And what is --

12 MR. OSHEYACK: Number 2: "Does the --

13 THE COURT: Just a minute. Before you --

14 MR. OSHEYACK: -- disconnect authority --

15 THE COURT: Just a minute, Mr. --

16 MR. OSHEYACK: Does the disconnect authority
17 rule as currently --

18 THE COURT: Mr. Osheyack --

19 MR. OSHEYACK: Yes.

20 THE COURT: -- before you proceed with
21 Number 2, could you tell us which ones, which of the
22 items under G you're now summarizing?

23 MR. OSHEYACK: All right. That also is --
24 yeah, Number 9, I would say. I think there are a
25 couple of others, but Number 9 would be a classic

1 example. We're talking about legislative authority
2 given by the Florida Statutes, and there's several
3 references in there in G. Number 9 is one of them; 10
4 is another.

5 THE COURT: Okay.

6 MR. OSHEYACK: Shall I read it?

7 THE COURT: Yes.

8 MR. OSHEYACK: All right. Number 2: "Does
9 the disconnect authority rule as currently applied
10 unreasonably expand the legislative authority provided
11 to the Commission by the Florida Statutes to the
12 detriment of the consumers?" (Pause)

13 Can we go off audio for a second?

14 THE COURT: Off the record --

15 MR. OSHEYACK: Off audio --

16 THE COURT: In other words, you want a
17 private conversation?

18 MR. OSHEYACK: We want to -- yeah, we just
19 want to talk about --

20 THE COURT: There is a button on your
21 console that says "Privacy," or something of that
22 nature.

23 MR. OSHEYACK: Right. Can you hear us now?

24 THE COURT: Yes.

25 MR. OSHEYACK: No.

1 (Discussion off the record.)
2 THE COURT: All right. Proceed.
3 MR. OSHEYACK: I thought we would get it all
4 straightened out so we wouldn't have to interrupt.
5 You have one on 2. Number 8. 9 --
6 THE COURT: Okay.
7 MS. HELTON: Just a minute. I'm not
8 following you.
9 MR. OSHEYACK: All right. On point
10 Number 3 --
11 THE COURT: Now you're going to Number 3?
12 MR. OSHEYACK: Did we cover Number 2?
13 THE COURT: As I heard you, it was as in
14 place of 9 and 10.
15 MR. OSHEYACK: All right. Number 2 is in
16 place of 8.
17 THE COURT: Only 8?
18 MR. OSHEYACK: Yeah, only 8. We haven't
19 sorted that out.
20 THE COURT: So now you're going to Number 3.
21 MR. OSHEYACK: Number 3. This would be in
22 place of 9, 10 and 18. Are you ready?
23 THE COURT: Yes.
24 MR. OSHEYACK: "Does the disconnect
25 authority rule, as currently applied, contravene the

1 mandate of the Florida Telecommunications Statutes as
2 amended in 1995, which call for the Commission to
3 promote competition by approving trade practices that
4 encourage fair competition and consumer choice while
5 eliminating anticompetitive rules and regulations?"

6 MS. HELTON: Can I have him read that one
7 more time?

8 THE COURT: Mr. Osheyack, off the record.
9 Could you read that back?

10 (Thereupon, the requested section appearing
11 on Page 20, Lines 24 through Page 21, Line 5, was read
12 back by the reporter.)

13 MR. OSHEYACK: That's correct, if you want a
14 comment from me.

15 THE COURT: Okay. Back on the record. You
16 may proceed.

17 MR. OSHEYACK: On Number 4 we capsulized 14,
18 15 and 16 of the prehearing stipulation. "Does the
19 Florida Public Service Commission have the authority
20 to approve policies that are arbitrary and capricious
21 in nature and are inconsistent based on competent
22 evidence?"

23 THE COURT: Okay. What is your last issue
24 that you're --

25 MR. OSHEYACK: On the last issue we

1 substitute 4, 17 and 19. "Does the Florida Public
2 Service Commission have the authority to approve or
3 sustain policies, such as the disconnect authority
4 rule, which contravene the mandates of state law and
5 the principles of conduct defined in federal law, or
6 the mandates of applicable federal law with respect to
7 the specific issue of universal service?"

8 Now, these are my issues. By limiting the
9 scope of the hearing, we can have a more expeditious
10 process and I, therefore, ask the Court to make these
11 substitutions because the list is more limited and
12 targeted to five issues of litigation. I believe that
13 the Court in the process will be better served by this
14 more limited scope for argument. And along with this
15 suggestion, I drop all the others. I withdraw all the
16 others.

17 MS. HELTON: May I ask for a clarification
18 question? So does that mean, Mr. Osheyack, that you
19 no longer are arguing that the rule is prohibited by
20 the Federal Fair Debt and Collection Act and the
21 Florida Fair Debt Collection Act?

22 MR. OSHEYACK: Well, let's see. I agree to
23 that.

24 MS. HELTON: But you are still arguing that
25 the rule is inconsistent with the Federal

1 Telecommunications Act on competition and universal
2 service?

3 MR. OSHEYACK: Absolutely.

4 MS. HELTON: What about the Antitrust Act?

5 MR. OSHEYACK: The Antitrust Act is relevant
6 only as to its -- the behavior that the -- the pattern
7 of behavior that it outlines, but it's not -- it's not
8 really relevant to this case as it is now.

9 MS. HELTON: What about the statute of
10 limitations?

11 MR. OSHEYACK: I withdraw that. I -- I am
12 appalled that there should be any objection to it,
13 because historically the statute of limitations is a
14 part of the system of jurisprudence in every civilized
15 country in the world. But I withdraw it.

16 MS. HELTON: If it's appropriate for me to
17 discuss this now --

18 THE COURT: All right.

19 MS. HELTON: I don't object to Mr. Osheyack
20 limiting the proceeding. I do object to the wording
21 of a couple of the questions. And, to me, they
22 presuppose that the rule is -- violates standard
23 federal law and I -- obviously, the Commission
24 disagrees with that. So I may object to the wording
25 of the issues, but I don't object to the scope of the

1 issue.

2 **THE COURT:** All right. Let's proceed. I
3 think that obviously the Commission does not think the
4 rule violates those provisions.

5 All right. You may proceed with your
6 opening statement, Mr. Osheyack.

7 **MR. OSHEYACK:** The following, your Honor,
8 represents the essence of my arguments.

9 Regarding 1, and let me rephrase -- in each
10 case, let me rephrase the issue. "Does the Florida
11 Public Service Commission have jurisdictional and
12 legislative authority to permit denial and
13 interruption or disconnection of basic local exchange
14 telephone service for nonpayment of services not
15 regulated by the Commission, including but not limited
16 to interstate long distance service?"

17 The Federal Telecommunications Act
18 establishes the framework for the regulation of
19 interstate telecommunications service by the Federal
20 Communications Commission, and Section (2)(B) of the
21 Act reserves for the states the regulation of
22 intrastate telecommunications services. Consistent
23 with the federal statutes, the Florida Statutes
24 provide authority for the State Commission to regulate
25 services provided within the state of Florida.

1 I submit that the State Commission's
2 regulatory authority over billing and collection
3 tariffs of the interexchange carriers is restricted to
4 intrastate services, and that billing and collection
5 for interstate services, including rates, charges and
6 rules of practice for interstate services, are not
7 subject to the Florida Commission jurisdiction by
8 virtue of the Florida Statutes.

9 I would also argue that even where tariffs
10 applicable to Florida carriers may have been
11 appropriately conceived, by definition the tariff is a
12 contract between two corporations, one purchasing a
13 service from another for consideration, which contract
14 is approved by the State Commission. And these
15 tariffs do not address or reflect the public interest
16 except perhaps as interpreted by the State Commission.

17 If, therefore, the Commission's
18 interpretation is mistaken, the tariff would be based
19 on an invalid interpretation and, therefore, null and
20 void.

21 Finally, I argue that the Commission has
22 already determined that it cannot permit denial,
23 blocking or disconnection of local exchange services
24 for nonpayment of bills for services that are not
25 regulated by the Commission or not under its direct

1 control.

2 The Commission, therefore, ignored the
3 telecommunications reform statutes that the State
4 enacted in 1995 when it decided to reject the staff
5 recommendations in that November, 1996, which action
6 motivated my petition to the DOAH.

7 I believe that this action was in error
8 because it disregarded the reality that a rule that it
9 had sustained is arbitrary and capricious and is not
10 supported by evidence which, in fact, was before the
11 Commission --

12 **MS. HELTON:** I'm sorry, your Honor, but I'm
13 going to have to object here. What's at issue today
14 is whether the rule that's on the books is authorized
15 by the Legislature, whether it's based on competent
16 and substantial evidence, and whether it's arbitrary
17 and capricious.

18 What is not at issue today is a rule that --
19 the amendment that the Commission withdrew.
20 Mr. Osheyack was able to fully participate in that
21 process. Mr. Osheyack appealed that notice of
22 withdrawal to the Supreme Court of the state and
23 the -- and that court dismissed his appeal.

24 What the Commission did or the reasons for
25 that, I think, are not at issue today.

1 **MR. OSHEYACK:** Your Honor, the Supreme Court
2 did not dismiss my appeal on the basis of the merits
3 of the case. It dismissed the appeal on the basis of
4 my standing before the Supreme Court.

5 That is entirely an erroneous comment, and
6 as far as this particular statement is concerned,
7 we're talking about the fact that there was evidence
8 presented. There is evidence that was presented
9 that's in the exhibit file presented by the Commission
10 today which supports my statement.

11 **THE COURT:** All right. I'll overrule the
12 objection. This is opening statement. You may
13 proceed.

14 **MR. OSHEYACK:** All right. Number 2: "Does
15 the disconnect authority rule as currently applied
16 unreasonably expand the legislative authority provided
17 by the Commission -- to the Commission by the Florida
18 Statutes to the detriment of the consumers?"

19 It is my position, your Honor, that the
20 disconnect authority rule as currently applied by the
21 Commission unreasonably expands the legislative
22 authority provided by the Florida Statutes to the
23 detriment of the consumers of telephone service.

24 As currently applied, the rule tramples on
25 the public interest whom the Commission is obligated

1 to protect, and is of questionable value to the
2 multibillion-dollar, multinational telephone
3 corporations.

4 The PSC Staff recognized these facts after
5 almost three years of study. It attempted to provide
6 a remedy and a recommendation to the Commission, but
7 the Commission failed to act; and the evidence
8 presented in the Commission file and among their
9 exhibits proves this case.

10 Shall I go on?

11 **THE COURT:** Yes.

12 **MR. OSHEYACK:** On Number 3: "Does the
13 disconnect authority rule as currently applied
14 contravene the mandate of the Florida
15 telecommunications statutes as amended in 1995, which
16 call for the Commission to promote competition by
17 approving trade practices and encourage fair
18 competition and consumer choice while eliminating
19 anticompetitive rules and regulations?"

20 Your Honor, Chapter 364 of the Florida
21 Statutes is clear with respect to the responsibilities
22 of the Commission to encourage competition in the
23 provision of telecommunications services, while at the
24 same time protecting the public health, safety and
25 welfare, and by ensuring that basic local telephone

1 service is available to all consumers. This is set
2 forth in Florida Statute Chapter 364.01(4)(a) and (b).

3 However, the Commission ignored this statute
4 when it rejected the Staff recommendations in
5 November, 1996 and continued to allow local exchange
6 companies to deny, block or disconnect basic local
7 telecommunications services for nonpayment of
8 interstate charges which are not within their ability
9 to control or within their legitimate jurisdiction.
10 This is also supported by evidence presented by the
11 Commission and recognized by the court.

12 Item 4: "Does the Florida Public Service
13 Commission have the authority to approve policies that
14 are arbitrary and capricious in nature and are
15 inconsistent based on competent evidence?"

16 I submit your Honor, that the Commission, in
17 a prior order promulgated in January, 1993, determined
18 that it had no authority to allow denial, interruption
19 or disconnection of basic local exchange service for
20 nonpayment of interstate telephone services which are
21 not within their jurisdiction or under their direct
22 control.

23 Furthermore, in a prior order promulgated in
24 July, 1996, the Commission ruled that universal toll
25 call blocking for nonpayment of interstate and

1 intrastate charges are direct contraventions of
2 Florida Statutes and are examples of anticompetitive
3 behavior.

4 Yet in November, 1996, under pressure from
5 approximately 16 local exchange and interexchange
6 corporations, the Commission did sustain, against the
7 advice of staff, a rule which approved denial,
8 blocking or disconnection of what is still a monopoly,
9 basic local exchange service to residential consumers
10 for nonpayment for what is a competitive service, long
11 distance service to residential companies; exacerbated
12 the obvious mistake by its action.

13 The Commission approved denial, blocking or
14 disconnection of services above referenced, through
15 failure to pay a bill owed to one long distance
16 company, one long distance competitor, with the
17 consequence that the customer is prohibited from free
18 access to 449 other certificated interexchange
19 carriers.

20 This is a clear contravention of a mandate
21 to promote competition in the Florida markets as set
22 forth in the Florida Statutes, and it is also a clear
23 illustration of inconsistency in policy decision
24 making by the Commission.

25 Your Honor, in the absence of consistency of

1 interpretation of law, there can be no justice, and
2 absent such consistency, the policy makers cannot
3 enjoy the full faith and confidence of the public.

4 Number 5: "Does the Florida Public Service
5 Commission have the authority to approve or sustain
6 policies such as the disconnect authority rule which
7 contravene the mandates of state law and the
8 principles of conduct defined in federal law or the
9 mandates of applicable federal law with respect to the
10 specific issue of universal service?"

11 I would finally argue, your Honor, that the
12 failure of the Commission to give credence to the
13 recommendations of the Staff and other petitioners
14 which shared in the common public interest led to the
15 continuation of the rule which contravenes the state
16 and applicable federal statutes and the principles of
17 conduct defined in the federal law with respect to the
18 mandated goal of universal service.

19 In conclusion, your Honor, with the passage
20 of the new state and federal telecommunications
21 statutes in 1995 and '96, both legislative bodies have
22 imposed upon the Commission two principal
23 requirements.

24 First, to maintain and expand universal
25 service, which is simply defined as basic local

1 exchange service, I believe that we can easily
2 demonstrate to you that the disconnect authority rule
3 currently applied within the state of Florida prevents
4 the achievement of that goal.

5 The second requirement imposed on the
6 Commission by the new statutes regards the complete
7 elimination of rate of return regulation and as rapid
8 as possible transmission to increase competition in
9 the telecommunications markets.

10 The Commission is mandated to oversee this
11 transition and to facilitate its advancement. The
12 Florida Legislature drew a sharp line between basic
13 local telecommunications service and all other
14 services, and established for the Commission the
15 priority task of protecting subscribers of basic local
16 service from price and service discrimination while
17 allowing all other services, such as long distance
18 service, the freedom from continuing price and service
19 regulation; and this to continue until we have a fully
20 competitive local communications market, at which time
21 it is hoped that most all regulation will disappear.

22 Against this background, the point must be
23 made that the unreasonable pressure exerted by the
24 telecommunications industry here in Florida has caused
25 the Commission to disregard its mandate to protect the

1 consumer and to permit the industry to enjoy a
2 collection remedy that is contrary to all standards of
3 conduct and behavior in the competitive marketplace.

4 The Commission has ignored the Legislature.
5 It has ignored the staff and those who attempt to
6 represent the public interest, and it has ignored its
7 responsibility to the consumer with respect to the
8 need to protect the public health safety and welfare,
9 and has listened only to corporations whose interest
10 is not the consumer, but rather the shareholder, the
11 bottom line of their financial statement, and the
12 market value of their stock.

13 That is my statement.

14 THE COURT: Any opening statement?

15 MS. HELTON: The Commission waives its right
16 to do that.

17 THE COURT: Mr. Osheyack, you may present
18 your evidence.

19 MR. OSHEYACK: Is that the exhibits?

20 THE COURT: It should be your exhibits or
21 your witnesses or both.

22 MR. OSHEYACK: May we have a break?

23 THE COURT: All right; a short recess.

24 MR. OSHEYACK: I am on some new medication
25 and I need a break every now and then, if it's all

1 right with you.

2 THE COURT: A five-minute recess, you mean?

3 MR. OSHEYACK: Yeah, about five minutes.

4 THE COURT: All right. We're in recess for
5 five minutes.

6 MR. OSHEYACK: Thank you very much.

7 (Brief recess.)

8 - - - - -

9 THE COURT: Are you ready to proceed?

10 MR. OSHEYACK: I notice that Bev DeMello is
11 there, and why don't we call her first.

12 THE COURT: State your name and employment
13 and work address.

14 WITNESS DEMELLO: Am I addressing myself to
15 you or to Mr. Osheyack?

16 THE COURT: Now you're addressing yourself
17 to me, but then you'll be answering his questions.

18 WITNESS DEMELLO: I'm sorry. I just wanted
19 to make sure.

20 My name is Beverly S. DeMello. I'm the
21 director of the Florida Public Service Commission's
22 division on consumer affairs.

23 MR. OSHEYACK: I can't hear too well.

24 WITNESS DEMELLO: Sure. I can speak up.

25 MR. OSHEYACK: Speak up a little louder.

1 WITNESS DEMELLO: No problem.

2 THE COURT: All right. You may proceed and
3 ask her the questions, Mr. Osheyack.

4 - - - - -

5 BEVERLY S. DEMELLO

6 was called as a witness on behalf of the Petitioner
7 and, having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. OSHEYACK:

10 Q Bev, I'm Chet Osheyack. We've talked. I'm
11 glad to be able to identify a face with a voice.

12 A Good morning.

13 Q Good morning. Bev, I understand your
14 replacement -- you will be the replacement for George
15 Hanna?

16 A Yes, sir.

17 Q But as I read the respects of your job, your
18 job is quite a bit expanded from his. Is that not
19 true?

20 A I'm sorry. It's expanded?

21 Q Is your job expanded beyond the scope of
22 what George Hanna did, or is it exactly the same?

23 A When George Hanna was the director, we did
24 not have two bureaus until the very end of his tenure.
25 And then we have the bureau of complaint resolution

1 which handles the calls coming in over the 800 line,
2 and then we also have the bureau of consumer
3 information, which deals with consumer information and
4 media relations, and that did not -- those two bureaus
5 did not come together until the end of George Hanna's
6 tenure. But other than that, I am the director just
7 as he was.

8 Q I thought that your duties has been expanded
9 based on what I saw. But in your capacity of -- and
10 including the four hats you wear -- which I'm sure get
11 heavy at times -- are you required to make policy or
12 interpret policy, or do you just convey policy?

13 A We basically -- we handle complaints,
14 consumer complaints and inquiries, and that means
15 that -- you know, obviously we don't set policy. What
16 we do is carry out the policy that has been set for
17 us.

18 Q You carry it out or communicate it? If it
19 happens to be the press or public that has a question,
20 you communicate policy?

21 A That's right.

22 Q You don't make it or --

23 A That's right. Well, in other words, sir, if
24 someone asks a question, I may or one of my analysts
25 may have to touch base with one of the technical

1 division directors or some of their staff members,
2 because, obviously, we have a very general
3 understanding of the Commission role and duties; and
4 then when we need specific information we have a
5 wealth of people at the Commission that we go to.

6 Q Well, suppose somebody throws a legal
7 question at you or a quasilegal question at you. You
8 wouldn't attempt to answer that without talking to a
9 lawyer, I presume?

10 A No. As I have stated in earlier
11 conversations, I am not an attorney. My background is
12 not a legal background, and so definitely on questions
13 that need legal opinions I would ask one of our
14 attorneys for that type of information.

15 Q Did you know George Hanna well? He's been
16 around the company -- the organization a long time.

17 A Yes, sir, I did know Mr. Hanna well. He
18 hired me.

19 Q Oh, he did hire you?

20 A Uh-huh.

21 Q Then you did know him. Was he a cowboy, a
22 shoot-from-the-hip type of guy, or was he very
23 cautious and careful about what he did?

24 A I'm not sure of the relevance --

25 MS. HELTON: I object to that question. I'm

1 not sure to the relevance either.

2 MR. OSHEYACK: Well, it's -- the relevance
3 is to the quality of his work and his work product,
4 that his work product is -- is one of our exhibits.

5 MS. HELTON: The Commission is willing to
6 stipulate that George Hanna was the director of the
7 division of consumer affairs prior to Ms. DeMello
8 taking on that role.

9 However, what Ms. DeMello thought of his job
10 performance I don't think is applicable to this
11 proceeding at all.

12 MR. OSHEYACK: All right. I withdraw the
13 question.

14 Q (By Mr. Osheyack) I'd like to put an
15 exhibit up on the screen, Bev.

16 A Yes, sir.

17 Q Which is a letter from George Hanna. Can
18 you read it?

19 A Yes, sir, I can.

20 THE COURT: For the record, this is your
21 Exhibit No. 1, is it not?

22 MR. OSHEYACK: Exhibit No. 1, right.

23 Q (By Mr. Osheyack) George Hanna, in
24 response to an inquiry from me -- and just to give you
25 some background so maybe you can understand --

1 somebody -- I'm a nonlawyer. Somebody tell me if I
2 get out of line. But the background underlying this
3 letter was simply this: I had been referred to the --

4 MS. HELTON: Your Honor, I'm a little bit
5 unclear here. Is it Mr. Osheyack that's testifying,
6 or is it Ms. DeMello that's testifying?

7 MR. OSHEYACK: All right. I'll stay with
8 the questions. I say I'm a nonlawyer, so if I get out
9 of line -- thank you, Mary Anne, and I'll go back to
10 the letter.

11 Q (By Mr. Osheyack) Bev?

12 A Yes, sir.

13 Q As you read the letter, is the information
14 regarding the jurisdiction of the Public Service
15 Commission and the jurisdiction of the Federal
16 Communications Commission properly stated in that
17 letter?

18 A We're talking about the Commission's
19 jurisdiction; is that correct?

20 Q Right.

21 MS. HELTON: And, your Honor, I'm just going
22 to have to state for the record that I believe that
23 this is -- that Mr. Hanna has made a legal conclusion
24 in the letter and that he is -- Mr. Osheyack is now
25 asking Ms. DeMello to make a legal conclusion in the

1 letter; and as Ms. DeMello has stated, she's not a
2 lawyer.

3 **MR. OSHEYACK:** Well, your Honor, we just
4 established that in each case where a legal or
5 quasilegal question is asked, the head of the
6 department would go to a lawyer before responding, and
7 my assumption is that George Hanna would do the same,
8 and that we're talking here about expert witnesses.
9 We're talking about people who are heads of
10 departments. They would not be head of the department
11 unless they were credible people.

12 I've got to believe that the people who are
13 in contact with the public are telling them the truth
14 as they know it, and if they don't know the truth,
15 they research it and come forth with the truth.

16 **THE COURT:** Well, it seems to me,
17 Mr. Osheyack, what you're asking for, however, is a
18 legal conclusion, which this witness has indicated
19 that she would have no ability to answer such a
20 question, anyway. And, secondly, I question whether
21 there would be any relevant -- there may not be any
22 relevant evidence as to a strictly legal matter. So I
23 think I'll sustain the objection.

24 **MR. OSHEYACK:** Okay.

25 **Q** (By Mr. Osheyack) Bev?

1 A Yes, sir.

2 Q You have a young lady by the name of Paula,

3 Paula --

4 A Isler.

5 Q Isler. Yeah, Paula Isler.

6 A Paula Isler --

7 Q I looked through some of her --

8 A -- for the record --

9 Q -- testimony --

10 A For the record, Paula Isler no longer

11 works --

12 THE COURT REPORTER: Excuse me.

13 Q Okay.

14 A Okay. I'm just trying to get across --

15 Q Okay.

16 A -- in the record --

17 THE COURT: Just a moment. Mr. Osheyack,

18 are you finished with the document, or are you

19 still -- because we can't see you down --

20 MR. OSHEYACK: Oh, no; I finished with the

21 document.

22 THE COURT: All right. Do you want to

23 change your camera back so we can see you?

24 MR. OSHEYACK: Okay. Right.

25 Q (By Mr. Osheyack) When you get complaints

1 into a department where Paula Isler used to sit --
2 where complaints are processed -- you record those
3 complaints and categorize them, do you not?

4 A That's correct. Are we talking about Paula
5 Isler anymore, because for the record, I want to --

6 Q I use her name as a reference because she
7 was an analyst of complaints.

8 A Okay.

9 Q You do have people who categorize the
10 complaints? And I believe you have a category for
11 basic local -- could you tell me what the categories
12 are?

13 A We have approximately 40 categories, and we
14 also -- we categorize them whether they're a rule or a
15 tariff violation. That would be considered an
16 infraction against the company, you know. If they
17 violated a tariff or a rule, then it becomes a
18 Commission infraction.

19 Now, if it's something that we don't
20 regulate or it's something that is not a rule or a
21 tariff violation, then we do categorize those, but
22 those are under the name of "General Categories"
23 because they don't violate a Commission rule or
24 tariff, which is what we have to go by.

25 Q Oh. I see. So in other words, if somebody

1 came to the Florida Public Service Commission and
2 said, I have a gripe against MCI or AT&T, I love GTE
3 and I love BellSouth, but I have a complaint against
4 AT&T because I'm unhappy with a bill they sent me for
5 a call to California, you would not record that as a
6 complaint?

7 A We would probably --

8 Q (Inaudible comment.)

9 A Excuse me. Do you want me to finish now?

10 Q Yeah. I'm sorry.

11 A We would probably ask the person to fax us a
12 copy of their bill or to let us see it, and then to
13 make sure that the call is an interstate call, meaning
14 it crosses state line; and then we would probably help
15 the person get access to the FCC, which that agency
16 does handle interstate calls, in other words, calls
17 outside of Florida.

18 We would want to put them in touch with the
19 FCC to make sure that they got proper assistance, that
20 the FCC handles the service quality -- excuse me. Are
21 you listening?

22 Q (Pause)

23 A Okay. Since the quality of service issue,
24 the FCC would handle that particular part of the
25 complaint.

1 Q The quality of service. How about the
2 charge itself?

3 A That's why we would have to look at the
4 charge. Normally our analysts will try to get the
5 person to show them the bill so we can look at the
6 charge to see can we or can we not help this person.
7 I would have to look at the bill.

8 Q Just to make sure that I have it fixed in my
9 mind, what you're saying is pretty much what George
10 Hanna said, that intrastate calls, calls that
11 originate or terminate within the borders of the state
12 of Florida, anything outside you would refer to the
13 FCC; is that right?

14 A Usually, Mr. Osheyack, we try to look at the
15 person's bill to make sure. We would not just say,
16 you know, go to the FCC. We try to look at the
17 person's bill or at least get them to send it to us so
18 we can make sure that that's the proper authority who
19 should handle that complaint.

20 Q Right. But if it was a call that terminated
21 outside the state of Florida and it was handled on the
22 AT&T lines or the MCI lines or LCI, whatever, it would
23 go to the FCC; is that right?

24 A We would help the person by probably
25 referring that letter with a cover letter to the FCC.

1 Q And the reason would be that you do not
2 regulate interstate --

3 A We would do that because the FCC's role, as
4 they have put out in some of their literature, is to
5 handle the quality of service complaints dealing with
6 interstate calls.

7 Q Is that their option? Is it an optional
8 thing, or is it something --

9 MS. HELTON: Your Honor, this question has
10 been asked and answered, I think, several times now.

11 THE COURT: I'll overrule the objection.
12 You may ask the question.

13 Q (By Mr. Osheyack) Is it optional for you
14 to refer it, or is it something you have to do?

15 A Is it something we have to do?

16 Q Yeah. Can you handle it if you want to?

17 A We try to put the person in touch with the
18 proper agency. Just like if we had a call related to
19 the Department of Business and Professional
20 Regulation, we would handle -- put that call forth to
21 that agency, because those are the proper authorities
22 that can expedite the process.

23 We, obviously, if it's dealing with an
24 interstate call and it's a quality of service issue,
25 we would probably refer the caller or the letter

1 writer to the FCC.

2 Q Well, then you're qualifying it by saying
3 "probably". What I'm trying to find out is simply yes
4 or no. If it's a call that is -- that you determine
5 belongs with the -- in the interstate category, you
6 would refer it to the FCC; you do not have the right
7 to do anything other than that. And all I need is a
8 yes or no answer.

9 A Well, I wish that I could say yes or no, but
10 in the complaint business, Mr. Osheyack, it's
11 really -- I have to -- I don't like to make broad
12 statements like that, because I have to look at each
13 complaint on a case-by-case basis. There are certain
14 ramifications to each case that may be different.

15 Q Well, once you make a decision that it's
16 interstate rather than intrastate, you have a decision
17 to make.

18 A Uh-huh.

19 Q And all I'm asking is if that -- is are you
20 obligated or mandated to make the decision that if a
21 call is intrastate, you can handle it, if a call is
22 interstate, you cannot handle it, you must refer it?

23 A I don't think there's a "can" or "cannot".
24 If it's an interstate call, more than likely we will
25 refer it to the FCC because they are the proper

1 jurisdiction to handle a quality of service issue.

2 Q Are there any circumstances that you can
3 think of now that would prevent you from passing along
4 an interstate call to the FCC?

5 A Possibly if the consumer is having trouble
6 reaching the FCC, I or one of my staff members may
7 intervene on their behalf to talk to somebody at the
8 FCC and say, could you help this person. And so that,
9 in my opinion, is helping the consumer, but it's also
10 putting the consumer with the agency that has the
11 jurisdiction over that matter.

12 Q All right. I think that settles the issue.
13 And thank you very much Bev. I'm sorry to have taken
14 you away from your other duties, but you've been
15 helpful and I appreciate it.

16 A Thank you.

17 THE COURT: Is there any cross-examination?

18 CROSS EXAMINATION

19 BY MS. HELTON:

20 Q If a consumer has a customer complaint about
21 their bill and disputes part of the bill, does the
22 Commission have a procedure for that?

23 A If they're disputing part of their bill?

24 Q Right.

25 A I can make a determination, and we can hold

1 that part of that until the dispute resolution is
2 made. It depends on the amount, though, and where the
3 dispute is.

4 Q But does the Commission have a rule in place
5 that guides the procedure --

6 A Right. There is a -- we abide by our
7 customer service rules. And if a consumer does
8 protest a complaint decision made by one of the
9 analysts, for example, they can raise it to the next
10 level and hold an informal conference, and then
11 there's a next level. In other words, there is a
12 process, a due process for the consumer.

13 MS. HELTON: That's all.

14 THE COURT: Any redirect? Any other
15 questions?

16 MR. OSHEYACK: Just one question.

17 REDIRECT EXAMINATION

18 BY MR. OSHEYACK:

19 Q Some of your long distance bills -- your
20 toll bill complaints might come in and part of them
21 are intrastate long distance and part of them are
22 interstate long distance. Assuming the customer pays
23 the intrastate portion of it, you would then have to
24 pass it along, would you not?

25 A No. You're saying the customer is only

1 paying part of that intra --

2 Q He's paid his intrastate portion.

3 A Okay. If the --

4 Q The only thing left would be interstate.

5 A But if the interexchange company has a
6 contract with the local exchange company, you know, a
7 billing contract, then that whole bill would be in
8 dispute, because the person may or may not be paying
9 it; and that's money that is owed to the local
10 exchange company, if I understand you correctly.

11 Q Well, I'm not talking about the tariff now,
12 I'm talking about the Public Service Commission
13 position in this.

14 You got an interstate bill. You got a long
15 distance bill. Part of it is intrastate, part of it
16 is interstate. The intrastate portion of it is paid.
17 We're not talking about the tariff. We're talking
18 about the position of the Public Service Commission
19 complaint department.

20 A But if the consumer has not paid that
21 bill -- what I'm saying is that if it's an interstate
22 or an intrastate, if the consumer has not paid that
23 bill, then that is in dispute, because the local
24 exchange company has entered into a billing and
25 collection agreement with --

1 Q Billing in contract -- I have a little
2 trouble with that. You're talking about a contract
3 between two corporations, and you're telling me that
4 the government has a responsibility to intervene in
5 that contract.

6 There's a court system. If any corporation
7 wants to litigate with its customer, it can. I don't
8 understand where the Public Service Commission fits in
9 terms of the relationship of this contract. They've
10 approved the contract. They're out of it at that
11 point.

12 A Let me see if I can explain it in a consumer
13 friendly way. If you don't pay your bill, for
14 example, you don't pay your long distance bill,
15 whether it is inter or intrastate, okay, and I pay
16 mine, and my neighbor pays mine and my other neighbor
17 pays mine (sic), is it fair for us to have to pay for,
18 because the company, in order to cover the cost that
19 it's waiting for you to pay your bill, is going to
20 have to raise my bill, my next-door neighbor's and --

21 Q Excuse me, Bev. We're not arguing -- we're
22 not arguing the issue of --

23 A Oh, no, sir, I'm not --

24 Q -- payment of bills.

25 A I'm just making a statement, because you

1 started talking about intrastate and interstate.

2 Q But it's not responsive. What I'm talking
3 about is not payment of bills. We will stipulate that
4 everyone should pay his bills, okay?

5 A Okay.

6 Q We'll stipulate that. We might have an
7 argument about the methods used in collection, but
8 everybody should pay their bill.

9 What we're talking about is the role of the
10 Public Service Commission in that collection process.
11 You have a complaint resolution process. Who the
12 money is owed to is irrelevant.

13 What is relevant is, as you have said, where
14 the call originates and where the call terminates.
15 You have said that is a determining factor of what
16 your role will be, and that is if it's an interstate
17 call, it will be referred to the FCC.

18 What I'm saying is that if the bill is
19 partially intrastate -- it originates and terminates
20 within the state of Florida -- and partially
21 interstate -- it originates in the state of Florida
22 but terminates in the state of California -- you,
23 according to what you have said, are obligated to pass
24 along the interstate portion to the FCC.

25 A No, sir, but --

1 Q But what I'm asking is if the portion of
2 intrastate is paid, does that not -- or does it or
3 does that not buy out your responsibility for
4 continuing the process in your shop?

5 A Well, the problem is that you have broken
6 the distinction. You're trying to talk about
7 interstate calls on -- I think I was talking more in
8 terms of the lines of quality of service or if you had
9 a particular --

10 Q (Inaudible)

11 A Sir, let me finish. You were trying to talk
12 about a billing versus a quality of service.

13 Q No, ma'am. I must interrupt --

14 MS. HELTON: Excuse me, your Honor, but my
15 witness is trying to answer the question here, and
16 Mr. Osheyack will not let her answer the question.
17 If he has a clarifying question afterwards --

18 MR. OSHEYACK: It is not -- it is not
19 responsive, your Honor, and I'm trying to bring it
20 back to where it is responsive.

21 THE COURT: Well, I think it's an attempt to
22 be responsive, and it might be, if she's permitted to
23 finish her answer. So I'll sustain the objection and
24 let her finish her answer.

25 WITNESS DEMELLO: My only --

1 MR. OSHEYACK: Okay, your Honor. I would
2 like to drop the witness and go on from here.

3 THE COURT: Any recross?

4 MS. HELTON: No, sir.

5 THE COURT: I have a few questions to make
6 sure I understand the issues as best as I can.

7 As I understand what you've been saying, if
8 you have a complaint from a customer that involves
9 quality of service, and the service that the complaint
10 is raising is -- has to do with the interstate portion
11 of the service, you would, as you said, first
12 ascertain that, and then help the customer get to the
13 person who can help with that issue, which would be
14 the FCC.

15 WITNESS DEMELLO: That's correct.

16 THE COURT: Now, another question that has
17 come in here -- which I'm not sure if it came in or
18 not intentionally -- but the other thing that you were
19 testifying about is a problem where it's not a service
20 quality complaint, but it's a complaint or a dispute
21 with a portion of the bill.

22 WITNESS DEMELLO: Uh-huh.

23 THE COURT: And let's say that portion of
24 the bill that's in dispute has to do with an
25 interstate call. What do you do? What does the PSC

1 do with that complaint? And first of all, let me say
2 I recognize from your testimony that there may be a
3 difference in what gets done depending upon whether
4 the local company has a contract to bill and collect
5 for that interstate --

6 **WITNESS DEMELLO:** That's correct. But if it
7 is a company that has a contract with, for example,
8 like BellSouth, say, down in Miami, and it's a person
9 that's not paying the AT&T portion of the bill, you
10 know, they're not paying their intrastate or
11 interstate calls, then because of the billing
12 agreement that BellSouth and AT&T have, we have
13 responsibility over that billing agreement and so,
14 therefore, that amount would be in dispute.

15 **THE COURT:** And the PSC would be involved in
16 resolving that dispute?

17 **WITNESS DEMELLO:** Yes.

18 **THE COURT:** Okay. I have no other questions
19 of the witness. Any other questions to follow up on
20 my questioning?

21 **MS. HELTON:** No, sir.

22 **THE COURT:** Thank you.

23 **WITNESS DEMELLO:** Thank you very much.

24 **THE COURT:** You may be excused.

25 **WITNESS DEMELLO:** Thank you, Mr. Osheyack.

1 **MR. OSHEYACK:** Thank you, Beverly.

2 (Witness DeMello excused.)

3 - - - - -

4 **THE COURT:** All right. You may call your
5 next witness.

6 **MR. OSHEYACK:** Julian O'Pry.

7 - - - - -

8 **JULIAN O'PRY**

9 was called as a witness on behalf of the Petitioner
10 and, having been duly sworn, testified as follows:

11 **DIRECT EXAMINATION**

12 **BY MR. OSHEYACK:**

13 **Q** I'm Chet Osheyack. You're one of the first
14 people at the Public Service Commission that I have
15 not met before.

16 **A** Good morning.

17 **Q** I've read some of your work, Julian, and it
18 interested me greatly. You were the lead analyst, I
19 believe, on the 1993 case involving BellSouth and an
20 attempt to collect a bill from out of state and denial
21 of service. If I recall, they presented a tariff
22 which would enable them to deny service in the state
23 of Florida to collect a bill from out of state --
24 (inaudible) --

25 **THE COURT REPORTER:** Excuse me.

1 MS. HELTON: Excuse me, your Honor. I'm
2 going to have to say I guess it seems to me that
3 Mr. Osheyack is trying to testify here, not Mr. O'Pry.

4 THE COURT: Well, I don't know -- I would
5 overrule that objection. But, Mr. Osheyack, if you
6 would speak up a little. We're having a little
7 difficulty hearing the last part of what you were
8 saying.

9 MR. OSHEYACK: All right. My water was in
10 the way. Can you hear me now?

11 THE COURT: Yes.

12 Q (By Mr. Osheyack) Julian, do you have the
13 exhibits in front of you? Do you have access to the
14 exhibits --

15 A Yes, I do.

16 Q -- presented by all parties? Would you look
17 at Exhibit -- (inaudible) --

18 A I have it before me.

19 Q -- of the Public Service Commission. It
20 relates to PSC Order 93-0069 --

21 THE COURT REPORTER: Excuse me. I didn't
22 hear what he said.

23 Q -- dated January 14th, 1993.

24 THE COURT: Just a minute. Mr. Osheyack.
25 For the record, you're referring to the items that are

1 attached to the Florida Public Service Commission's
2 motion for official recognition; is that correct?

3 MR. OSHEYACK: Yeah. It was recognized
4 under "Q".

5 THE COURT: "Q" under that. Okay.

6 MR. OSHEYACK: "Q" under that.

7 Q (By Mr. Osheyack) This is a docket, I
8 believe, Julian, where Southern Bell proposed to deny
9 local service in Florida to a customer who had an
10 unpaid bill in another state. Is that not right?

11 A Yes. That was the major part of the filing.
12 It also dealt with a name change, but I think that's
13 immaterial to today.

14 Q That was a material point. Did the Public
15 Service Commission deny that request?

16 A Yes, they did. But I need to qualify, if I
17 could, Mr. Osheyack, why they denied it. They did
18 not --

19 Q Well, could we get to that later?

20 A All right.

21 Q Because I think your qualification is well
22 presented here. This PSC order is consistent with
23 your recommendation, your staff recommendation, was it
24 not?

25 A Yes, it was.

1 Q Now, Julian. Based on your experience, if
2 this tariff has been approved, would Southern Bell
3 have refused to take an application from a customer
4 that had a bad bill in another state?

5 A I cannot answer that yes or no. I would
6 have to qualify it as it was filed. Had a customer in
7 Virginia, say, not paid for local service, yes, the
8 tariff provision would have had a Florida subscriber
9 denied service for owing that local bill in Virginia.

10 Q Yeah, okay. Then the answer is yes, if
11 somebody applied for a local service, they would be
12 denied if that tariff had been approved.

13 Suppose a customer had already ordered
14 service in Florida and it was determined that they
15 failed to pay their final bill in Georgia. This
16 tariff would also have allowed the company to deny
17 service in Florida; is that not correct?

18 A Again, subject to the qualification if it
19 were for a local service or --

20 Q Local service --

21 A -- or for "intra" service in Georgia, or
22 toll service billed in Georgia, an interstate call
23 billed in Georgia, the tariff would have provided for
24 denial of service in Florida.

25 Q Right. Okay. So denial based on what you

1 say denied the application might be denial of working
2 service, local service in the state of Florida?

3 A That's correct. Had the tariff been
4 approved, but the Commission denied the tariff.

5 Q Okay. Now, on Page 4 of this order -- Page
6 3 I think it is here -- yeah, Page 3 of this order, in
7 the third paragraph, I think this is the order of the
8 Commission and I think it's fairly consistent with the
9 language in your staff report, and I want to read a
10 couple of portions to you and ask you whether this is
11 what you recall.

12 You say that "Upon consideration we find it
13 appropriate to deny the tariff as proposed for reasons
14 discussed below. It is inappropriate to allow a
15 company to refuse service for circumstances beyond the
16 control or review of this Commission."

17 Is that your statement of fact and is that
18 what the Commission approved?

19 A That is, reading the order, what the
20 Commission approved, but it goes on and explains, I
21 believe, what the Commission means by that.

22 Q Yes, I know it does, and I think that's very
23 important. It says "Even if a debt would otherwise be
24 sufficient grounds for refusal of service, the
25 Commission has no review or control over the

1 circumstances surrounding the creation of the debt in
2 another state."

3 But going down below, you cite rule
4 25-4.113(4)(e), and you say "In addition -- and the
5 rule I just cited -- of the Florida Administrative
6 Code provides that nonpayment for nonregulated service
7 is not sufficient grounds to refuse service. By its
8 terms this provision precludes a tariff of the nature
9 proposed by the company, since any debt from another
10 state is by definition nonpayment for a service
11 rendered by a utility which is not regulated by this
12 Commission."

13 Now, is that your understanding of what
14 transpired at that agenda conference and what went
15 into the order; what was in your staff recommendation
16 and what went into the order of the Public Service
17 Commission?

18 A Yes, it is. And what that says to me,
19 Mr. Osheyack, is that in Georgia, your example,
20 this -- the Florida Commission has no jurisdiction of
21 billing arrangements in Georgia, intrastate,
22 interstate, local service, and according to the rule
23 that you quoted here (e), the Commission has no
24 jurisdiction, and it's nonjurisdictional under the
25 rule.

1 Q Well, let's explore that a minute. A debt
2 in another state -- a debt incurred in another state
3 is a debt which the Public Service Commission has no
4 control over, cannot review and, therefore, cannot
5 deny service even though it's a valid debt. I think
6 that's what you said. Am I right?

7 A I believe that to be correct, yes.

8 Q If the Public Service Commission has no
9 jurisdiction over a debt that was incurred in another
10 state, they have said in this order they have no right
11 to deny, interrupt or terminate service, local
12 service. But in your experience, isn't it true that
13 the Public Service Commission has no jurisdiction over
14 calls that terminate outside the state of Florida,
15 interstate calls?

16 A The Commission has no jurisdiction over the
17 services or the rates of those calls. They do have
18 jurisdiction over billing and contract arrangements
19 that are recognized by the FCC as being with the
20 State. And as the Commission in one of the orders
21 that you have here as an exhibit -- I believe it is
22 Exhibit I, as in Ike -- approved the billing and
23 collecting stipulation, and this order provided for
24 tariffs to be filed setting forth the charges and the
25 conditions under which those contracts are offered,

1 the billing collection rates are offered; and that
2 order is still -- has never been overturned or
3 amended, and the tariffs are in effect today.

4 Q You bring up an interesting point. What
5 you're saying is that the Public Service Commission
6 right to intervene stems from their right to approve
7 or disapprove the tariff. Is that what you're saying?

8 MS. HELTON: Excuse me, your Honor. I don't
9 understand the question as asked. What is the
10 Commission intervening in?

11 MR. OSHEYACK: Well, "intervene" was the
12 word of the witness.

13 MS. HELTON: I don't recall Mr. O'Pry saying
14 anything about the Commission intervening in anything.

15 MR. OSHEYACK: Well, could the recorder read
16 back that last testimony?

17 THE COURT: The last answer?

18 MR. OSHEYACK: The last part of it, yeah.

19 (Thereupon, the answer appearing on Page 61,
20 Line 16 through Page 62, Line 3, was read back by the
21 reporter.)

22 THE COURT: All right. I didn't hear the
23 witness and I didn't recall the witness using the word
24 "intervention" by the PSC --

25 MR. OSHEYACK: All right. Intervene is

1 probably wrong, but let me phrase it a different way.

2 Q (By Mr. Osheyack) What you're saying is
3 the State has the right, by virtue of their right to
4 approve a contract between two corporations, to
5 supervise the consumer -- the consumer's execution of
6 that contract. Am I putting it right? It's a little
7 bit confusing.

8 A Mr. Osheyack, I don't -- I do not believe
9 that I'm qualified to address contract law, and I'm
10 unable to answer your question.

11 Q Well, does the State regulate interstate
12 billing and collection? That's a simple one.

13 A No, sir. The Commission does not.

14 Q The Commission does not regulate interstate
15 billing and collection. Notwithstanding the fact that
16 there might be a contract between two corporations,
17 the State still has no right to regulate interstate
18 billing and collection.

19 Okay. I'm satisfied with that. I guess I
20 have no more questions for you, Julian, and I thank
21 you very much.

22 THE COURT: Do you have any
23 cross examination?
24
25

1 Are you saying now that there's
2 circumstances which enable them to regulate interstate
3 billing and collections?

4 A Mr. Osheyack, you asked me if they regulated
5 interstate billing and collecting. The answer is no.
6 The Commission regulates intrastate --

7 Q Oh, intrastate. Oh.

8 A -- which includes interstate calls. It's a
9 part of the billing and collecting contract, and it's
10 provided by tariff.

11 Q Julian, how long have you been around the
12 Public Service Commission? I'm just curious. You
13 look like you've got as many gray hairs as I have.

14 A A few more, I think. About 33 years at the
15 end of this month, Mr. Osheyack.

16 Q Well, I have a gut feel that you know more
17 about what goes on there than most people. I want to
18 ask you a question about your experience. Do you
19 remember the days, Julian -- I remember in the
20 publishing business where we started to use computers
21 and they were mainframes, and there wasn't a hell of a
22 lot of flexibility. I presume that you remember those
23 days in the telephone business, don't you?

24 A Yes, I do.

25 Q And wouldn't the linkage between intrastate

1 and interstate billing -- wasn't it a matter of
2 technical feasibility, the fact that these mainframes
3 were not able to separate the two, the two bills? Or
4 is that within the scope of your knowledge?

5 A That goes beyond my knowledge. I mean,
6 basically the answer to your first question, I have
7 general knowledge of that, but any more specific
8 general knowledge I would be unable to answer.

9 Q Well, I'm computer illiterate myself. I
10 rely on one of my grandchildren. But she tells me
11 that software today is able to -- separations that
12 were not available years ago. But that's beyond the
13 scope of your knowledge, so we won't pursue that. But
14 you know a little bit about the complaint department,
15 I presume?

16 A Yes.

17 Q I think analysts handle complaints all the
18 time, as I recall, don't they?

19 A I'm sorry. Would you repeat the question?

20 Q Don't the analysts handle complaints all the
21 time, consumer complaints, on a regular basis?

22 A Yes. If the technicality gets involved in
23 it, if it becomes real technical, the complaint
24 analyst will consult with the technical departments.

25 Q To your knowledge, if the Public Service

1 Commission receives a complaint regarding billing and
2 collection for interstate long distance services,
3 would they handle it? I think Ms. DeMello answered
4 it, but I'm just curious about what would happen if a
5 technical complaint came along and it required your
6 services. Is that something you would say, pass on,
7 it's not ours?

8 A No. Again, I think if it came to the
9 communications division at the PSC, we would see that
10 it went to the consumer affairs division for handling,
11 as Ms. DeMello indicated, or if it was such that it
12 required our technical input, we might handle it
13 within the division.

14 Q I presume that your not being a lawyer, but
15 being around a long time would make you an expert in
16 those things. Nobody is an expert in the law, but I
17 just wondered if something came to you which required
18 legal interpretation, where would you go?

19 A I would go to our communications legal staff
20 as I did. If you go back to the recommendation that
21 you examined me on earlier, you would find a gentleman
22 on that recommendation along with me. He's no longer
23 with the Commission. But the gentleman, the attorney,
24 was Tracy Hatch, and my recommendation was and always
25 is reviewed by the legal staff, and the legal staff

1 signs off on a recommendation before it goes before
2 the Commission.

3 Q Tracy Hatch, as I note in the order, in your
4 recommendation particularly, signed off on all that
5 information that was presented to the Commission along
6 with you. Both of you signed off on it.

7 A That is correct, sir.

8 Q So as far as Tracy Hatch was concerned, that
9 was a legally sound decision?

10 A Yes, sir. I would assume that it was or he
11 would have never signed off.

12 Q In your discussions during the -- and maybe
13 you don't remember -- or I hope you do -- but in your
14 discussions regarding the legality or nonlegality or
15 applicability of that particular law, was there ever
16 brought forth a specific authority, a specific Florida
17 statute other than that which exists in there in the
18 rules; a specific Florida statute where -- which
19 indicates that you, the Public Service Commission,
20 have been given the authority to regulate interstate
21 services, and specifically interstate billing and
22 collections services? Did that ever come up in the
23 discussions?

24 A I do not recall such a decision. That would
25 be in the legal area, and Mr. Hatch would have

1 addressed that.

2 Q But he signed off on it, so the presumption
3 is he felt that that law as presented satisfied
4 whatever Florida Statutes might exist, and that law
5 specifically states -- or that rule, I should say,
6 specifically states that the following shall not
7 constitute sufficient cause for refusal of service to
8 an applicant or customer and under any failure to pay
9 for a certain service as rendered by the utility which
10 is not regulated by the Commission.

11 So I presume that that -- whatever
12 interpretation that you might want to put on it now,
13 that is the law, and that is what Tracy Hatch signed
14 off on?

15 MS. HELTON: Your Honor, I have to say that
16 Mr. O'Pry can't testify as to what Mr. Hatch thought
17 or presumed when he signed off on the recommendation
18 and when he wrote the order.

19 MR. OSHEYACK: Well, he doesn't have to.
20 All he has to testify is that -- the fact that Tracy
21 Hatch signed beside his name and signed off on the
22 information.

23 THE COURT: I think it's cumulative. I
24 think you've already established as much as this
25 witness can offer on the subject.

1 MR. OSHEYACK: I agree. I agree. Thank
2 you, Julian.

3 THE COURT: Any recross?

4 MS. HELTON: Mr. Osheyack has listed as an
5 exhibit a news release of an FCC order, and the
6 subject of my second motion for official recognition
7 is that FCC order. It's FCC 86-31 that was released
8 on January the 29th, 1986, and it was adopted on
9 January the 14th, 1985, in the matter of detariffing
10 and billing and collection services. Could I just get
11 Mr. O'Pry to look at Page 31, Paragraph No. 51. And
12 could you read that first sentence into the record?

13 THE COURT: Before he does that, to identify
14 the document more clearly for the record, does this --
15 first of all, we should put on the record that
16 Mr. Osheyack has stated before we went on the record,
17 I believe, that he had no objections to the Second
18 Request for Official Recognition, so I will officially
19 recognize the document, but as far as identifying it,
20 do you have a -- is there a letter identification, as
21 it were, for the first set of --

22 MS. HELTON: No, there's not. No. Would
23 you like me to make it a letter? Maybe the last would
24 be I-I.

25 MR. OSHEYACK: I don't think she's talking

1 about that one, your Honor.

2 THE COURT: Right. She's talking about the
3 second -- this is part of the second request. I just
4 wanted to know whether --

5 MS. HELTON: Oh, I'm sorry.

6 THE COURT: -- it was in a packet with an
7 identification number.

8 MS. HELTON: It would be JJ, because we have
9 an II.

10 MR. OSHEYACK: Are we talking about the
11 detariffing of billing and collection services?

12 MS. HELTON: Yes.

13 MR. OSHEYACK: Okay. I've got it identified
14 as three stars.

15 THE COURT: Okay. Do you want to identify
16 it then as JJ?

17 MS. HELTON: If that would, you think, make
18 the record clearer, we can do that.

19 THE COURT: Okay. Let's do that: So
20 essentially JJ is the first item in your second
21 request for --

22 MS. HELTON: That's correct.

23 THE COURT: -- official recognition.

24 MS. HELTON: It's the only item.

25 THE COURT: Okay; only item. All right.

1 You may proceed.

2 **RECROSS EXAMINATION**

3 **BY MS. HELTON:**

4 Q Could you read that first sentence in
5 Paragraph No. 51?

6 A Yes. The heading of the section is "G" as
7 in Gail, Local Cutoffs. Paragraph 51: "We shall
8 continue to defer to state regulatory authorities with
9 respect to the practice of local cutoffs. While we do
10 not intend by this action to give --

11 **MS. HELTON:** I think that's the end of the
12 first sentence.

13 **MR. OSHEYACK:** (Laughter) Very good, Mary.

14 **THE COURT:** Well, the whole document is
15 officially recognized, and I have access to it, and
16 you can point out to me whatever parts of it you think
17 are pertinent. All right.

18 **MR. OSHEYACK:** That's no problem.

19 **THE COURT:** Anything else from Mr. O'Pry?

20 **MR. OSHEYACK:** Yes. Yes. I'm glad that
21 Ms. Helton brought forth the matter of detariffing of
22 billing and collection services.

23 **FURTHER EXAMINATION**

24 **BY MR. OSHEYACK:**

25 Q Do you have that before you, Julian?

1 A Yes, I do now.

2 Q The second page in the middle of the first
3 paragraph, please read the paragraph starting with
4 "The Commission's detariffing of billing and
5 collection order."

6 THE COURT: I'm sorry --

7 MR. OSHEYACK: Read it out loud --

8 THE COURT: -- which page are you on?

9 MR. OSHEYACK: Let's see. We're on the
10 second page of -- I think it's double-sided, so you
11 have to --

12 THE COURT: Well, there's a page --

13 MR. OSHEYACK: -- turn it over. The second
14 page, Page No. 2, middle of the first paragraph, that
15 would be the introduction. It starts with "The
16 Commission's detariffing of billing and collection?"

17 THE COURT: I don't see what you're
18 referring to.

19 MR. OSHEYACK: I don't see it either. Give
20 us a moment to sort this out. (Pause)

21 I'll tell you what threw us off was -- the
22 same information is in Exhibit 18 of my files, Exhibit
23 18 of my exhibit files, which is a letter from the FCC
24 which paraphrases what exists in the order.

25 THE COURT: So do you want Mr. O'Pry to

1 refer to your Exhibit 18?

2 MR. OSHEYACK: Yeah. My notes refer to my
3 order, because the other one was a late-filed, and I
4 didn't have time to go over it, but it has the same
5 information.

6 MS. HELTON: Your Honor, I object to
7 Mr. O'Pry being cross-examined on this exhibit. It's
8 hearsay. Mr. O'Pry has no way to authenticate whether
9 this actually is a letter from someone at the FCC.
10 Moreover, this letter draws legal conclusions, and we
11 don't know whether the author was a lawyer or not.

12 MR. OSHEYACK: Your Honor, Julian O'Pry just
13 was asked questions about the order which is referred
14 to in this letter.

15 THE COURT: Well, I'll allow you some
16 latitude. Go ahead and proceed and ask your question,
17 but I think probably the more relevant inquiry would
18 be directed to the order itself, not to a letter about
19 the order; but I'll allow you some leeway.

20 MR. OSHEYACK: All right.

21 Q (By Mr. Osheyack) In the second page,
22 middle of the paragraph, it starts with "The
23 Commission detariffing of billing and collection," and
24 refers to the order, the detariffing order,
25 FCC Docket 85-88.

1 A Yes, I see that reference.

2 Q Okay. Could you read that, Julian, for the
3 record?

4 A "The Commission's detariffing of billing and
5 collection order, detariffing order, FCC Docket 85-88,
6 102 FCC 2d 1150 (1986) required the LECs to detariff
7 interstate billing and collection services for IXCs
8 for which they do bill, effective January 1, 1987."

9 Q And do you want to go on to the end?

10 A Period. "The Commission concluded that
11 billing and collection services are not, quote,
12 'communications common carriage,' end of quote, within
13 the meaning of Title II of the Act." Period.

14 Q Julian, you've been around long enough to
15 understand the jargon of the industry. What does that
16 mean to you; not as a lawyer, but as an analyst?

17 A It says that interstate billing that was
18 subject to the FCC's review was to be detariffed
19 effective January 1, 1997.

20 Q And what does detariff mean?

21 A That means taken out of the tariff and no
22 longer subject to review of the FCC.

23 Q Okay. Now, down on the next paragraph,
24 doesn't the FCC say that the detariffing order did not
25 preempt the states' authority to regulate intrastate

1 billing and collection for intrastate services? Is
2 that not correct?

3 A That wording is there, yes.

4 Q If we could get back to Exhibit 4 of my
5 exhibits, and, again, it's a news release.

6 A Mr. Osheyack, if I could, we've taken it out
7 of context, because the start of the second complete
8 paragraph on this page says "The Commission defers to
9 state authorities with respect to permitting local
10 service disconnections for nonpayment of interstate
11 toll charges."

12 Q We understand that. We understand that. On
13 Exhibit 4 --

14 MS. HELTON: Your Honor, I'm going to have
15 to object again to Exhibit No. 4. This is a news
16 release concerning the order that we have right here
17 in front of us and this is just a paraphrase of what
18 the order says. It's hearsay.

19 THE COURT: What's the relevance?

20 MS. HELTON: Author unknown.

21 MR. OSHEYACK: It's important. It's -- as
22 she says, it does paraphrase what the order says.
23 It's just that I didn't have time to juxtaposition it
24 with the order, if that's incorrect.

25 THE COURT: Well, I think -- it seems to me

1 that if what we're concerned with is the order, that
2 probably the order is what's relevant, and these
3 commentaries on it would not be relevant.

4 MR. OSHEYACK: Give us a 10-minute recess
5 and we'll put it together.

6 THE COURT: Okay. We'll be in recess for 10
7 minutes.

8 MR. OSHEYACK: Make it 10 minutes and we'll
9 put the order together with the supplementary
10 information, make everybody happy.

11 THE COURT: Okay. 10-minute recess.

12 (Brief recess.)

13 - - - - -

14 MR. OSHEYACK: We did sort it out. We have
15 caught up with the late arrival of the last --

16 MS. HELTON: Your Honor, could I interrupt
17 with a technical problem. The court reporter has
18 complained that there's music coming from the speaker.

19 (Discussion off the record.)

20 THE COURT: We're ready to proceed with or
21 without music.

22 Q (By Mr. Osheyack) Julian, what I'd like to
23 do to preserve continuity -- it might be repetitive --
24 but let me go to Page 18 of the detariffing order.
25 It's Paragraph 26 of the page called "Local Cutoffs."

1 Would you read the second line from "this Commission"
2 to "resolution" into the record?

3 A "The consensus among virtually all
4 categories of commenters is that this Commission
5 should defer permanently to state regulatory
6 practice -- I'm sorry -- to state regulatory
7 authorities with respect to local cutoffs, because the
8 issues raised by this practice are better suited to
9 state resolution."

10 Q Okay. And go to Page 22, Paragraph 34 and
11 read that into the record.

12 A "Based on the factors we have described, we
13 reach the conclusion that billing and collection
14 services provided by local exchange carriers are not
15 subject to regulation under Title II of the Act."

16 Q All right. That pretty much is consistent
17 with what was in the letter. Now, Julian if you would
18 go to Page 31 of the detariffing order, Paragraph 51.

19 A Yes. I think we previously read that into
20 the --

21 Q I think you read a portion of it. I wanted
22 you to go on and finish it.

23 A Beginning with --

24 Q I believe you read --

25 THE COURT: You know, Mr. Osheyack --

1 MR. OSHEYACK: Yeah.

2 THE COURT: -- there's really no reason for
3 him to read this into the record. This document has
4 been officially recognized, and it can be referred to
5 and read by me, and it can be argued by you and
6 Ms. Helton without it being, you know, read into the
7 record today.

8 MR. OSHEYACK: Okay. I just want to provide
9 for continuity to make a point.

10 Q (By Mr. Osheyack) The point is, Julian,
11 just so it doesn't -- we don't have to read it into
12 the record, the -- what it says in summary is that
13 while the FCC deferred --

14 MS. HELTON: Your Honor --

15 Q -- to the -- it did not give tacit approval
16 to the local cutoff practice. Is that not true?

17 A I do not believe that that is -- I mean,
18 reading excerpts from various parts of the order, I
19 think you can go to the conclusion of the order and
20 determine what the order said and --

21 Q Well, I'm just asking about this particular
22 sentence, Julian.

23 THE COURT: Well, the sentence says what it
24 says. Do you have any -- what is the question for the
25 witness, if there is one?

1 Q (By Mr. Osheyack) The question is, that in
2 deferring local cutoffs, the FCC did not give tacit
3 approval to the practice. Is this not true?

4 A I don't know that that is true.. I don't
5 know that that -- you can read that into the order.
6 You can only read what they say, and I do not see
7 where it says that.

8 Q All right. Let's talk about the word
9 "deferred," Julian. Does deferred -- do you believe
10 that -- you're an expert witness. Do you believe that
11 deferring means mandating? The FCC mandate cutoffs,
12 or did they defer to the state --

13 MS. HELTON: Your Honor --

14 Q -- option to do cutoffs?

15 MS. HELTON: -- I think the definition of
16 defer may be a legal term, and I'm not sure that the
17 witness is qualified to that. And, also, I'd like to
18 clarify the witness. I don't believe that Mr. O'Pry
19 has been offered or approved as an expert witness.

20 MR. OSHEYACK: Thirty-three years with the
21 organization and he's not an expert. Good Lord. I
22 apologize, your Honor. The word "defer" is in every
23 dictionary that's ever been published and is not a
24 legal word. It's a layman's word, and the word
25 "defer" is very clear to anybody that's went to high

1 school, much less college.

2 THE COURT: Well, it's a matter that you
3 could argue -- you're going to argue then, and I don't
4 know why you need the witness to tell you what the
5 word means.

6 MR. OSHEYACK: All right. All right. I
7 think we'll go on to the next witness. Thank you,
8 Julian.

9 THE COURT: Any other questions for
10 Mr. O'Pry?

11 MS. HELTON: No.

12 THE COURT: Thank you. You may be excused.
13 (Witness O'Pry excused.)

14 - - - - -

15 THE COURT: Back on the record. You may
16 call your next witness.

17 MR. OSHEYACK: Mark Long.

18 - - - - -

19 MARK LONG

20 was called as a witness on behalf of the Petitioner
21 and, having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. OSHEYACK:

24 Q Well, Mark, I'm happy to meet you. We've
25 had some quite long discussions in the past over the

1 ACM program and certain other things.

2 A That's correct.

3 Q You were the lead -- as I recall, you were
4 the lead analyst on the GTE proposal for the advanced
5 credit management program; is that not true?

6 A I was for a period of time, but by the time
7 it came to its conclusion and as of now, I am not.

8 Q You're pretty well acquainted with it,
9 though?

10 A I am generally familiar with it.

11 MS. HELTON: Your Honor, could I interrupt
12 at this point? When Mr. Osheyack discussed with me
13 that he wanted to call Mr. Long as a witness, he
14 stated that he wanted to call him to ask him questions
15 about what the joint board recommended to the FCC as
16 far as universal service goes. This advanced credit
17 tariff -- is that -- advanced management credit tariff
18 never came up as a subject matter between Mr. Osheyack
19 and me --

20 MR. OSHEYACK: Your Honor, excuse me for
21 interrupting. The advanced credit management program
22 is very much a part of universal service, and I asked
23 to call Mark Long to talk about universal service.

24 The advanced credit management was a toll
25 blocking program, which it appears with universal

1 service -- (inaudible) --

2 THE COURT REPORTER: I'm losing him.

3 MR. OSHEYACK: Mark Long has worked with
4 both the joint board on universal service and the ACM
5 program and is very well qualified to answer the
6 questions that we would be able to ask.

7 WITNESS LONG: And I would only qualify,
8 since I was not notified that I would be testifying to
9 this, it has been at least two years since I have read
10 any of the ACM products, tariffs, proceedings, orders.
11 So I don't know how much help I will be, but I will be
12 certainly happy to answer anything that I can recall.

13 THE COURT: All right. I'll overrule the
14 objection. You may proceed.

15 Q (By Mr. Osheyack) Mark, on the subject of
16 universal service, you were appointed to the joint
17 board along with Julia Johnson, as I recall.

18 A I was appointed to the staff of the joint
19 board. That is --

20 Q The staff.

21 A -- the staff members that work for the joint
22 board in making the recommendations. I was not --

23 Q Did you go --

24 A -- a voting member of the joint board --

25 Q Did you go to all --

1 A Excuse me. I was not --

2 Q -- meetings --

3 A Yes.

4 THE COURT REPORTER: I didn't hear the --

5 Q I --

6 THE COURT: Excuse me, Mr. Osheyack. Off
7 the record.

8 (Discussion off the record.)

9 THE COURT: All right. Back on the record.

10 Q (By Mr. Osheyack) You're generally
11 acquainted, Mark, with everything that happened at the
12 joint board sessions, are you?

13 A Yes.

14 Q You had the opportunity to read and review
15 the joint board recommendations?

16 A Yes.

17 Q Now, could you please refer to Section 254
18 of the Communications Act of 1934 as amended. It
19 would be my Exhibit 17. Now, Mark, does Section 254
20 deal with universal service?

21 A Yes, it does.

22 Q Please refer to paragraph --
23 subparagraph (B). Let's see if I can find the page.
24 Does this section deal with principles of universal
25 service?

1 A Yes, it does.

2 Q Refer to subparagraph (5), if you will.

3 Does this paragraph state that there should be
4 specific predictable and sufficient federal, state --
5 and state mechanisms to preserve and advance universal
6 service?

7 A Yes, it does.

8 Q Mark, from your experience in both the
9 research on the ACM program, but particularly from
10 your attendance at the joint board meetings where a
11 lot of data was brought forth, are you generally aware
12 of the percentage of households in Florida and around
13 the country that have basic telephone service?

14 A The actual percentage I really do not know.
15 I believe it's somewhere in the 90s.

16 Q Would 94% be approximate --

17 A Subject to check, that appears reasonable.

18 Q So that would leave at least 6% of the
19 households without service as an average across the
20 country? Is that not true?

21 A Yes, that would --

22 Q If these figures are correct.

23 A Yes.

24 Q Now, when Section 254 states that the states
25 should have a specific mechanism to preserve and

1 advance universal service, what does that mean to you
2 as a nonlawyer?

3 A Well, that means that the state should --
4 should do whatever it believes is reasonable in
5 advancing subscribership and telephone service to its
6 citizens.

7 Q Are you generally aware, or have you heard
8 of any studies that have suggested the primary cause
9 of households not having basic telephone service is
10 because of disconnection due to excessive long
11 distance calls?

12 A No, I'm not specifically -- I am not
13 specifically familiar with that. I do know that some
14 comment --

15 Q You heard some comments.

16 A Yeah. Some commenters made that claim in
17 the universal -- FCC's universal service docket, yes.

18 Q Was one of the comments -- commenters Reid
19 Hunt, the head of the FCC?

20 A It may have been. I do not recall
21 specifically what he said or didn't say during that
22 process.

23 Q Based on your experience in
24 telecommunications regulation, is it necessary -- is
25 the necessity for a deposit asked by the telephone

1 company primarily due to the risk associated with long
2 distance billing?

3 A Could you repeat that question, please?

4 Q Well, the question is based on your past
5 experience in telecommunications. Is the necessity
6 for the deposit a factor which causes the risk
7 associated with long distance billing? Is a necessity
8 for a deposit associated with the risk in long
9 distance billing?

10 A I can say that in my experience, local
11 exchange companies claim that charging deposits to its
12 customers is a decision they make based on what their
13 expend -- what their expected expenditures are going
14 to be, and in general, that includes toll calls.

15 Q Does it -- do the deposits generally cover
16 the two and a half months of toll calls, or does it
17 fall short?

18 A I do not know --

19 Q Sorry --

20 A I do not know what telephone companies
21 charge for deposits, so I can't really answer that.

22 Q All right. In your opinion, if the
23 telephone companies were to stop disconnecting local
24 service for long distance bills, do you think we would
25 have more or fewer subscribers for local telephone

1 service in Florida?

2 A In my opinion, I do not believe --

3 Q Yes --

4 A In Florida I do not believe it would make
5 any substantial difference.

6 Q In your opinion, is basic local residential
7 service included in a definition of universal service?

8 A Yes.

9 Q Are you acquainted, Mark, with the list of
10 states that have eliminated disconnect authority?

11 A No, I'm not.

12 MS. HELTON: Your Honor, I just have to say
13 for the record -- or object for the record, if
14 Mr. Osheyack is going to talk about what other states
15 do, I don't think that's relevant here. I mean, I
16 think what's at issue is --

17 MR. OSHEYACK: Well, I haven't started to
18 talk about them yet, so I would suggest to the Court
19 that objections be made after the fact.

20 THE COURT: I would agree.

21 MR. OSHEYACK: (Pause) I'm just trying to
22 find something, if you'll bear with me. (Pause)

23 Q (By Mr. Osheyack) Mark, what are the
24 decisions of the joint board? One of the
25 recommendations, as I recall, was to eliminate

1 disconnect authority for a certain class of customer
2 or subscriber. Is that not true?

3 A For Lifeline subscribers, correct.

4 Q How would you define a Lifeline subscriber?

5 A Is anyone who subscribes to an FCC program
6 called Lifeline that is specifically designed to aid
7 the low income consumers acquire and maintain local
8 telephone service.

9 Q Do you know what the qualifications are to
10 participate in the Lifeline program?

11 A I, in all honesty, can't recall them at the
12 moment.

13 Q So the participation might be low because
14 the information isn't getting out to the public.
15 Would you say that's true? I mean, you have been in
16 the business a long time, the public might not. Would
17 you say that's true?

18 A One of the claims made during the joint
19 board process of why subscribership to Lifeline was
20 low among states was that information was not being
21 disseminated to potential -- potentially qualified
22 customers.

23 Q Would you go to another Section 254
24 definition, Mark, under C? It's the third page in my
25 exhibit. Initially it defines universal service, and

1 I think we all pretty much know what that definition
2 is.

3 A (Pause)

4 Q Are you there?

5 A Yes.

6 Q Okay. Look under (A). We're talking about
7 the definition of universal service. And could you
8 read (A) into the record?

9 A This is 254(c)(1)(A). "Are essential to
10 education, public health or public safety."

11 Q And (D)?

12 A "Are consistent with the public interest,
13 convenience and necessity."

14 Q Now I want to ask you a couple questions
15 about those two points, Mark, in relation to what the
16 discussions were at the joint board and in relation to
17 what, to your knowledge, the Public Service Commission
18 is doing today or has done.

19 My understanding of the Lifeline is that the
20 participants needed to be welfare recipients or
21 recipients of food stamps or aid to dependent
22 children. Was there any discussion of the working
23 poor? The government is in the process of transition.
24 The last I saw, I believe, that half the -- half of
25 Florida's welfare recipients are now at work. So the

1 working poor have become an important population, a
2 special population.

3 Is there any -- was there any discussion
4 about including them in the -- in the same category as
5 the Lifeline recipients? Participants, I should say.

6 A To my recollection, there was no discussion
7 regarding changing the qualifications for Lifeline
8 customers.

9 Q So whether the working poor is working at
10 minimum wage and might make a -- a very small stipend
11 and could not be assured of permanent basic local
12 telephone service is what -- is that true --

13 A Well, I mean, I would --

14 Q -- that condition --

15 A I would only say to the extent that that
16 customer was not eligible for a Lifeline program two
17 years ago, that customer would continue to not be
18 eligible today.

19 Q Okay. Now, how about the single mother with
20 school age children? She has a job. The children
21 come home from school. They can't reach the -- they
22 can't reach mom. They can't reach the police. They
23 can't reach the firemen. They can't reach the doctor.
24 They can't reach emergency service. Were they
25 discussed as possibilities for inclusion in the

1 program that's available to Lifeline customers?

2 A Again, to my knowledge, no, they were not.

3 Q How about the elderly who are dependent to a
4 great degree on communication with their doctor? They
5 call the doctor and are told the doctor is in with a
6 patient or the doctor is at the hospital, where can we
7 reach you. Are the elderly -- were the elderly a
8 consideration for inclusion with those Lifeline
9 participants?

10 A To my knowledge, there was no discussion of
11 changing the qualifications for people eligible for
12 the Lifeline program, period.

13 Q I want to go back to (A) where the
14 definition of the expansion of universal service --
15 (inaudible) --

16 THE COURT REPORTER: Excuse me. Did you
17 say --

18 THE COURT: Just a minute. Just a minute,
19 Mr. Osheyack.

20 THE COURT REPORTER: I didn't hear.
21 Sometimes that gets so loud in the background that I
22 can't hear him. I really can't hear what he's saying.

23 MS. HELTON: It's getting louder.

24 THE COURT: We seem to be getting some kind
25 of a strange echo when you're speaking.

1 MR. OSHEYACK: It must be my alter ego.
2 Does it happen all the time?

3 THE COURT: We're hearing it right now.
4 Have you been moving the microphone around?

5 MR. OSHEYACK: No.

6 THE COURT: Okay. Don't move it around.
7 Let me try something then, and see if it helps.

8 (Discussion off the record.)

9 THE COURT: Back on the record. You may
10 proceed.

11 Q (By Mr. Osheyack) Let's go back to see
12 definition (1)(A) where it's stated -- and you read
13 into the record the fact that universal service is
14 essential to education, public health and public
15 safety.

16 Now, we named a few populations which are
17 not being served by the universal service rules as
18 they are today. Would you say that this is a fair
19 statement, that these people who need the help and
20 might not even need the financial support as offered
21 by the universal service discussions today -- would
22 you say they should be a population group that should
23 be considered and aren't being considered by the
24 Public Service Commission?

25 A Well, I'm not quite sure what your question

1 is, but one of the principles of universal service is
2 that it be affordable. And I have to assume that if
3 these population groups that you state are not
4 qualified for other low income programs, then I can't
5 say whether they should be qualified for this low
6 income program. I would assume that, yes, they are
7 covered under universal service principles because
8 they can afford it.

9 Q (Pause)

10 A Finished.

11 Q They're covered because they can afford it.
12 That's an interesting point. And going down to (D),
13 "consistent with public interest, convenience and
14 necessity." I think these federal statutes are pretty
15 much consistent with the state statutes. Is this not
16 true?

17 A I do not make any claims that federal and
18 state statutes are consistent, but I will say the
19 phrase "public interest, convenience and necessity" is
20 a common phrase used in telephone regulation.

21 Q Okay. So if I understand what you're saying
22 is if they need subsidy, they can get help. If they
23 don't need subsidy, they might not be able to get
24 help. Is this a fair statement?

25 A Yes.

1 Q Let's look at the average phone bill. I
2 remember reading in some of the research that you did
3 on the ACM program that -- about -- no, I think it was
4 in the -- in some other information. About \$30 was
5 the average local bill. Does this ring a bell with
6 you?

7 A No. I really don't know what the average
8 local bill would be, and if you say "the average local
9 bill," I don't know what that would include.

10 Q Well, locally GTE, for example here in
11 Tampa, charges about \$11 and change for basic local
12 service plus the surcharges and an estimate of the
13 extended area charges. It seems to run about that,
14 about 25, 30. Would you say that was an acceptable
15 figure?

16 A I mean, I really don't know. Are you
17 including toll usage, the local --

18 Q No, not including toll usage.

19 A The local bill in Tallahassee is about \$16,
20 so I really don't know what an average would be.

21 Q Let me go to the order, the PSC order,
22 No. 93-0879, which is the Public Service Commission
23 Exhibit U. And, Mark, I believe that you were
24 involved in this one, if I'm not mistaken. Let's see
25 if your name is back here.

1 This was the order that -- in which the test
2 of the ACM program was -- the petition for variance
3 from Rule 25-4.113, based on proposed toll block
4 procedures. It's the docket, I believe, which you
5 managed at which time the order was accepted on an
6 experimental basis. Do you remember that?

7 A Vaguely. I believe that -- that I was
8 involved with it when it was approved as an
9 experimental filing, but then when it was refiled as a
10 permit offering, I was not.

11 Q Okay. Okay. If you go to -- let's see what
12 page it is. I don't have a page number on this.
13 Yeah, it would be the second page; the introduction on
14 the first page, and it would be the second page which
15 starts with the word "requests". Do you see that?
16 "Requests an exemption."

17 A Yes.

18 Q Mark, I would like to get into the record
19 that second paragraph, because it relates to universal
20 service. Could you read that into the record?

21 A Are you talking about starting with --

22 Q Starting with "GTEFL states."

23 A "GTEFL states that over the past few years,
24 there has been an increase in its uncollectible
25 accounts. In an average month GTEFL says it has

1 10,000 to 12,000 uncollectible. Currently, GTEFL is
2 only able to collect 14.4% of those accounts. GTEFL
3 analyzed the problem and developed a comprehensive
4 program to solve it."

5 Q Simpler arithmetic rounded 14.4 to 15, 10 to
6 12,000 a month to 10,000, times 12 months, 120,000
7 less 15% -- sounds like about 90,000 people are cut
8 off per year. Is that not true?

9 A I really can't attest to your math,
10 Mr. Osheyack. All it says is that it has 10 to 12,000
11 uncollectible accounts. I don't know if that means --

12 Q 15% of them?

13 A 15% of 10,000 is 1,500. So I don't know
14 if --

15 Q Times 12.

16 A Why would it be times 12? An uncollectible
17 account may last an entire year.

18 Q It says "an average month," and we're
19 projecting it for a year.

20 A Yes, but an uncollectible account is not
21 necessarily changed from month to month. An
22 uncollectible amount in January may be the exact same
23 in February, and by this paragraph I would say that
24 about 85% of those uncollected in January would also
25 be uncollected in February.

1 Q Well, that's what I'm saying. Yeah, I
2 agree. What I'm saying, what you read into the
3 record, if I might call your attention to it, is that
4 GTE states that over the past two years there's been a
5 constant increase, and that an average month, it's --
6 the disconnections are 10 to 12,000 uncollectible, and
7 then 15% uncollected, leaving 85%. I think that's
8 what you said. Is that not right?

9 A Yes. What I'm disagreeing with is your
10 statement that approximately 90,000 people are cut off
11 every year. I don't see where that math necessarily
12 adds up. It could be the same 10 to 12,000 people all
13 year long -- excuse me -- same 10 to 12,000 accounts
14 all year long.

15 Q That doesn't square. It says in an average
16 month it has 10 to 12,000 uncollectible accounts. Are
17 you saying that they hold those uncollectible accounts
18 for a year?

19 A Okay. If you want to take a recess to do
20 the math, how you would probably do it, take 10,000 in
21 January and 15% of those would be collected, 85 would
22 roll over into February and 85 of those would roll
23 over into March and so on and so forth. You wouldn't
24 take 10,000 and multiply it by 12. You take more like
25 1,500 would be your additional ones -- because if

1 you're averaging 10 to 12,000, you're only getting rid
2 of 1,500 a month and getting 1,500 new ones a month.
3 75, or 85 remain the same from one month to the next.

4 Q Mark, are you acquainted with the true-up
5 provision of the tariff?

6 A Not specifically, no.

7 Q As I believe, I recall the true-up provision
8 provides for the local companies to charge back every
9 month uncollectible accounts. Is this in your bank of
10 knowledge?

11 A No.

12 Q Okay. Let's go on to the next paragraph.
13 One, two, three, four -- the fourth line starting with
14 "an average." I would appreciate it if you would read
15 that into the record.

16 A "An average uncollectible account is
17 \$400.00, but the average deposit per account is
18 \$70.00."

19 Q Now, it's my understanding -- and perhaps
20 you know better than I -- that the rules permit two
21 and a half months of deposit, and if the deposit is
22 \$70.00, the deposit is probably collected on the local
23 bill, so the deposits don't cover the long distance
24 bill at all. Is that what it looks like to you? The
25 deposits are --

1 A Are you asking me -- the average bill --

2 Q I'm asking you if this is a --

3 A Let me finish, please. Are you asking me
4 that based on the sentence I just read is the average
5 deposit less than the average bill?

6 Q Yes.

7 A I don't know. It says the average
8 uncollectible account is \$400.00. I do not know if
9 that has any relationship to the average bill. The
10 average uncollectible account may far exceed the
11 average bill. That's why it's uncollectible. So I
12 don't know if the average deposit of \$70.00 is
13 representative of the average account balance of
14 customers overall.

15 All I know is the average deposit of \$70.00
16 is below the average uncollectible account of \$400.00.

17 Q Okay. On the statistics, though, you will
18 have to agree that this is GTEFL's representation of
19 the facts?

20 A Certainly.

21 Q You might disagree with them, but this is
22 their representation of the facts?

23 A Yes.

24 Q Okay. Now, Mark, you were not involved in
25 the final disposition of this -- of this GTE ACM

1 program when they came back to it?

2 A No, I was not.

3 Q Are you sufficiently acquainted with what
4 happened to answer questions about it from the order?

5 A I don't know. You're certainly welcome to
6 try.

7 Q Go to the conclusion if you will, and if you
8 can answer it, fine; if not, we'll try somebody else.
9 Number 3 conclusion -- it's the second from the last
10 page of the order, and it expresses concerns of the
11 staff about the ACM program.

12 A Did you say the last -- the last page of
13 the --

14 Q The second to the last page; the second to
15 the last.

16 A Okay.

17 Q Mine aren't numbered, unfortunately, so I
18 can only blame the --

19 THE COURT: There is a page numbering system
20 up, I think, on the top of the page on the header.
21 It's got an identification --

22 Q (By Mr. Osheyack) Does Page 143 make
23 sense?

24 A Yes.

25 Q It says 96 FPSC 7:143.

1 THE COURT: That sounds like a page number,
2 but which exhibit number are you on?

3 MR. OSHEYACK: I'm on exhibit Number X,
4 Number 3 conclusion.

5 WITNESS LONG: Yes.

6 Q (By Mr. Osheyack) This is the final order.
7 Now, just by way of background so we can establish a
8 background for the record, this was a request by GTE
9 to toll block as a means of collecting unpaid bills,
10 was it not?

11 A Yes.

12 Q That was the end -- they had a system of
13 credit management, but in final analysis, what they
14 had intended to do was use it as a device for
15 collecting unpaid bills. This is correct, is it not?

16 A Well, I would have to qualify that by saying
17 it was -- it was a device they created to prevent
18 unpaid bills, not a device to collect them. I do not
19 see where if you have a toll limit of \$400.00 and you
20 reach it and your toll has been cut off how that helps
21 them get their \$400.00.

22 I believe it was a device that they put in
23 to limit their liability in uncollectible debts, not
24 to collect the ones that were uncollectible or that
25 are already gone --

1 Q Okay. I'll accept that. But they -- but
2 we -- they did not stop trying to collect the bill
3 after the toll block was put in place, did they?

4 A My understanding is that they would continue
5 to pursue collecting, altogether, bills they felt due
6 to them.

7 Q So toll blocking was a means of limiting
8 their liability, but it also was a means of leveraging
9 collection. You would have to say that, would you
10 not?

11 A I'm not sure.

12 Q Well, let me ask it this way. What was the
13 liability in the collection of interstate charges?

14 A I don't understand the question.

15 Q Well, if toll blocking blocked those
16 companies who provided interstate service, did they
17 have liability for those charges that were incurred by
18 using the facilities or the services of interstate
19 companies?

20 A I still don't quite understand your
21 question. Let me try to explain to you what I think
22 you're getting at and see if that's correct, and then
23 I'll see if I can answer it. Is that okay?

24 Q Well, let me try to clarify it, I think, to
25 make it easier for you. If this toll blocking

1 program, if this ACM program, was designed to limit
2 their -- solely to limit their liability, and if they
3 had no liability in connection with certain services,
4 but the toll blocking affected those services anyhow,
5 would you still maintain that limiting their liability
6 was the only consequence?

7 A I don't know. I mean --

8 Q Toll block.

9 A -- I don't know. I don't know what it was
10 combined with or other factors. But just given your
11 statement, if it is only implemented to limit
12 liability, and on your conditions that liability has
13 been removed, then yes, there should be some other
14 reason that they have to implement it or to continue
15 it.

16 Q All right. Go to the second paragraph. And
17 this is the -- to a great extent, this is the order,
18 but it reflects the staff opinion. Second paragraph
19 one, two, three, the fourth line starting with "it is
20 inappropriate," would you read that into the record,
21 please?

22 A I'm sorry. Could you restate where we are
23 again?

24 Q Second paragraph under Conclusion 3, Page
25 143, second paragraph, one, two, three, four, fifth

1 line, middle of the line, starting with "it is
2 inappropriate".

3 A Okay. "It is inappropriate to block toll
4 service for nonpayment of local service. GTEFL --

5 Q Next paragraph, starting with -- well,
6 beginning of the paragraph, "Another problem".

7 A Another --

8 Q And -- excuse me. Go ahead.

9 A "Another problem with the PBTB procedure
10 that also existed with ACM is that a blocked customer
11 would be denied access to all IXCs." Is that enough,
12 or continue?

13 Q No. Go on.

14 A "This violates Sections 364.051,
15 Section (2)(c) and 364.02(2) Florida Statutes which
16 require price regulated LECs to provide, with basic
17 local service, access to all locally available IXCs."

18 Q So would you say from this statement in the
19 order that toll blocking was considered to contravene
20 those laws which are cited?

21 A It appears to. I'm not a lawyer. I have to
22 qualify by saying I'm not a lawyer --

23 Q Well, I asked for your opinion only as
24 somebody who's lived in -- through
25 telecommunication -- look, we're all -- all of us who

1 are subscribers are not lawyers, and we have to live
2 with the decisions that are made and the
3 interpretations that are given to us by people such as
4 yourself who we rely on to provide accurate
5 information. So I accept your statement.

6 A Then I would say that these sentences appear
7 to state that blocking customers would deny them
8 access to all interexchange carriers, which would
9 contravene providing basic local service.

10 Now, I do not know under what context that
11 they should be providing basic local service or any
12 other factors, but based on those sentences, yes,
13 that's what I would say it means.

14 Q Go to the bottom of that paragraph, Mark,
15 the last sentence starting with "The decision". Would
16 you read that into the record, please?

17 A "The decision to provide or deny toll access
18 to any customer should rest with the IXC, not GTEFL."

19 Q Well, in the next paragraph I think there's
20 an important statement made by the Public Service
21 Commission, which also appears in the Staff
22 recommendation, because it speaks to alternatives to
23 disconnection. Would you please read that into the
24 record?

25 A Could you repeat again, the --

1 Q Starting with "Another problem".

2 A Okay. "Another problem with the PBTB
3 procedure is that it proposes to block outgoing
4 collect calls, third party billed calls and credit
5 card billed calls. There is no reason --

6 Q Go on from there.

7 A "There is no reason or purpose for GTEFL to
8 block access to calls carried by a different provider
9 when GTEFL will have no financial risk associated with
10 the calls."

11 Q And that is the point that I was trying to
12 get at before when I spoke of financial risk, Mark.
13 Now, I think that last sentence is also important to
14 read into the record, if you would read that, please.

15 A The last sentence on Page 143?

16 Q Yeah, same page and going into the next
17 page.

18 A "In addition, the ability to provide toll
19 blocking presents a competitive advantage in billing
20 collection services for GTEFL. Since other billing
21 and collection agencies do not have the ability to
22 block toll, GTEFL can use this advantage to market its
23 billing and collection services."

24 Q And as we all know, the -- one of the
25 mandates of current law, the intent of the

1 Legislature, as mandated for your Commission, is to
2 eliminate all anticompetitive services. Is that not
3 true?

4 A Could you repeat that, please? .

5 Q The mandate of the Legislature in the
6 revised Chapter 364 of the -- of the laws, the Florida
7 Statutes, states clearly that the Commission is
8 mandated to eliminate all anticompetitive practices.
9 Is this not true?

10 A I would have to qualify that answer a
11 minute. In my opinion, there are several mandates in
12 the Florida law. One of them is in eliminating
13 anticompetitive practices. There are other mandates
14 to facilitate competition. There's another mandate to
15 relax regulations, not be overly burdensome with your
16 regulation, and others that I can't even recall right
17 now.

18 So, yes, one of the guiding principles in
19 the Florida law is to eliminate anticompetitive
20 practices, but it is not the only one.

21 MR. OSHEYACK: I have no other questions at
22 this time.

23 THE COURT: All right. Back on the record
24 for cross-examination.

25

1 CROSS EXAMINATION

2 BY MS. HELTON:

3 Q Mr. Long, are toll blocking and
4 disconnection the same thing?

5 A No.

6 Q Can you tell me what the difference is?

7 A Well, toll blocking is simply limiting your
8 ability to place toll calls for some reason.
9 Disconnection means that both your toll and your local
10 service are no longer available for some reason.11 Q And wasn't one of the problems that the
12 Commission found with this GTE proposal, that for toll
13 blocking that the problem was that customers were
14 paying for local service, however, they weren't
15 getting basic local service, and that they were not
16 getting access to all available IXCs, and they had
17 not -- it had not yet been shown that they weren't
18 going to pay the bill?

19 A That was one of their reasons, yes.

20 Q So there wasn't a showing that a bill had
21 not been paid, whereas with the Commission's policy
22 for disconnection for nonpayment, isn't it true that
23 the companies are authorized to disconnect for
24 nonpayment only if there has been a bill that is
25 outstanding?

1 A Correct.

2 Q Are we in a transition period right now as
3 far as competition goes?

4 A Hopefully, yes.

5 Q Hopefully, meaning that is there --

6 MR. OSHEYACK: No objection. (Laughter)

7 Q (By Ms. Helton) Is there true competition
8 today?

9 A No, there is not.

10 Q Do you think the Legislature contemplated
11 that there would be true competition today?

12 A I do not believe the Legislature
13 contemplated there would be true competition today.

14 MS. HELTON: No further questions.

15 THE COURT: Any redirect?

16 MR. OSHEYACK: Yeah.

17

18

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1 distance companies, particularly interstate.

2 But how about intrastate? How about
3 intrastate toll service? At least from what I read,
4 there are 500 -- in one of these documents that was
5 brought in by the Public Service Commission, in
6 competition in telecommunications markets I read that
7 there are 500 companies that are providing toll
8 service. Somebody has got to bend. Wouldn't that be
9 true, Mark?

10 A Yes. There is competition for toll service
11 within the state. Again, I would not call it true
12 competition, but I would call it sufficient for now.

13 Q Can we say there is competition, but you're
14 not happy with the level of it?

15 A Well, I don't know if I want to testify as
16 to my level of happiness or not, you know. But it
17 seems -- the market seems to be working sufficiently
18 now. Yes, I would like to see more vigorous
19 competition. I would like to see more companies do
20 more creative things with prices and other things,
21 but, you know, I don't rule the world.

22 Q I'll accept that.

23 MR. OSHEYACK: No other questions, your
24 Honor.

25 THE COURT: Any recross?

1 MS. HELTON: No.

2 THE COURT: Thank you.

3 (Witness Long excused.)

4 - - - - -

5 THE COURT: Off the record.

6 (Discussion off the record.)

7 THE COURT: We're at 12:30 now. Do you have
8 any further witnesses, Mr. Osheyack?

9 MR. OSHEYACK: Yes. I'd like to call Sally
10 Simmons.

11 MS. HELTON: Ms. Simmons is my witness, the
12 Commission's witness. You issued a prehearing order,
13 or amended prehearing order, that required to us
14 notify each other of witnesses by I think the date was
15 June the 6th.

16 I had I don't know how many conversations
17 with Mr. Osheyack the week and a half prior to that
18 date to determine who his witnesses were going to be.
19 Ms. Simmons never was mentioned as a witness by
20 Mr. Osheyack.

21 The Commission is calling -- I mean the
22 Commission has stated in the prehearing stipulation,
23 and Mr. Osheyack has known since at least June the 6th
24 and I think prior to that, that Ms. Simmons was going
25 to be called as the Commission's witness.

1 **THE COURT:** Well, Mr. Osheyack, you'll be
2 able to cross-examine.

3 **MR. OSHEYACK:** Your Honor, Sally Simmons was
4 my first choice of a witness, and it was communicated
5 to Ms. Helton. She said she was going to call Sally
6 Simmons. And if you'd permit me the present scope of
7 questioning, she happens to be the person in the
8 organization that knows all the answers. I tried to
9 call three --

10 **THE COURT:** Why didn't we call her first,
11 then?

12 **MR. OSHEYACK:** Well, good question. It's a
13 matter of strategy and tactic, I suppose. I don't
14 know why.

15 **THE COURT:** My question was -- the reason
16 for me raising the question is, do we want to forge on
17 and finish the hearing? It's 12:30 at this point.

18 **MR. OSHEYACK:** Oh, yeah.

19 **THE COURT:** Okay. Now, do you have any
20 witnesses other than Ms. Simmons?

21 **MR. OSHEYACK:** No, not other than
22 Ms. Simmons. I'd like to talk to Ms. Simmons, and
23 that's the end of it.

24 **THE COURT:** All right. And I think we can
25 deal with the documentary evidence after the last

1 witness is called. Do you only have one witness?

2 MS. HELTON: (Nodding head.)

3 THE COURT: What I would propose is that we
4 stick to what's in the prehearing stip and we conclude
5 your presentation subject to the exhibits that you
6 want to be in evidence, and we go now to the PSC's
7 case and let them call Ms. Simmons.

8 You can cross-examine, and presumably that
9 would cover the territory that you would want to,
10 anyway. If not, you can ask to go beyond cross if you
11 need to, and we can deal with it --

12 MR. OSHEYACK: That's all I ask. If I can
13 go beyond what counsel asks and make the points, find
14 the truth, that's all I want to do.

15 MS. HELTON: May we take like a two-minute
16 break?

17 THE COURT: All right. Let's take a short
18 recess before we do this.

19 (Brief recess.)

20 - - - - -

21 THE COURT: Back on the record. You may
22 call your witness.

23 MS. HELTON: For the record, my witness is
24 Ms. Sally Simmons from the Public Service Commission,
25 and I can't recall whether you swore her in.

1 **THE COURT:** I haven't.

2 - - - - -

3 **SALLY SIMMONS**

4 was called as a witness on behalf of Florida Public
5 Service Commission and, having been duly sworn,
6 testified as follows:

7 **DIRECT EXAMINATION**

8 **BY MS. HELTON:**

9 **Q** Please state your name and business address
10 for the record.

11 **A** My name is Sally Simmons and my address is
12 2540 Shumard Oak Boulevard, Tallahassee Florida, zip
13 code is 32399.

14 **Q** And what is your current position?

15 **A** I am the bureau chief, or a bureau chief in
16 the division of communications.

17 **Q** And what are your job responsibilities?

18 **A** I supervise three sections. Those sections
19 are end user services, carrier services and market
20 assessment, and these sections handle pricing policy,
21 provisioning and market evaluation functions.

22 **Q** And how long have you worked at the
23 Commission?

24 **A** Approximately five and a half years.

25 **Q** And how long have you worked in the

1 telecommunications industry?

2 A I've worked in telecommunications for
3 approximately 22 years. Prior to joining the
4 Commission, I worked with the C&P Telephone Companies,
5 AT&T and Bell Atlantic, and for a portion of that
6 period I held middle management positions.

7 Q And what types of duties did you have when
8 you were working outside of the Commission?

9 A My duties outside of the Commission ranged
10 across the areas of rate planning, forecasting and
11 product line management.

12 Q I'm going ask you just a couple questions
13 about the rule. I don't know if you want to open up
14 to it or not. What does Rule 25-4.113 do?

15 A This rule sets out, basically restricts
16 disconnection of telephone service, both
17 discontinuance or refusal of telephone service to
18 specific conditions as laid out in the rule.

19 Q What does paragraph (1)(f) of Rule 25-4.113
20 do?

21 A Basically (1)(f) permits disconnection of
22 telephone service for nonpayment of bills.

23 Q When did the Commission first authorize
24 local exchange companies who bill for IXCs to
25 disconnect for nonpayment if the toll portion of the

1 bill was not paid?

2 A It was in December of 1983, I believe, in
3 conjunction with the divestiture of AT&T.

4 Q Did they do that by an order?

5 A Yes. It was Order No. 12765, which is Tab
6 H.

7 Q Why did the Commission do this?

8 A Let me quote a portion from the order on
9 this. It's quite instructive, I think. On Page 26 of
10 Tab H, and I guess it would be the fourth complete
11 paragraph on that page --

12 MS. HELTON: If I could just clarify for the
13 record, the orders in this book are copies of orders
14 in the Commission's Official Reporter, which is the
15 Florida Public Service Commission Reporter. So some
16 of these orders are going -- depending on what era
17 they came from, some of the orders may have two page
18 numbers.

19 In this case, Page 26 is the actual page
20 number of the order when it was issued from the
21 Commission, and then Page 125 is the page number, and
22 Volume No. 12 from the 1983 edition.

23 THE COURT: Okay.

24 WITNESS SIMMONS: And I am on Page 26 of
25 Item H. All right. On Page 26, the fourth paragraph

1 down, I'd just like to read this because this is
2 really the -- there are two paragraphs here that
3 really explain the Commission's logic.

4 It starts "We believe that by granting LECs
5 disconnect authority, bad debts for toll charges will
6 be less than without this authority. It is presently
7 anticipated that since IXCs cannot disconnect local
8 service for nonpayment of toll charges, the IXC
9 uncollectible rate will be higher than the LECs' rate.
10 If the bad debt expenses of the IXCs are excessive,
11 then they may increase their toll charges to recoup
12 this expense. As a result, Florida subscribers may
13 pay increased rates for IXC services."

14 And then in the next paragraph, "Therefore
15 we find that the LECs should be granted disconnect
16 authority for nonpayment of an IXC bill. This
17 disconnect authority, however, shall only be granted
18 when the LEC provides billing services for the IXC.
19 With billing, collection and disconnection offered as
20 a complete package of services, the LEC will be able
21 to verify from its own records if and when the
22 disconnection of service is warranted. We further
23 find that it is unnecessary for the LECs to own the
24 IXCs' accounts receivable."

25 That was a decision made at that time. That

1 last sentence I read was later changed in a subsequent
2 order, 13429, to include purchase of the IXCs'
3 accounts receivable. But that's the Commission's
4 basic reasoning as stated in the order.

5 Q Was this policy codified to ensure the
6 survival of LECs after the '83 federally mandated
7 divestiture?

8 A Probably not, although this question is hard
9 to answer absolutely one way or the other. This order
10 encompassed a wide range of topics. It was a --
11 basically was the Commission's investigation into how
12 to charge for switched access, special access, how to
13 charge for billing and collecting, and how to handle
14 directory assistance. So it was a very large docket.

15 Certainly there was an overall premise
16 that's mentioned in the order to ensure the financial
17 viability of the local exchange company. So that is
18 mentioned. However, it is not mentioned specifically
19 with respect to billing and collection.

20 The terminology here is difficult because
21 billing and collection is included in an access
22 tariff, although it's typically not considered an
23 access charge. So we kind of get tripped up in our
24 terminology here.

25 It's my interpretation, looking at this

1 order, that most likely the financial viability of the
2 LECs was most likely not a prime consideration in the
3 billing and collecting area. I think it was a prime
4 consideration in the switched access area for sure,
5 but I am doubtful that it went beyond that.

6 Q Why is the LEC disconnect policy necessary
7 today?

8 A I think the reasons that I just cited a
9 moment ago from Order No. 12765 really still apply
10 today. The concern is that the IXCs uncollectibles
11 presumably would be higher without this disconnect
12 authority, and the concern is if the uncollectibles go
13 up, the bad debt expense of the IXCs would increase,
14 and as a result, likely rates would increase.

15 So we are concerned about -- you know, even
16 though we're trying to encourage competition, we feel
17 it's very important that we try to keep rates as low
18 as possible, and we feel that this policy contributes
19 to that goal.

20 Q Well, how would IXC rates go up?

21 A IXC rates presumably would go up because of
22 the fact that -- or I shouldn't say the fact -- but
23 presumably because their uncollectible expense would
24 increase if, let's say, the local exchange company
25 with which the IXC has a collecting arrangement or

1 contract, if that LEC could not disconnect for
2 nonpayment of toll, the bad debt for the IXCs would go
3 up. If any expense goes up, the IXC is likely to
4 raise rates.

5 Another thing I guess I should mention, too,
6 in terms of why we think the policy is still
7 appropriate today -- there are two other points. One
8 has to do with alternative local exchange companies.
9 Alternative local exchange companies are not subject
10 to this rule that's at question. That is because the
11 Legislature wanted to allow these alternative
12 companies to operate with as few restrictions as
13 possible, so there are minimal requirements that they
14 must meet.

15 They are not affected or not bound by this
16 rule that's under discussion today. So, in fact, if
17 25-4.113(1)(f), if that is struck down, that would
18 prevent -- you know, that would presumably take away
19 the LECs' right to disconnect, but it would in no way
20 prevent an alternative local exchange company from
21 disconnecting for nonpayment of toll.

22 And there was one other point I wanted to
23 make in terms of the appropriateness of the policy
24 today. I believe if the policy did not exist, I
25 believe deposit requirements would be higher than they

1 presently are. Any kind of deposit requirement is a
2 barrier to entry, and certainly it would not be a good
3 idea to take any sort of action that might increase
4 deposit requirements, because that could have an
5 adverse effect on subscribership.

6 Q If the Commission did not allow local
7 exchange companies to disconnect for nonpayment of
8 toll, could customers switch from toll carriers and
9 incur or charge up high debts among several different
10 carriers?

11 A Sure they could. Without any disconnection
12 authority, a customer could switch from IXC to IXC to
13 IXC, leaving behind unpaid balances that good paying
14 customers would have to somehow pick up through the
15 rates they pay.

16 Q Under the express terms of the rule, can a
17 company disconnect for nonpayment of unregulated
18 services rendered by it?

19 A No, they cannot and that's basically, I
20 think, under 25-4.113. It's (4)(E).

21 Q What types of regulated services are
22 contemplated by the rule here?

23 A Most of the examples of unregulated
24 services, they typically fall in a couple of
25 varieties. One would be customer premises type

1 services, such as inside wire maintenance would be an
2 example. Another example would be information
3 services such as voice mail. Those are, you know,
4 some examples of unregulated services.

5 Q Does the Commission have jurisdiction over
6 toll calls?

7 A Yes, the Commission does have jurisdiction
8 over toll calls, the only exception being that they do
9 not have jurisdiction over interstate transmissions
10 and rates.

11 Q Then why can the companies disconnect for
12 nonpayment of interstate toll?

13 A Of interstate toll?

14 Q Uh-huh.

15 A That is because the Commission does have
16 jurisdiction over the billing and collection
17 arrangements, that is the contracts between the local
18 exchange companies and the IXCs, and it's by virtue of
19 having authority over those billing arrangements that
20 is the basis for the Commission having the disconnect
21 authority.

22 Q In your opinion, is the Commission's policy
23 on disconnection for nonpayment of toll inconsistent
24 with the Commission's policy that companies cannot
25 disconnect for nonpayment of unregulated services

1 rendered by it?

2 A No, I don't think it's inconsistent at all.
3 Basically, as I just indicated, the Commission has
4 jurisdiction through the billing and collecting
5 contracts, and I believe that that provides the
6 authority to permit disconnection of service for
7 nonpayment.

8 Q Can you pull out what's been marked for
9 identification as Exhibit No. 30?

10 A Yes, I have it.

11 Q Can you tell me what that is?

12 A Okay. This is the uniform tariff for
13 billing and collection services that was filed in a
14 response to Order No. 13429, which was an order
15 approving a stipulation.

16 Q So the Commission ordered this tariff to be
17 filed?

18 A That's correct.

19 Q And did the Commission approve this billing
20 and collection tariff?

21 A Yes, they did.

22 Q And does the Commission keep this tariff on
23 file as part of its regularly conducted business
24 activity?

25 A Yes, it does.

1 Q Just so the record is clear, what is a
2 tariff?

3 A A tariff really sets forth the rates, terms
4 and conditions by which a company is going to offer
5 service to a customer. It, in essence, is a contract.

6 Q Are companies obligated to follow the terms
7 of this tariff, of a tariff in general?

8 A Yes, they are.

9 Q And are customers of the phone company
10 required to following the terms of tariffs?

11 A Yes, they are. It's a mutual obligation on
12 the part of the customer and the company.

13 Q What did this uniform tariff do?

14 A This basically sets out the terms and
15 conditions for the billing and collection services
16 that the local exchange companies were offering to the
17 IXCs at the time.

18 Q Is this particular uniform tariff still in
19 effect today?

20 A No, it is not.

21 Q Will you pull out what's been marked for
22 identification as Exhibit 31?

23 A I have it.

24 Q Can you tell me what it is?

25 A These are the current billing and collection

1 tariffs for -- let me just double-check here -- for
2 BellSouth, Sprint, and GTE.

3 Q Did the Commission approve these billing and
4 collection tariffs?

5 A Yes. I have to give you a caveat, though.
6 The Commission did approve these tariffs if they were
7 filed prior to the time these companies elected price
8 regulation. Some of these pages I can tell were filed
9 after one or more of these companies elected price
10 regulation. In that case these tariff filings were
11 presumptively valid.

12 THE COURT: Were presumptively valid?

13 WITNESS SIMMONS: Presumptively valid.

14 Q (By Ms. Helton) And is that under
15 operation of the statute or --

16 A Yes.

17 Q Does the Commission keep this tariff on file
18 as part of it's regularly conducted business activity?

19 A Yes.

20 Q Why aren't BellSouth, GTE and Sprint still
21 following the uniform tariff?

22 A These companies have generally reduced rates
23 over time. They've been trying to respond to
24 competitive pressures in a way, because the
25 interexchange companies, many of them, are able to do

1 their own billing, and thus the companies have tried
2 to get their rates down so as to be attractive as
3 possible so as to retain the business.

4 Q So do these tariffs have higher or lower
5 rates in them?

6 A Generally speaking, the rates are low.
7 That's probably not the case, you know, for every
8 element, but in general the rates are low.

9 Q What happens if a customer disputes charges
10 on his bill?

11 A Okay. The Commission has a rule on that.
12 There's a whole series of rules on customer
13 complaints. The overall heading is 25-22.032. It's
14 Tab EE in the Commission's binder of documents for
15 initial recognition.

16 Q Actually, I think it might be FF.

17 A I'm sorry; FF. You're correct. I stand
18 corrected. There's a number of tabs close together
19 here. So in Tab FF is this Rule 25-22.032, Customer
20 Complaints. And there's a Part (10) of that rule
21 which reads "During the pendency of the complaint
22 proceedings, the utility shall not discontinue service
23 to a customer because of an unpaid disputed bill.
24 However, the utility may require the customer to pay
25 that part of the bill which is not in dispute."

1 Q Then what happens if a partial payment is
2 made? How is that payment applied?

3 A Okay. Partial payments, the Commission has
4 a rule on that as well. I refer you to Tab CC. It's
5 Rule 25-4.110, which is Customer Billing for Local
6 Exchange Telecommunication Companies. (9) of that
7 rule reads as follows: "Each local exchange company
8 shall apply partial payment of an end user/customer
9 bill first towards satisfying any unpaid regulated
10 charges. The remaining portion of the payment, if
11 any, shall be applied to the nonregulated charges."

12 Bear in mind what I said about the
13 nonregulated charges earlier. Examples would be
14 things like inside wire maintenance, voice mail,
15 customer premises type services, and also information
16 services. That's what we mean by nonregulated;
17 nonregulated by -- not regulated by any party.

18 Q If sufficient payment is made to pay the
19 local services portion of the bill, why is the
20 consumer's local service disconnected?

21 A Well, there are a couple of problems here,
22 the first one being that over the years -- and this
23 situation may well be changing -- but over the years
24 the local exchange companies' billing systems have not
25 been able to handle multiple balances very

1 effectively.

2 In fact, this is mentioned in a couple of
3 orders we've already cited to. This Order 12765,
4 there's some discussion in that order about
5 maintaining multiple balances and --

6 THE COURT: Which tab is that?

7 WITNESS SIMMONS: That is Tab H. And then
8 in Tab I in Order 13429, the multiple balances were
9 subsequently done away with. I'll take a minute and
10 I'll try to see if I can find that in here. (Pause)

11 Anyway, there's discussion about problems.
12 In this Order 13429, there's discussion about the
13 LECs' difficulties in maintaining multiple balances.
14 It's on the first page of the order.

15 So, anyway, there's historically been
16 difficulty in that area. Now, if it's -- I doubt it's
17 completely unsurmountable, but there's always been a
18 problem in that area.

19 Additionally, if a partial payment comes in,
20 it's not really not altogether clear what the local
21 exchange companies should do with it. You know, there
22 may not be any sort of note with it. It may not be
23 clear how the customer wants the payment applied. So
24 there are a couple of problems.

25 Q But isn't it possible for LECs to configure

1 service so toll service can be blocked?

2 A Yes, that's possible. That's normally done
3 for a charge. Now, we do have two companies, GTE and
4 Southern Bell have trial tariffs in effect at the
5 Commission whereby a customer can have basic local
6 service, but a toll block is placed on the line; and
7 this is to try to assist customers that may have had
8 payment problems in the past. It is a way for them to
9 have service when they otherwise would not be able to.

10 Q And have they agreed to that toll block?

11 A Yes. It would be -- basically that would be
12 an option for the customer; we can give you service
13 under these conditions.

14 Q And those are for payment problems?

15 A Yes, past payment problems.

16 Q Mr. Osheyack asked Mr. Long some questions
17 about some orders that were officially recognized in
18 here that dealt with -- I don't know why I can't
19 remember the name of that, but it's -- advanced credit
20 management program?

21 Is the Commission's treatment of GTE's
22 tariffs there inconsistent with the Commission's
23 policy on disconnect?

24 A No, it isn't. I'd like to try to make a
25 distinction here. The advanced credit management

1 program dealt with blocking, considerable discussion
2 about blocking, and I know that came up a lot in the
3 cross-examination of Mr. Long.

4 The rule at issue in this hearing has to do
5 with discontinuance of service or refusal of service.
6 And in the case of blocking, there is -- say,
7 involuntary blocking, the difficulty is that the
8 customer is still paying for basic service.

9 Basic service, according to the statute,
10 includes all access to locally available interexchange
11 carriers. So the customer is paying for basic
12 service, but they're not getting what they're entitled
13 to, because they're not -- they do not have access to
14 all locally available interexchange companies. And if
15 you'd like, do you want me to --

16 Q Sure.

17 A I can find the statutory cites, if that
18 would help.

19 Q Are you going to B?

20 A Yes. Tab B is Chapter 364, Florida
21 Statutes. Okay. There are two places to look. The
22 first is 364.051(2)(C) that states "There shall be a
23 flat rate pricing option for basic local
24 telecommunications services." And it goes on to say
25 "and mandatory measured service for basic local

1 telecommunications services shall not be imposed."

2 It's the first part of that that's critical,
3 and that is basically you've got to -- you have to
4 provide basic service.

5 Now, basic service is defined in another
6 portion of the statute under 364.02. This is
7 Definitions portion. Part (2) of that defines basic
8 local telecommunications service, and it says it means
9 voice-grade, flat-rate residential and flat-rate,
10 single-line, business local exchange services which
11 provide dial tone, local usage necessary to place
12 unlimited calls within a local exchange area, dual
13 tone multifrequency dialing -- otherwise often known
14 as touch tone -- and access to the following; and it
15 has a whole list of items. And one of those items is
16 "all locally available interexchange companies".

17 So the point that the Commission has made is
18 if a customer is subscribing to basic service, that
19 should be what they receive.

20 Q And under the advanced credit management
21 tariff that the Commission ultimately denied, was the
22 customer paying for local service?

23 A Yes, they were.

24 Q And was the customer receiving local
25 service?

1 A Yes. Well, let me put it this way. The
2 customer was paying for basic service, but they were
3 getting less than basic service because they did not
4 have access to all locally available IXCs. They
5 couldn't access any toll provider.

6 Q And when -- if Rule 25-4.113(1)(f) is
7 invoked, has the customer paid for basic local service
8 there?

9 A No, I would say they have not, because they
10 are not receiving basic service nor are they paying
11 for it.

12 Q Under the current regulatory scheme, can
13 IXCs bill for their services without using a billing
14 agent?

15 A Yes, they certainly can. Some of them do.
16 The difficulty -- I think this was alluded to
17 before -- is that the customer of the IXC basically
18 can leave one IXC, go to another one. Let's say the
19 IXC is doing their own billing. The customer just
20 moves from company to company, and meanwhile building
21 up unpaid balances; and, consequently, good paying
22 customers end up having to foot the bill, presumably
23 through higher rates.

24 Q And if you have -- if a person has
25 subscribed with one interexchange carrier, I mean,

1 let's say AT&T, can they also use other long distance
2 carriers?

3 A Certainly they can.

4 Q How would they do that?

5 A Via an access code of some sort. It's often
6 referred to as 10XXX or possibly an 800 number or 888
7 number.

8 Q So it would be possible for a customer to
9 run up balances with several different long distance
10 companies at the same time?

11 A Yes, it is.

12 Q Can you pull out what's been marked for
13 identification as Exhibit No. 32? It's the last
14 little bit --

15 A I think I flipped two things together.

16 Q Okay.

17 A I've got it. I had it out of order.

18 Q Can you tell me what Exhibit 32 is comprised
19 of?

20 A It looks like the tariff governing
21 limitations and use of service for BellSouth, Sprint
22 and GTE.

23 Q And did the Commission approve these
24 tariffs?

25 A Yes. With the caveat I gave you previously,

1 the Commission would have formally approved these had
2 they been filed prior to local exchange company
3 electing price regulation. After the LEC elects price
4 regulation, the tariffs are presumptively valid.

5 Q Does that make a difference in how the
6 tariffs -- the force and effect of the tariffs?

7 A No. It has the same effect.

8 Q Does the Commission keep these tariffs on
9 file as part of its regularly conducted business
10 activity?

11 A Yes, the Commission does.

12 Q What do these tariffs do?

13 A These tariffs really implement this
14 25-4.113(1)(f), that rule which is the subject of
15 today's hearing. I should point out that this
16 particular rule is permissive. The local exchange
17 company is not forced to disconnect or refuse
18 servicing under this circumstance, but it may. And,
19 consequently, if a company wants to do that, then they
20 need to so indicate in their tariff, and they need to
21 include the terms and conditions under which service
22 will be discontinued or denied.

23 Q Do you know how often telephone service is
24 disconnected for nonpayment? Do you have any --

25 A My understanding is that during 1995 and '96

1 for BellSouth and GTE, that the disconnections for
2 nonpayment were less than six-tenths of 1% on average.

3 Q And that would be per month?

4 A Yes.

5 Q And do you have any knowledge as to whether
6 uncollectible expenses have been rising?

7 A I don't know.

8 Q If we knew whether uncollectible expenses
9 had been rising, would that in your mind play any --
10 have any effect on the validity of the rule?

11 A No, not necessarily, because certainly
12 uncollectibles could be increasing. But yet the rule,
13 I would argue, is keeping uncollectibles still lower
14 than they would otherwise be. So if uncollectibles
15 happen to be increasing, I don't think this is
16 indicative that the rule is invalid or ineffective.

17 Q If the number of uncollectible bills are
18 rising, would it be because nonregulated services are
19 included in the numbers reported?

20 A I really have no idea. The numbers we
21 receive at the Commission do not include nonregulated
22 charges.

23 Q Mr. Osheyack has asserted that under the '95
24 changes to Chapter 364 and the '96 federal changes to
25 the Telecommunications Act, telephone companies can

1 grow vertically and horizontally. Do you agree?

2 A I think that's reasonable.

3 Q So with this horizontal and vertical growth,
4 will consumer bills increase and cause a higher
5 delinquency and default rate?

6 A Well, I think it's -- I think it makes sense
7 as more and more services become available that
8 customer bills are likely to go up, and this is all a
9 function of consumer choice and what people want to
10 purchase. Whether or not that would lead to a higher
11 uncollectible rate, I really wouldn't hazard a guess.

12 Q Do you know whether over the last 10 years
13 subscribership in Florida has increased or decreased?

14 A It's increased.

15 Q Mr. Osheyack has argued that the
16 Commission's disconnect policy is contrary to
17 universal service. In laymen's terms, what is the
18 universal service obligation?

19 A It's the offering of basic telephone service
20 at affordable rates.

21 Q If you could pull out what's been marked for
22 identification as Exhibit No. 29.

23 A Yes, I have it.

24 Q What is it?

25 A It's a report published by the Florida

1 Public Service Commission entitled "Universal Service
2 in Florida, a Recommendation to the Governor and
3 Legislature," and it's dated December, 1996.

4 Q Did you ever see development of this
5 recommendation?

6 A Yes, I did.

7 Q Why did the Commission make this
8 recommendation?

9 A This report was required under the statute,
10 and if you give me a minute I'll give you the
11 reference. It's under 360 -- once again I guess I'm
12 in Tab B, as in boy. It's under 364.025(4), and the
13 report was required no later than January 1, 1997.

14 Q Was this recommendation made and is it kept
15 in the course of the Commission's regularly conducted
16 business activity?

17 A Yes. Yes. In fact, I should point out that
18 this report was presented at least once, perhaps
19 twice -- I don't recall -- at a Commission internal
20 affairs meeting.

21 Q Is the definition of universal service that
22 you just gave about offering access, basic telephone
23 access at affordable rates, is that consistent with
24 the definition of universal service in the
25 recommendation?

1 A Yes. To the best of my recollection, yes.

2 Q Do you need a minute to look at the report
3 to see?

4 A Okay. (Pause) Yes. Under -- this report
5 on Page 6 under the Executive Summary indicates that
6 fundamentally, universal service concerns the
7 provision of a specified set of services to customers
8 at affordable rates.

9 Q Was there industry-wide, or is there
10 industry-wide agreement on the definition of universal
11 service?

12 A There's general agreement.

13 Q And does the report or recommendation state
14 whether there was agreement when you -- throughout the
15 process of developing the report?

16 A I do recall seeing that in the report, yes,
17 that there was generally agreement.

18 Q In your opinion, based on your knowledge of
19 the telecommunications industry, is the rule contrary
20 to the universal service mandate in Section 364.025?

21 A I don't believe so. Because the way I read
22 it, there's still an obligation to pay; all right?
23 And I guess -- let me direct you once again in Tab B
24 to 364.025(1), and on the --

25 THE COURT: I'm sorry. Which tab was that?

1 WITNESS SIMMONS: That's in tab B, as in
2 boy.

3 THE COURT: 025(1)?

4 WITNESS SIMMONS: Right.

5 MS. HELTON: Subsection 1 of Section 025 of
6 364.

7 WITNESS SIMMONS: 025(1). And it starts off
8 "For purposes of this section, the term 'universal
9 service' means an evolving level of access to
10 telecommunications services that, taking into account
11 advances in technologies, services, and market demand
12 for essential services, the Commission determines
13 should be provided at -- and this is the important
14 part -- just, reasonable and affordable rates to
15 customers."

16 And I believe that this last portion is
17 indicative that there is an obligation to pay.

18 Q (By Ms. Helton) In your opinion, does the
19 Commission's policy on disconnection preclude a
20 customer from getting basic local service?

21 A No, not if they pay their bill.

22 Q In your opinion, can universal service exist
23 under rule -- or paragraph (1)(f) of the rule?

24 A Oh, yes. You just need to pay your bill.

25 And once again, too, I should point out -- we may or

1 may not have covered this earlier. I think we did --
2 if a customer has a concern with their bill and they
3 dispute a portion of the charges, they are protected.
4 They only need to pay the undisputed charges. So long
5 as they do that, they are still protected and they can
6 have basic service.

7 Q In your opinion are large deposit
8 requirements an impediment to universal service?

9 A Yes, definitely. And I believe that if we
10 did not have the rule in question today, I believe
11 deposit requirements would most likely be higher.

12 Q In your opinion, is the Commission's policy
13 inconsistent with the Federal Act's pronouncements
14 concerning universal service?

15 A Not inconsistent with the Federal Act, no.

16 Q Have you had a chance to review the FCC
17 order on universal service?

18 A Yes. I've looked at the portions of the
19 order dealing with Lifeline, as an example; and there
20 is a possible inconsistency there in that the federal
21 order, which is not yet final, does preclude
22 disconnection of Lifeline customers for nonpayment of
23 toll.

24 However, this order -- which again I
25 emphasize is not a final order -- does expressly

1 reserve for the states the authority to determine what
2 would be an appropriate disconnection policy, if any,
3 for non-Lifeline customers.

4 Q So the order is not final, so the Commission
5 doesn't have to yet decide whether it needs to change
6 its rule based on that FCC order?

7 A That's correct. It would be premature,
8 because it's -- we're really dealing with a moving
9 target.

10 Q Mr. Osheyack has made some allegations
11 concerning the Commission's disconnect policy on
12 competition and its impact on competition. In your
13 opinion, does pure, true competition exist in Florida
14 today?

15 A Well, I guess it's somewhat in the eyes of
16 the beholder. I think in the toll market we have a
17 reasonable level of competition.

18 I think I would agree with Mr. Long. I
19 don't think it's as robust as it could be even despite
20 the large number of carriers. There's still a lot of
21 price following behavior.

22 In the basic local exchange market, there
23 are -- you know, we have companies that are
24 certificated. I'm not certain of the number. I think
25 it's probably in the thirties or forties. We have

1 companies certificated, but -- and in fact some of
2 them have operating agreements with the incumbent
3 companies. But the fact of the matter is, is when you
4 look at it from a customer standpoint, very few
5 customers really have an alternative to the incumbent
6 local exchange company.

7 Q Well, in your opinion, is the basic local
8 market today still a monopoly, or is it --

9 A From -- that's correct for most all
10 customers. There are -- what is happening is that the
11 alternative providers tend to target more lucrative
12 niches such as, say, the larger business customers.
13 So those larger customers are the ones that tend to
14 get the alternatives first. The vast majority of
15 customers, though, have no alternative, and basically
16 it's still a monopoly situation from their standpoint.

17 Q Could you pull out what's been marked for
18 identification as Exhibit No. 28.

19 A I have it.

20 Q What is it?

21 A All right. This is also the Commission
22 report on competition in telecommunications markets in
23 Florida, and it's dated December of 1996.

24 Q Did you also oversee preparation of this
25 report?

1 A Yes, I did.

2 Q And why did the Commission publish this
3 report?

4 A This report was also required according to
5 the statutes. I once again refer you to Tab B,
6 Section 364.386 that states "The Commission shall
7 submit to the president of the Senate, the speaker of
8 the House of Representatives, and the majority and
9 minority leaders of the Senate and the House of
10 Representatives on December 1st, 1996, and on an
11 annual basis thereafter, a report on the status of
12 competition in the telecommunications industry and a
13 detailed exposition of the following." And it lists,
14 oh, like, I guess, (a) through (f), different areas
15 that we are supposed to comment on.

16 And, I guess, in addition, the Governor had
17 some requests. The specific nature of them I don't
18 recall, but he did have some requests that were
19 addressed within the confines of this report.

20 Q Was this report made and is it maintained in
21 the course of the Commission's regularly conducted
22 business activity?

23 A Yes, uh-huh.

24 Q Is the statement that you just gave a little
25 bit ago about the state of competition in Florida

1 consistent with what was made in the Commission's
2 report?

3 A Yes.

4 Q Mr. Osheyack has asserted that the
5 Commission's disconnection policy stifles effective
6 and fair competition. Do you agree?

7 A No, I don't believe I do. I think -- you
8 know, any rule really is anticompetitive in some sense
9 because it restricts what a provider can do in one way
10 or another.

11 I think in this context this rule is only
12 anticompetitive possibly in the sense that it would
13 encourage an interexchange company to use the local
14 exchange company for billing and collection.

15 I think any concern in this area, though, is
16 outweighed by the positive benefit of the rule in that
17 it keeps long distance rates lower than they would
18 otherwise be by keeping uncollectibles in check.

19 Q If the Commission were to prohibit LECs from
20 disconnecting local service for nonpayment of toll,
21 would it have any effect on the competition between
22 LECs and ALECs?

23 A Yes. The alternative local exchange
24 companies would have an advantage if this rule was
25 struck down and no longer applied for local exchange

1 companies. The ALECs would not be subject to any
2 restrictions in this area, and they could set up
3 whatever refusal or discontinuance of service
4 conditions they would like, because they are not
5 subject to this rule.

6 They are the -- the ALECs are subject to
7 very minimal requirements in the statutes, such as
8 they have to be interconnected with the incumbent;
9 they have to offer number portability; they have to
10 offer access to 911.

11 In fact, if you bear with me for a minute,
12 here, I will locate what their basic service is to
13 consist of; and it is quite limited. (Pause)

14 Okay. I've located it. It's under 364.337.
15 Once again, this is Tab B, as in boy, Part (2), the
16 second sentence of that. "The basic local
17 telecommunications service provided by an alternative
18 local exchange telecommunications company must include
19 access to operator services, 911 services and relay
20 services for the hearing impaired."

21 It goes on to say "There shall be flat rate
22 pricing option." But, really, very minimal
23 requirements.

24 One other thing. I guess it's important.
25 The alternative local exchange company must be

1 certificated. But, I mean, the requirements are very
2 minimal in terms of what the alternative provider must
3 do.

4 Q I think that you've already read us the
5 definition of basic local telecommunications service,
6 and if I -- particularly the factors listed there, is
7 access to all locally available interexchange
8 companies -- that's just for -- to clarify the
9 record -- in subsection (2) of 364.02?

10 A Correct.

11 Q Does the Commission's policy contravene this
12 provision?

13 A No, not if you pay your bill.

14 Q In your opinion, did the Federal Act
15 overrule rule all state restrictions on competition
16 and local and long distance telephone service?

17 A No. The federal law only preempts state
18 regulations that are inconsistent with the Federal
19 Telecommunications Act of 1996 and subsequent FCC
20 orders implementing that act.

21 Q Is Florida's -- excuse me -- is Florida's
22 policy on disconnection, in your opinion, preempted by
23 the federal law?

24 A No, except in the possible case of Lifeline
25 customers. And, once again, that order is not yet

1 final; but if that order does become final, we would
2 have a federal requirement, then, that would preclude
3 disconnection of Lifeline service for nonpayment of
4 toll.

5 Q Does universal service in competition
6 require consumers to have free access to the carrier
7 of last resort?

8 A No, they're -- the requirement would be --
9 (Extraneous noise in room.)

10 THE COURT REPORTER: Excuse me.

11 (Discussion off the record.)

12 THE COURT: Okay. Back on the record.

13 WITNESS SIMMONS: Could you restate the
14 question?

15 Q (By Ms. Helton) I think you answered it.
16 Let's just do it one more time to make sure.

17 Does universal service and competition, in
18 your opinion, require consumers to have free access to
19 the carrier of last resort?

20 A No, just affordable access.

21 Q In his petition Mr. Osheyack has argued that
22 consumers owned their access. Do you agree?

23 A No, I do not. Customers own their customer
24 premises equipment, such as telephone sets, answering
25 machines.

1 With basic service, however, what you are
2 doing is you are purchasing a service. You are
3 purchasing the right to access the line. You're
4 purchasing access to the line.

5 It's much analogous to a situation whereby
6 you're paying for access to a private boat ramp. You
7 don't own the boat ramp, but you pay to access the
8 ramp. This is much the same way.

9 Q When service -- oh. Actually I think that
10 question went to the fair debt collection act, and
11 that's not an issue here, so I'm not going to burden
12 the record with it.

13 How does rule -- let's go down to the
14 statutory authority. I know that you aren't a lawyer,
15 but in your job I think you have to still apply what's
16 in Chapter 364 to what you do every day.

17 So with the caveat here that you're not a
18 lawyer, can we talk about statutory authority for the
19 rule? How does the rule implement Section 364.19?

20 A All right. That's in Tab B. Let me just
21 read it for starters. It's just two lines. It says
22 "The Commission may regulate, by reasonable rules, the
23 terms of telecommunications service contracts between
24 telecommunications companies and their patrons."

25 To my way of thinking, there are two

1 contracts going on here. There's a contract between
2 the IXC and the LEC that is embodied in billing
3 collection contracts. There's that.

4 There's also the contract between the local
5 exchange company and the end user. Any contract for
6 service involves payment conditions, terms under which
7 service will be continued, discontinued, temporarily
8 suspended or whatnot.

9 So I believe that one of the portions of the
10 statute being implemented in the rule in question is
11 364.19, because it's dealing with conditions under
12 which service may be discontinued or refused, which,
13 to me, falls under a contractual term.

14 Q I think that the rule also lists as a law
15 implemented section, 364.03?

16 A Yes.

17 Q How does it implement that part of the
18 statute?

19 A 364.03 does not apply to price regulated
20 companies, but it does apply to rate of return
21 regulated companies; and 364.03 addresses a fair
22 number of areas. It deals with rates to be
23 reasonable, performance of service and maintenance of
24 telecommunications facilities.

25 So really here we're talking about -- and

1 just bear with me for a moment here. I want to give
2 you a specific reference. (Pause)

3 Okay. It appears to be part 3 of that rule.
4 "Every telecommunications company shall, upon
5 reasonable notice, furnish to all persons who may
6 apply therefor and be reasonably entitled thereto
7 suitable and proper telecommunications facilities and
8 connections for telecommunications service and furnish
9 telecommunications services as demanded upon terms to
10 be approved by the Commission."

11 Talking about here terms to be approved by
12 the Commission, and there's some language in here
13 about the person being reasonably entitled thereto. I
14 mean, this talks in terms of there are certain
15 conditions by which -- under which service will be
16 provided. So this is applicable for the rate base,
17 rate of return regulated local exchange companies.

18 Q And I think you said that price capped LECs
19 are not -- don't fall under this rule.

20 A That's correct.

21 Q Do alternative local exchange companies or
22 interexchange companies fall under this rule -- I
23 mean, statute? Do you know?

24 A They do not.

25 THE COURT: Which statute was that?

1 MS. HELTON: The .03.

2 WITNESS SIMMONS: Those companies you just
3 mentioned, however, are subject to 364.19.

4 Q (By Ms. Helton) Right. I think that we've
5 talked about this a little bit, but just -- I think
6 it's important here, too, for the statutory authority
7 part. Why shouldn't ALECs be required to comply with
8 the Commission's rule on disconnect?

9 A Well, it goes back to this idea to put very
10 few limitations on the alternative local exchange
11 companies; and, in addition, it is possible for an
12 alternative local exchange company to get a waiver of
13 364.19.

14 Q And how does the rule implement section --
15 the last section listed as the law implemented, which
16 is 427.704?

17 A That portion of the law deals with the relay
18 service.

19 THE COURT: What statute was that again?

20 MS. HELTON: 427.704. It's in Tab C.

21 WITNESS SIMMONS: If you look in the rule
22 that's in question, 25-4.113(1)(f), you'll see that it
23 reads "for nonpayments of bills for telephone service,
24 including the telecommunications access system
25 surcharge."

1 That is why 427.704 Florida Statutes is
2 referenced as a law implemented. It's because of the
3 fact that disconnection is possible for nonpayment of
4 the telecommunications access system surcharge.

5 Q In your opinion, how is the rule rationally
6 related to its statutory authority?

7 A Well, to my way of thinking, the statutory
8 authority says that we can regulate, by reasonable
9 rules, conditions under which service can be obtained
10 or discontinued. So that, to me, is the basis for
11 this rule.

12 Q I want to talk to you just a little bit
13 about the legislative history here.

14 A Okay.

15 Q Has the Legislature ever enacted legislation
16 to invalidate the Commission's disconnect policy, that
17 you're aware of?

18 A Not to my knowledge.

19 Q And do you know whether when Chapter 364 was
20 substantially revised in 1995, whether the
21 Commission's disconnect policy was discussed or if it
22 was at issue?

23 A Not to my knowledge.

24 Q And do you know whether the joint
25 administrative procedures committee has ever objected

1 to the Commission's disconnect policy that's codified
2 in the rule?

3 A Not to my knowledge.

4 Q I have just a few more questions to kind of
5 try to sum everything up. What is the Commission's
6 role as a regulator in today's regulatory environment?

7 A I'd like to refer you to a portion of the
8 statute that I think is instructive. Under Tab B
9 again, 364.01, there's some discussion in (3) of that
10 dealing with the transition from the monopoly
11 provision of local exchange service to the competitive
12 provision thereof.

13 It talks about the need for appropriate
14 regulatory oversight. It's in the middle of the
15 Part (3), "need for appropriate regulatory oversight
16 to protect consumers and provide for the development
17 of fair and effective competition.

18 So while the Legislature has found that the
19 competitive provision of telecommunications services
20 is in the public interest, they have recognized that
21 that's not going to happen overnight and there's a
22 need for regulatory oversight in transition.

23 Q In your opinion, is the rule logical and
24 rational?

25 A Yes, I believe it is. I think it's very

1 much related to the role as defined in -- the role of
2 the Commission as defined in the statutes.

3 Q If Mr. Osheyack were to prevail today and
4 the administrative law judge were to say, okay,
5 Commission, you don't have authority for (1)(f) of
6 this rule, what would be the consequences?

7 A I think the consequences could be extensive,
8 because I think if (1)(f) -- (f) is determined to be
9 invalid, I believe that calls into question whether or
10 not the Commission can place restrictions of any kind
11 on disconnection service.

12 It's quite possible -- I mean, I guess it's
13 kind of like this: I think the Commission either has
14 authority to place restrictions on disconnection of
15 service, or it does not.

16 Q And if it didn't, would the restrictions in
17 the rule apply; meaning could companies disconnect
18 without any notice for nonpayment?

19 A I think that's conceivable, yes.

20 Q In your opinion, has the Commission's policy
21 kept up with the recent major changes in the
22 regulation of telecommunications companies, both in
23 the state and federal arenas?

24 A Yes, I believe so, because we are still --
25 particularly with the local exchange competitions,

1 very early on in the process. I've not -- I don't
2 feel like there have been -- anything has happened
3 that would really invalidate the Commission's original
4 thinking.

5 Back to one of those first orders we talked
6 about -- I guess it was Order 12765 -- I think that
7 reasoning still is quite valid, trying to keep
8 uncollectibles as low as possible, and thus keep
9 overall prices in the market as low as possible.

10 Q And I believe you've stated -- or let me ask
11 you this: Does the Commission's policy serve the
12 public interest?

13 A I believe it does.

14 Q How does it do that?

15 A Basically for the reasons I just cited. I
16 believe absent a policy, that the bad debt for
17 interexchange companies would be much higher, and I
18 believe that would force them to charge higher prices
19 on other ones.

20 Q Do you believe the Commission's policy puts
21 cost on the cost causer?

22 A Yes. I mean, I definitely do. I think it
23 helps in terms of trying to make sure that the good
24 paying customers aren't unduly subsidizing the --
25 those that are not paying their bills.

1 MS. HELTON: That concludes my direct
2 examination of Ms. Simmons.

3 THE COURT: Let's take a recess before your
4 cross-examination. For the record, if you would --
5 I'm controlling the camera from up here. If you would
6 just leave the camera alone, please, Mr. Poucher.

7 We're taking a recess now. How long do you
8 expect your cross-examination to be, Mr. Osheyack?

9 MR. OSHEYACK: Quite some time. I can't
10 tell you exactly how long, but I have a lot of
11 questions.

12 THE COURT: Well, it's gone longer already
13 than I thought it would without a lunch break. Should
14 we take a lunch break?

15 MR. OSHEYACK: It's all right with me.

16 THE COURT: Why don't we take, let's say, a
17 45-minute lunch break, let's say, until 2:30. Okay.
18 Lunch recess.

19
20 (Thereupon, lunch recess was taken at 1:50
21 p.m.)

22

- - - - -

23 THE COURT: We're ready to proceed. Back on
24 the record for cross-examination.

25

1 CROSS EXAMINATION

2 BY MR. OSHEYACK:

3 Q If you're ready, I have just a couple of
4 preliminary questions that came up as a part of your
5 testimony, Sally.

6 And, incidentally I do remember our
7 conversation way back, and it's nice also to see a
8 face identified with a voice. And you were my first
9 choice. Don't let anybody tell you different.

10 Sally, you mentioned, in answer to a
11 question, that the disconnections ran about -- or
12 averaged about -- I'm not sure of your language; stop
13 me if I'm wrong -- six-tenths of 1%?

14 A Yes. That's based on information from
15 BellSouth and GTE, I believe, in recent data requests
16 we received.

17 Q BellSouth has about six million customers, I
18 believe, if I read some of these documents that were
19 filed correctly; and that would mean about 36,000 per
20 month of disconnected and 400,000 a year. That's a
21 substantial number. I guess the percentages really
22 don't tell the full story, do they.

23 Sally, are you acquainted -- were you
24 involved or did you attend the agenda conference -- I
25 think it was back in February -- when David Smith held

1 a hearing on the subject of disconnect authority?

2 A The agenda conference where it was
3 discussed? Yes, I was there.

4 Q Where it was discussed and dismissed.

5 A Yes.

6 Q Do you remember an introduction by part of
7 the testimony by Kay Lewis in which she indicated that
8 there were 12 companies -- or 12 states that had
9 eliminated disconnect authority?

10 MS. HELTON: Your Honor, I'm going to have
11 to object if we're going to start talking about what
12 happens in states other than Florida, because I don't
13 think, number one, that's relevant here.

14 Number two, he's asking a hearsay type
15 question in which he's asking Ms. Simmons to talk
16 about a statement that Kathy Lewis, not Kay, may have
17 made in an agenda conference.

18 WITNESS SIMMONS: Well, I might be able to
19 make things easier, too. I don't recall the
20 discussion so --

21 MR. OSHEYACK: Okay.

22 THE COURT: Thank you.

23 MR. OSHEYACK: Because I might want to
24 introduce this later. The relevance is that the
25 question was asked, what would the consequences be if

1 that happened in Florida. And there are actually 23
2 states at this point that do not have disconnect
3 authority, and there's plenty of opportunity to
4 research whether or not there are consequences.

5 That 23 includes not only the 12th or 13th
6 that was added in 1996, plus Southwestern Bell and
7 U.S. West which have voluntarily eliminated disconnect
8 authority in 11 western states. So there is plenty of
9 evidence out there regarding consequences, and one
10 doesn't have to speculate on that point.

11 Q (By Mr. Osheyack) Sally what is important
12 is, I think if you'll please refer to Section 10 of
13 the Federal Act entitled --

14 A Can you give me a tab number?

15 Q It's my Exhibit 14, and it is entitled
16 "Title IV, Regulatory Reform."

17 A All right, I have it.

18 Q Section 401, Regulatory Forbearance. Now if
19 you look at subparagraph (a) which is entitled
20 "Regulatory Flexibility," please spend a minute
21 reading it over. You don't have to read it out loud,
22 but read it over, and I'd like to ask you a question
23 about that.

24 A All right. I've read the (a) portion.

25 Q Well, doesn't this portion of the Federal

1 Telecommunications Act direct the FCC to attempt to
2 forbear from regulation when it is in the public
3 interest or not necessary? Is this your
4 interpretation of that?

5 A In a quick reading, that's what it appears
6 to say.

7 Q You're very cautious, aren't you? Now go to
8 Page 2, if you would, of the same act and refer to
9 paragraph (e), and I would appreciate it if you would
10 read this out loud. Paragraph (e), State Enforcement
11 After Commission Forbearance.

12 A It says "A state Commission may not continue
13 to apply or enforce any provision of this act that the
14 Commission has determined to forbear from applying
15 under subsection (a)."

16 Q Now, if the FCC detariffed interstate
17 billing and collection, wouldn't you say that this
18 language in the Communications Act would make it
19 extremely difficult for a state to take the position
20 that it's permissible?

21 MS. HELTON: Objection. That calls for a
22 legal conclusion.

23 Q (By Mr. Osheyack) Sally, you've answered
24 many questions regarding -- with respect to your
25 understanding of the law, and I just want your

1 opinion. I don't want a legal opinion, I just want
2 your opinion?

3 A Well --

4 THE COURT: I'll overrule the objection.

5 WITNESS SIMMONS: My understanding, as a
6 nonattorney, is that more specific portions of the law
7 always govern over the more general is my
8 understanding. And when the FCC detariffed billing
9 and collection, they specifically left to the states
10 the decision in terms of what to do about -- or
11 whether or not there should be a policy of
12 disconnection for nonpayment of toll. In addition --

13 Q I don't --

14 A Well, I'd like to finish, please.

15 Q I'm sorry.

16 A In addition, in the recent FCC order on
17 universal service, which we talked about as far as the
18 provision in that order which isn't final yet, but the
19 provision that Lifeline customers may not be
20 disconnected for nonpayment of toll, other than that,
21 for all other types of customers the FCC has deferred
22 once again to the states very explicitly.

23 So I think those specific provisions would
24 take precedent over the general sort of language that
25 you have just, you know, asked me to look at.

1 Q Well, now, Sally hear me out on this. I
2 have no quarrel with the statement that the FCC
3 deferred on cutoffs. I have no quarrel with that or
4 disconnections or -- you understand what I'm saying.
5 But if the FCC has detariffed interstate billing and
6 collection, how can any state -- and you have the
7 paragraph here which states clearly that the state
8 should not forbear -- after Commission forbearance,
9 the state may not continue to apply or enforce any
10 provision under this subsection, how can the state
11 suddenly say, well, we get our authority from the
12 contract between two companies?

13 This is a federal government talking. This
14 is a federal government that has detariffed interstate
15 billing and collection. The state says we can -- we
16 can regulate interstate billing and collection. But
17 doesn't this contravene the law?

18 A We're getting into an area I'm not real
19 comfortable talking about because it's very legal in
20 nature.

21 THE COURT: I think it's the same objection
22 that was made earlier, which should be sustained at
23 this point. That would be your legal argument,
24 Mr. Osheyack.

25 MR. OSHEYACK: Okay.

1 Q (By Mr. Osheyack) I'd like to go, Sally,
2 to Chapter 364, and there are a couple of points in
3 364 I'd like to talk about. 364.01, Powers of the
4 Commission, legislative intent.

5 Now, 364.01(3), I'll summarize it to try
6 to -- try to expedite the process, and ask you whether
7 you agree or disagree or whether this is a fact or
8 not.

9 "The Legislature finds that Commission --
10 that competitive provision of telecommunication
11 service includes -- including local exchange service
12 is in the public interest and will provide customers
13 with freedom of choice." This is common
14 understanding, is it not?

15 A Yes. I think, however, there are some
16 caveats that are introduced later in that section
17 about the transition from monopoly environment to a
18 competitive environment.

19 Q I understand that. I understand that.

20 A Right. This is --

21 Q Well --

22 A This transition is going to take a while.

23 Q Well, we're trying to get at the truth, and
24 sometimes that takes a while.

25 Item (4), the Commission shall exercise its

1 exclusive jurisdiction to protect health, safety,
2 welfare by ensuring that basic local
3 telecommunications services are available to all
4 consumers in the state. That I think we understand,
5 do we not?

6 A I'm not sure if we'd have the same
7 interpretation or not.

8 Q Well, what is your interpretation?

9 A It says -- to me, the consumers need to have
10 the opportunity to purchase basic service at
11 reasonable and affordable prices. It doesn't mean
12 that they have to have it. They have to have the
13 opportunity to purchase it at reasonable prices.

14 Q Well, I would think that "ensure the
15 availability" is much stronger language than your
16 interpretation. Would you not believe that? I mean,
17 ensure --

18 A Well, to me availability is putting it out
19 there for someone to make a decision as to whether or
20 not they want to subscribe.

21 Q Would you agree we're talking about
22 telecommunications services?

23 A Yes.

24 Q Okay. Then let me direct your attention to
25 364.02, which is Definitions. Let's look at sub (12),

1 which is the definition of telecommunications company,
2 and let me read it.

3 "Telecommunications company includes every
4 corporation, partnership, and person, their lessees,
5 trustees, or receivers appointed by any court
6 whatsoever, and every political subdivision in the
7 state, offering two-way telecommunications services to
8 the public for hire within this state."

9 Within this state. Now, does that mean, to
10 you, intrastate or interstate?

11 A Let me study that a moment. (Pause) I
12 would say the telecommunications company operates
13 within the state, but not necessarily exclusively so.
14 But once again we're getting into interpretations of
15 the law. I'm not sure I'm equipped to be --

16 Q Yeah --

17 A -- doing that --

18 Q I'll try to stay with the facts and the law,
19 and the facts and the law are -- really, when you say
20 within the state, you're talking about within the
21 state that you -- if you want to talk about outside of
22 the state, you're in a different ball game.

23 But I think the importance of this is the
24 definition of telecommunications company when related
25 to the powers of the Commission and legislative

1 intent. It's fairly obvious they're talking about
2 intrastate. But let's go on.

3 MS. HELTON: Can I just say that I believe
4 Ms. Simmons is the person testifying today and not
5 Mr. Osheyack?

6 THE COURT: Well, let's --

7 MR. OSHEYACK: I'll try to control myself.

8 THE COURT: Let's proceed. I will say,
9 though, that it's not necessary for you to argue your
10 case through your questioning of the witness. The
11 purpose here is to elicit relevant testimony from the
12 witness.

13 MR. OSHEYACK: Okay. Thank you. Point
14 taken.

15 Q (By Mr. Osheyack) Well, here again under
16 Universal Service -- 364.025, Universal Service, go to
17 Page 4 -- go to the third page, Item (3).

18 A I'm sorry you're under 364.025?

19 Q Yeah, .025.

20 A Part what?

21 Q I'm trying to find a reference for you.
22 There's 1, 2, 3, 4 on the first page. On the second
23 page there is 5, 6. No, wait a minute. I gave you
24 the wrong -- I'm sorry. I gave you the wrong
25 reference.

1 It's 364.03(3) which is -- subparagraph (3),
2 which is on the next page.

3 A Okay.

4 Q It starts with "Every telecommunications
5 company shall upon reasonable notice furnish all
6 persons who may apply therefor and be reasonably
7 entitled." And it goes on to talk about
8 telecommunications service.

9 But, again, telecommunications companies --
10 you can see the importance of the definition of a
11 telecommunications company running all through this.

12 A Okay. But there's something I need to point
13 out, and that is that alternative local exchange
14 companies, interexchange companies and price regulated
15 LECs are not subject to 364.03.

16 Q Okay. Are they required to certify?

17 A A certification is required, yes, in order
18 to operate.

19 Q Let's look at 364.337 which relates to
20 alternate local exchange telecommunications companies,
21 intrastate interexchange telecommunications companies,
22 and it relates to certification. What is the purpose
23 of certification?

24 A Well, certification, basically -- I guess
25 you could look at it as almost authority to operate.

1 I don't deal with the certification process in my
2 bureau.

3 However, our requirements are fairly
4 minimal. I know there are some requirements in the
5 statute that the applicant have sufficient managerial,
6 technical and financial capability. The practice has
7 been to err on the side of letting as many people into
8 the market as possible. But as I say, that is not
9 within my area of responsibility.

10 Q But to sum up, it is a regulatory tool, is
11 it not?

12 A It is. And certainly if there are later
13 complaints or possible violations involving the
14 company, we have some information in terms of where
15 they're located, how to get in touch with them, you
16 know, who their key officers are.

17 I know that the people that deal with the
18 certification, you know, do check, do do some checking
19 as far as the -- perhaps the officers of the company;
20 and if the particular individuals have had previous
21 problems with the Commission, that might enter into
22 the thinking as to whether or not to grant a
23 certificate.

24 But as I say, I stress I'm not directly
25 responsible for that area.

1 Q I see here that under Item (3) of
2 subparagraph (3) the Commission certifies
3 intrastate interexchange telecommunications service.
4 So it certifies interexchange service --
5 interexchange companies to the extent they provide
6 intrastate service. Is that not true?

7 A Yes.

8 Q It doesn't certify companies that
9 provide service that terminates outside the state of
10 Florida?

11 A If the company was exclusively in the
12 interstate business, they would not have a certificate
13 in Florida.

14 Q Okay. So that is a regulatory process which
15 does not apply to the interstate companies' interstate
16 services?

17 A Exclusively interstate companies.

18 Q Exclusively, yes. But those who provide
19 both intrastate and interstate are required to be
20 certified for that portion which is intrastate?

21 A Right. They have to receive certification
22 at the state level and also at the federal level.

23 Q Right. And they're -- as I understand it,
24 they even have to provide a map of the area that they
25 cover intrastate?

1 A I don't know if that's a requirement or not.
2 So like I say, I don't deal much with this area.

3 Q Yeah. Okay.

4 THE COURT: Excuse me. What statute number
5 were you just referring to?

6 MR. OSHEYACK: That was 364.337.

7 Q (By Mr. Osheyack) I'd like to go to
8 364.07, which is Joint Contracts; intrastate
9 interexchange service contracts. And are you with me,
10 Sally?

11 A I'm getting there.

12 Q Okay.

13 A All right.

14 Q Point Number (2): "The Commission is
15 authorized to review contracts for joint provision of
16 intrastate interexchange service and may disapprove
17 any such contract if such contract is detrimental to
18 the public interest."

19 Now, we're talking here about interexchange
20 companies who provide intrastate service, are we not?

21 A Well, I'm not sure. Let me look at this for
22 a moment.

23 Q Okay.

24 A Offhand, I don't think we're necessarily --
25 I know there's "interexchange" in the heading of

1 364.07, but offhand, this Part (2) you're talking
2 about which says "joint provision of intrastate
3 interexchange service," you know, this is my first
4 impression; okay? I haven't studied this, but -- in
5 any depth.

6 My first impression would be that possibly
7 could involve a couple of local exchange companies,
8 possibly; where you've got two local exchange
9 companies side by side and, you know, it's a toll
10 route in between, and they have some agreement --

11 Q BellSouth and Centel? BellSouth and Centel
12 or Sprint and Centel within the state? Is that what
13 you mean?

14 A Yes. I'm thinking that situation also might
15 fit under Part (2).

16 Q But it could also involve telecommunications
17 contracts of other types. It isn't that clear, is it?

18 A No, it isn't. And I'll be honest with you.
19 I have never really studied this portion of the
20 statute in any depth at all.

21 Q Well, I had to. Mary Anne Helton made me do
22 it.

23 Let's go to Chapter 364.19,
24 Telecommunications service contracts. "The Commission
25 may regulate, by reasonable rules, the terms of

1 telecommunications service contracts between
2 telecommunications companies and their patrons."

3 Here again, telecommunication -- the
4 definition of telecommunication, of what is a
5 telecommunications company, under Florida law is an
6 essential definition. And I want to make that point
7 because I want to eventually go back to that
8 definition section and read it again.

9 Chapter 364.27, Powers and duties as to
10 interstate rates, fares, charges, classifications, or
11 rules of practice. Now, here the Commission shall
12 investigate all interstate rates, fares, charges,
13 classifications or rules of practice, but the only
14 thing the Commission can do, according to this
15 statute, is petition the FCC if there's a problem,
16 which I can do, too.

17 The question is, simply, do you believe that
18 this -- that these powers and duties are
19 transferable -- powers and duties -- let me say it
20 this way -- powers and duties over interstate rates,
21 fares, charges or rules of practice provide the
22 Commission with the authority to regulate interstate
23 service?

24 A I really don't think I can help you with
25 this, because I've got two problems. We keep getting

1 into interpretations of the law and, also, I have no
2 practical experience with 364.27. I really don't
3 think I can comment.

4 Q All right. 364.32 covers definitions with
5 respect to certification, and I think we covered that.
6 I think we covered that and agreed on that. We
7 covered 364.337.

8 I'd like to go to 427.701, the
9 Telecommunications Access System Act of 1991, and 702
10 which is the "Findings, Purpose and legislative
11 intent". Do you have it?

12 A I have it in front of me.

13 Q Oh, okay. Let's go to sub (a). (1)(a):
14 "Telecommunications services provide a rapid and
15 essential communications link among the general public
16 and with essential offices and organizations such as
17 police, fire and medical facilities."

18 And under (b): "All persons should have
19 basic telecommunications services available to them at
20 reasonable and affordable costs."

21 Now, if you look at (a) and you look at the
22 universal service law, and you look at the mandate
23 that the Legislature placed upon the Florida Public
24 Service Commission with respect to health, safety and
25 welfare, do you believe that everything is being done

1 that is -- that could possibly be done including
2 the -- permitting the local -- local exchange service
3 to continue while debts are being negotiated, or the
4 cutoffs -- are cutoffs consistent with the paragraphs
5 you see here?

6 A Well, I would go back to something I said
7 earlier. The customer is only required to pay the
8 undisputed charges. If you have a dispute with the
9 company and you have gone through the formal
10 Commission complaint process, you are protected if you
11 just pay the undisputed charges. Your service is
12 maintained. So I think --

13 Q Suppose you can't -- I'm sorry. I'm sorry.

14 A Okay. Well, that was one thing I wanted to
15 mention. The other thing is I had mentioned earlier
16 that there are a couple of trial tariffs that -- one
17 for GTE and one for BellSouth, which I believe are
18 rather promising, because they allow a customer who
19 would not otherwise be able to have service to receive
20 service but with a toll block. It's at the customer's
21 option and, you know --

22 Q Universal toll block?

23 A I'm sorry.

24 Q Is that a universal -- a universal toll
25 block?

1 A Yes, it's -- that's my understanding that it
2 is; okay? However, it's at the option of the customer
3 in terms of -- you know, you could choose to not have
4 service, or you could choose -- you know, because of
5 the past payment problems that have, say, caused
6 difficulty with a customer obtaining service, it is
7 possible under these trial tariffs to obtain service
8 but yet have the service restricted until such time as
9 the past balances are paid.

10 So this is a way to have basic service where
11 a customer might not have been able to have it
12 otherwise. I think these trial tariffs are promising.

13 Q Sally, I think what I heard all through your
14 testimony, and you argued well, what is right is
15 wrong. But at some point we have to come down to the
16 facts and law, and if what is -- what is right is
17 right, then it should be supported by law. What is
18 wrong is wrong, it should be supported by law. And
19 the interpretations, I don't think, help us in this
20 particular case.

21 I know there are experiments going on. For
22 example, are you aware of the tests that -- well, I
23 don't know -- yeah, it's a test that GTE is conducting
24 in their mobile home -- mobile section where they
25 permit secured credit options for impaired credit

1 customers. Have you heard of that?

2 A I have not heard about that, but of course
3 that's an area -- that's also an area that the
4 Commission doesn't regulate, the mobile. .

5 Q Well, that's why they're trying it there,
6 because -- well, I won't editorialize. I'm sorry.

7 In any case, the findings here are that all
8 persons should have basic telecommunications service
9 available to them at reasonable and affordable costs,
10 and you agree to that.

11 A Right.

12 Q With reservations, with qualifications.

13 A Right. You and I, I think, might think of
14 availability differently. I was thinking about the
15 opportunity to have service at affordable rates. I
16 don't think it's necessarily an entitlement, but I
17 think everyone should have an opportunity to have
18 service at reasonable rates.

19 Q Yeah. And the access to police, fire, and
20 medical facilities. Would you consider that an
21 entitlement from a human standpoint rather than from a
22 legal standpoint?

23 A I don't -- you see, the difficulty, I think,
24 sometimes with telephone service is that there are
25 always some people who probably don't want it for

1 whatever reason. So I have trouble with this notion
2 of everybody must have a telephone, because I think
3 there's some people who don't want one.

4 Q Well, let's deal only with the people who
5 want it and want to have police, fire, and medical
6 facilities available to them, which they could have
7 through basic local service, which includes access to
8 other -- to the interstate services that might want to
9 deal with it. Let's deal only with that group, and
10 forget about the people that don't want service.

11 A Okay. Well, the one thing I would
12 mention -- and I don't have a detailed understanding
13 of this, but I know that sometime in the very near
14 future there is going to be a requirement that 911
15 access be available regardless of, you know, the
16 status of your phone line.

17 Q Is it your understanding the FCC has already
18 done that?

19 A I am uncertain of the catalyst for that, but
20 that is my understanding.

21 Q Let's go to General Management Regulations
22 and Tariffs. It's 25-4.34 of the rules and
23 procedures, I believe.

24 A I'm sorry. Can you give me a tab number?

25 Q Unfortunately -- I think it's -- this came

1 out of the -- out of the Commission filing, but I
2 don't have a tab number, unfortunately.

3 A And what is the number again?

4 Q Well, it's Docket No. 74189, Order No. 7132,
5 Page 243, General Management Requirements tariffs.

6 MS. HELTON: Can you tell me the order
7 number one more time, please, Mr. Osheyack?

8 MR. OSHEYACK: Sure. It's 7132. It's
9 pretty hard to read.

10 MS. HELTON: 23721?

11 MR. OSHEYACK: Maybe it -- 7132.

12 THE COURT: I think he's on Tab G, maybe.

13 MR. OSHEYACK: It might be G. It's just
14 before H.

15 WITNESS SIMMONS: Okay. Order No. 7132?

16 Q (By Mr. Osheyack) Yeah. Do you have it?

17 A Yes. Yes, I have it.

18 Q You were asked before about declining
19 tariffs, and I think there might be some information
20 in here which is relevant to that question and talks
21 about tariffs, set forth rates and charges for
22 customer service, classes of rates for service, et
23 cetera.

24 A Can you give me some kind of reference
25 within this document?

1 Q Yeah. That's in (1). That's in (1).

2 MS. HELTON: It's on Page 243 of the --

3 WITNESS SIMMONS: Okay. 243. All right.

4 I've got it. Page 243, General Management

5 Requirements?

6 Q (By Mr. Osheyack) Right. Now, if you
7 would go to (A), capital A, around the middle of the
8 page. Each company -- if you would read that into the
9 record, I'd appreciate it, because it relates to some
10 of those requirements.

11 THE COURT: Well, again, it doesn't need to
12 be read into the record. As I understand, this is a
13 rule that's been -- it's also been officially
14 recognized.

15 MS. HELTON: If I could just make a
16 statement, too. I'm not sure that this is the most
17 current version of the rule, just to clarify the
18 record. This is the version of the rule that the
19 Commission adopted back in 1976, and I don't know this
20 for a fact, but I'm pretty sure that this tariff rule
21 probably has been amended since it was dealt with in
22 the '76 order.

23 WITNESS SIMMONS: Yeah, I would assume --

24 MR. OSHEYACK: Probably has. But the fact
25 that the -- the fact is that my understanding is that

1 it's still necessary for the -- for certification to
2 file a map defining the exchange service area and the
3 base rate area. Is that not true?

4 A I indicated before I am really not sure
5 about that.

6 Q All right. Let's skip that.

7 A I feel confident it is not required for
8 alternative local exchange companies, without a doubt.

9 Q Did you say it is required?

10 A It would definitely not be required for
11 alternative local exchange companies.

12 Q For alternative. Okay.

13 A And I just don't know about the others.

14 Q And you don't know about interstate
15 companies. It would be pretty hard to put a map of
16 the United States in for AT&T for certification, I
17 would imagine.

18 A Right.

19 Q Let me go to H, Exhibit H of the Commission,
20 which is the --

21 A Yes, I have it.

22 Q Okay. If you go to Page 103 under History.
23 "It's best advised that the -- well, I don't have to
24 read it, but what it says is the access charge
25 structure emanates from the modified final judgment,

1 and I think this is a significant fact. Would you
2 agree to that?

3 A I would. I guess I should mention -- and I
4 never worked directly in this area that I'm about to
5 comment on, so I can't give you specifics at all. But
6 there was a system prior to this, because we -- there
7 was -- you know, for instance for arrangements, let's
8 say where MCI wanted to provide service, there was
9 some kind of access arrangement prior to what's talked
10 about here so that a local exchange company's customer
11 could reach MCI.

12 Q Okay. But the origin for some of this stuff
13 that -- some of this material in some of this
14 background was the -- this is your --

15 A Oh, certainly. That was the catalyst for
16 this particular docket, yes.

17 Q Yeah. That's right. And I think this is
18 interesting. If you go to Page 124 of -- Page 25 of
19 the same document -- and you might or might not know
20 this. I asked this before and, you know, it's a
21 technical matter; and, Sally if you don't know just
22 tell me.

23 But the statement is made right around the
24 middle that where there's a differentiation between
25 interstate and intrastate calls for the purpose of

1 applying access charges, and the governing
2 jurisdictional revenue -- the feeling was the
3 technology does not currently exist to make interstate
4 and intrastate distinctions. And that was back in
5 when? 1983, I believe?

6 A Correct.

7 Q Sally, are you conversant in computers?

8 A To some extent.

9 Q Are you computer literate?

10 A To some extent, yes.

11 Q I ask this question of you. Back in those
12 days they used the big mainframes, which are as --
13 from the standpoint of technical feasibility, they
14 were quite limited, and there was very little
15 opportunity to separate interstate from intrastate
16 charges. Do you remember that far back? I know
17 that's a delicate question to ask a woman. Do you
18 remember that?

19 A Oh, I remember mainframes.

20 Q Okay. My granddaughter tells me that with
21 software today you can do almost anything. One of the
22 things that I'd like to know if you can do is separate
23 interstate and intrastate charges.

24 A My impression is that -- and this is based
25 on some data requests that the Commission received

1 recently. My impression is that the companies do
2 separate balances for tax purposes.

3 Q Yeah.

4 A Now, you know, that's my impression.

5 Q That's mine, too. The capability apparently
6 is there, then, is what you're saying. Whether they
7 use it or not is another question, but the capability
8 is there.

9 A That is my impression.

10 Q Yeah.

11 A Okay?

12 Q I'll go with your impression. Well, here
13 again on Page 26 under "Accounts Receivable," in the
14 second paragraph the beginning of the second paragraph
15 again credits the MFJ, the modified final judgment, as
16 giving the Bell operating companies the discretion to
17 bill customers for interexchange services provided by
18 an IXC. Is that your reading of it?

19 A Well, I'm not sure. I lost you there a
20 little bit. Could you restate, please?

21 Q In the second paragraph, the beginning, the
22 first three lines, this is an order of the Public
23 Service Commission back in 1983 in which they state
24 that the MFJ gave the Bell operating company the
25 discretion to bill customers for interexchange

1 services.

2 A Yes.

3 Q And it was a discretionary thing?

4 A That's correct.

5 Q Okay. Do you know of any statute that
6 exists in Florida law which provides that -- I'm
7 talking about statutes now; not discretionary statutes
8 but specific statutes that provide this permission for
9 the LECs, or the OCs at the time, to provide
10 interexchange service -- to provide billing and
11 collections services for the --

12 A I'm not aware of any statute that addresses
13 this one way or another; Florida statute.

14 Q Florida statute is what I'm talking about.
15 All right.

16 Now, I want to get to that Order No. 12765
17 which you were questioned on which is the order
18 approving stipulation, and that is Exhibit I.

19 A Okay. You're referring to Order No. 13429?

20 Q 13429; that's right. And it refers to 12765
21 in the first paragraph, but it is order 13429.

22 Sally, in the second paragraph starting with
23 "We also granted disconnect authority," would you read
24 that into the record, please?

25 A All right. Starting with the second

1 sentence, the second paragraph: "We also granted
2 disconnect authority to the LECs for nonpayment of an
3 IXC bill on the basis that had debts for toll charges
4 would likely be less than without the disconnect
5 authority." Should I stop?

6 Q Yeah, stop there for the moment. "Would
7 likely," are these finite words? Do these words
8 express to you full knowledge, or are they estimates
9 of what might happen?

10 A It's a conceptual argument.

11 Q It's a conceptual argument. In other words,
12 there's no hard evidence presented here; is that
13 right?

14 A There doesn't appear to be.

15 Q Now would you go on go beyond that? "If had
16 debt expenses," go beyond that.

17 A Okay. "If had debt expenses of an IXC
18 become excessive, the IXC might seek increases in its
19 toll charges to recoup this expense, resulting in
20 increased rates for IXC service for Florida
21 subscribers."

22 Q Again we see the words "might see
23 increases," and that's not very -- that's not very
24 explicit, is it?

25 A No. But I think anytime an expense of any

1 business goes up, they are going to tend to raise
2 rates to recoup it. I think that's a reasonable
3 inference.

4 Q Do we -- does the Florida Public Service
5 Commission have regulatory power over IXC rates,
6 interexchange rates? I mean, interstate rates.

7 A No. But, I mean, I would expect that
8 intrastate toll rates would go up.

9 Q You're talking --

10 A If the bad debt expense goes up.

11 Q And I want to -- I want to point to the
12 heading of this docket in which it says "In re:
13 Intrastate telephone access charges." Is that a
14 correct reading?

15 A That's what it says.

16 Q In other words, this stipulation refers to
17 intrastate toll charges, and does not -- is not
18 directed at interstate charges in any way, shape or
19 form; is that correct?

20 MS. HELTON: Objection. He's asking the
21 witness to reach a legal conclusion.

22 MR. OSHEYACK: There's no legal --

23 THE COURT: I'll overrule it.

24 MR. OSHEYACK: -- conclusion here that --

25 THE COURT: I'll overrule the objection.

1 Where are you referring to now?

2 MR. OSHEYACK: We're talking about the top,
3 the heading of the -- Public Service Commission Order,
4 which says "In re --

5 THE COURT: Okay.

6 MR. OSHEYACK: It's the order approving
7 stipulation, which was the order that approved the
8 ability of the local exchange company to bill,
9 collect, and disconnect or deny service for interstate
10 charges.

11 Q (By Mr. Osheyack) This is an order which
12 specifically states that it relates to interstate
13 charges only; is that not correct?

14 A I think the title --

15 Q The --

16 A I think the title may be misleading. I'm
17 very leery to agree with the statement, because
18 there's a portion down toward the bottom where it
19 talks about the stipulation addresses four primary
20 areas; and it says first it allows for purchase of
21 accounts receivable of the IXCs by the local exchange
22 companies.

23 Those accounts receivable are not
24 distinguished, to the best of my knowledge, between
25 intrastate and interstate. I mean, I believe as a

1 result of this order, that the accounts receivable
2 were purchased in toto.

3 Q Well, whether they were purchased in toto or
4 not, the question is, does the order approving
5 stipulation involve interstate and intrastate, or just
6 intrastate? That is the question.

7 A I believe -- this is my interpretation. I
8 believe from what I'm reading here that it would
9 include both intrastate and interstate accounts
10 receivable.

11 Q Then the order is wrong?

12 A Well, sir, it's -- quite oftentimes a docket
13 is named early on in the process, and when the order
14 actually comes about, it's sometimes -- the docket
15 sometimes enlarges and covers more areas than it
16 originally envisioned. So I don't think you can put a
17 lot of weight on how the docket is titled.

18 You know, we've had -- I can think of a case
19 recently where the docket was titled one way and
20 the -- and, indeed, what actually was handled in the
21 docket was much broader than that.

22 MR. OSHEYACK: Well, Mary Anne, I'm a little
23 confused. All I want to know is whether I should
24 believe this order or not.

25 MS. HELTON: Whether you should do what to

1 this order, Mr. Osheyack?

2 THE COURT: Believe.

3 MR. OSHEYACK: Believe this order. Believe
4 what it says. It's incredible.

5 MS. HELTON: It's my understanding,
6 Mr. Osheyack, that orders speak for themselves.

7 THE COURT: I'll sustain the objection.

8 Q (By Mr. Osheyack) Let's go to "N" of the
9 Commission exhibits, 25 -- it's a rule chapter
10 25-4.160. It's about the relay service.

11 A I'm sorry. This is Tab N, like Nancy?

12 Q "N" like in Nancy, yes; or Nellie, we used
13 to call it in the Army.

14 A Are you referring to the underlying
15 language?

16 Q I'm referring -- are you at N?

17 A Yes.

18 Q Go to the second page, 25-4.160, Operation
19 of Telecommunications Relay Service, (1).

20 A All right. I see it.

21 Q Would you read that first line, or read
22 the -- yeah, read -- I guess, read the second -- the
23 first and second line into the record.

24 MS. HELTON: I'm sorry. I'm lost. What
25 page are we on?

1 MR. OSHEYACK: Subhead (1), 125-4.160. It's
2 Page 92. Page 213. It's under the --

3 MS. HELTON: I found it now, Mr. Osheyack.
4 Could I just clarify the record again, and say that
5 this was the version of the rule that was adopted in
6 1992, and I'm not sure whether this rule has been
7 amended since then.

8 MR. OSHEYACK: It's the only one in your
9 exhibit, so I'll have to work with it.

10 Q (By Mr. Osheyack) Now we go to Page 2 in
11 the middle of the page, Sally 25-4.160, Operation of
12 Telecommunications Relay Service.

13 A All right.

14 Q Okay. Read that first sentence. Well,
15 let's see where the sentence ends. It's a long
16 sentence. Why don't you read the first -- well, read
17 the whole paragraph up to "surcharge" at the end. I
18 think that's the only way to do it.

19 THE COURT: What paragraph are you talking
20 about?

21 MR. OSHEYACK: Sub (1) under 25-4.160.

22 THE COURT: Okay.

23 WITNESS SIMMONS: Sub (1)?

24 MR. OSHEYACK: Operation --

25 WITNESS SIMMONS: All right. I think I'm

1 there. Okay. 25-4.160(1): "For intrastate toll
2 calls received --

3 THE COURT: Just a minute. There's no need
4 to read this into the record.

5 MR. OSHEYACK: All right. Let me ask you a
6 question, then.

7 Q (By Mr. Osheyack) In that first sentence
8 for intrastate toll calls, does that in any way, shape
9 or form relate to interstate phone calls?

10 A No. It's talking -- no, it's talking about
11 intrastate rates.

12 Q It says "intrastate toll calls," does it
13 not?

14 A Right; but then it goes on to talk about how
15 they're to be rated.

16 Q Okay, fine. Fine. It goes on to say that
17 the local exchange and interexchange company billing
18 relay calls shall discount relay by 50%. Is that what
19 you mean?

20 A Yes.

21 Q Now if you go to the next page, subhead (3),
22 this is how -- and there were questions asked about
23 the relay service, and that's why I'm talking about
24 this.

25 It says "To fund the telecommunications

1 access service." It tells you how to fund it. "All
2 local exchange companies shall impose a monthly
3 surcharge on all local exchange company subscribers."

4 Now, Sally, if you cut off the service of
5 your local exchange company subscribers, does it not
6 limit the funds that are taken in to distribute, to
7 satisfy these relay services?

8 A On its face, that's how it seems, if you
9 disconnect. But I go back to something I said
10 earlier. If you didn't have the disconnect policy,
11 you would probably have to have a higher deposit
12 requirement, and I don't know -- I don't know -- the
13 net effect of eliminating, say, the disconnect policy
14 and increasing deposit requirements, I don't know if
15 you're going to end up with fewer or more subscribers
16 as a result.

17 Q Well, let's explore that a moment. Let's
18 explore that a moment, Sally. I told you about the
19 GTE test of secured credit. You know what secured
20 credit is. It's a prepayment upon which the customer
21 draws. When he's running out of money, he tells
22 the -- the company tells him that he has \$10.00 left
23 in his account, and he can put another 25 in or he can
24 stop calling. It's the secured credit. It's common
25 use among credit cards. People with impaired credit

1 can get secured credit cards.

2 Now, this is already an option in the mobile
3 business, phone business. Wouldn't you consider it an
4 option in the wire service business?

5 A You know, that's -- the companies are at
6 liberty to propose that.

7 Q But, see, you mentioned deposits, and it
8 seems like we have heard deposits before, and I ask
9 you, is that the only alternative?

10 A It's not necessarily the only alternative.

11 Q Okay. Then if we agree that deposits and
12 cutoff are not the alternatives, let's explore the
13 other alternatives; and one of them is secured credit.

14 Let me suggest another one; phone cards.
15 These are in common use today. Technology has gone
16 far beyond where it was in 1983. I use a phone card,
17 and I found out several things about it. When I'm
18 down to the end of the line, they tell me, you got one
19 minute left. I either put more money in or stop
20 calling. This is an alternative, is it not?

21 A It's an option. It's an option.

22 Q So there are alternatives available to
23 disconnection and high deposits?

24 A Right. All I was trying to convey is I'm
25 not sure what would happen to the subscribership in

1 the absence of this disconnect policy. I wouldn't
2 want to guess what would happen to it. There are
3 forces working in different directions.

4 Q It's the nature of the competition, Sally, I
5 would say. Is it not a mandate that the consumer have
6 free choice of his options?

7 A I guess that's kind of been the premise in
8 this country, but -- yeah, that's about all I can say
9 about it.

10 Q Sally, forgetting this country, is it not a
11 premise -- is it not a mandate under Florida law that
12 the consumer have free choice; free choice of where
13 his credit comes from, free choice of how he spends
14 his money, free choice of what supplier he uses for
15 phone service? Is that not the mandate of the Florida
16 Statutes?

17 A I think you're speaking awfully broadly
18 here. I mean, the statute says to encourage -- that
19 the Commission should encourage competition. It also
20 recognizes that there will be a transition and that
21 some regulatory oversight will be needed during that
22 transition. That's about as far as I can go.

23 Q Does it say that the Commission should be
24 promoting competition?

25 A Yes. Yes. It talks about the promotion of

1 competition. But what I'm trying to say is,
2 competition does not happen overnight, and some
3 regulation is needed in the interim.

4 Q Does the word "promote" connote to you an
5 active or a passive role for the Commission?

6 A Fairly active; fairly active.

7 Q Right. In other words, the Commission
8 shouldn't be sitting back and waiting for transition
9 to happen; the Commission should be helping it happen.
10 Is this not true?

11 A I would say the Commission should help the
12 process, yes.

13 Q Well, let's look at the process of
14 disconnection, the whole matter of billing and
15 collection for other companies, of local companies
16 billing and collecting bills for other companies.

17 As I read the material in this last
18 stipulation, the stipulation which was agreed to by 16
19 companies in 1983 and then approved by the order of
20 the Commission, what I read in there -- and let me
21 find it, because I think it is important.

22 MR. OSHEYACK: Is the stipulation itself,
23 Mary, in with your documentation?

24 MS. HELTON: Everybody should have the same,
25 Mr. Osheyack.

1 MR. OSHEYACK: Well, I know that. I'm just
2 asking a question.

3 WITNESS SIMMONS: It should be at the back
4 of Tab H.

5 MR. OSHEYACK: Back of "H"?

6 MS. HELTON: "I".

7 WITNESS SIMMONS: Or "I". I'm sorry.

8 MR. OSHEYACK: That was the order approving
9 stipulation, and I'm looking for the -- here it is.
10 You're right. It's back of -- you're right, it is.
11 Thank you, Mary.

12 I guess it might have been -- yeah, it might
13 have been in Terry Deason's letter. May I go to Terry
14 Deason's letter?

15 MS. HELTON: Can I just state for the record
16 that the Commission objects to Mr. Osheyack offering
17 Mr. Deason's letter -- excuse me -- Commissioner
18 Deason's letter? It's hearsay. It's --

19 MR. OSHEYACK: I've just proven, your Honor,
20 that it's relevant.

21 MS. HELTON: Excuse me, Mr. Osheyack. It's
22 speculative. The order codifying the decision can
23 speak for itself.

24 And it's also my understanding in Florida
25 that legislators can't be called to talk about the

1 thought processes that went behind to show legislative
2 intent. And so it seems to me that following that
3 type of reasoning then, a commissioner who wasn't even
4 on the Commission when the order was issued and when
5 the Commission made its decision shouldn't be able to
6 speak as to the thought processes that the Commission
7 followed when it entered its order.

8 THE COURT: Where is this letter,
9 Mr. Osheyack?

10 MS. HELTON: It's No. 2.

11 MR. OSHEYACK: It's Item 2 in my exhibit,
12 Judge Johnston, and Mr. Deason was Chairman of the
13 Commission at the time he wrote it. He spoke of the
14 history of disconnect authority, and he spoke of what
15 he had instructed his staff to do about it at the
16 time; and this is dated September 3rd, 1993.

17 As a historical document -- it is not a
18 legal document -- but it is the opinion of the
19 spokesperson for the Commission at the time. And,
20 again, I say if we can't believe what the people in
21 government tell us in writing, who can we believe?

22 THE COURT: And I'll overrule the objection.
23 You may proceed.

24 Q (By Mr. Osheyack) What he says here very
25 clearly is that the Florida Commission wanted to give

1 long distance companies an incentive for using local
2 companies' billing services, and the authority to
3 disconnect local service for nonpayment of long
4 distance bills was this incentive.

5 He also says in here that were it not for
6 the ability to disconnect local service to collect
7 long distance bills, the long distance companies would
8 not come to the local companies for billing and
9 collection. And he also says that the --

10 MS. HELTON: Excuse me. I have to object.
11 I believe that the letter can speak for itself. I
12 didn't -- Mr. Osheyack is not testifying.

13 THE COURT: Sustained.

14 MR. OSHEYACK: You're right.

15 Q (By Mr. Osheyack) Do you have that letter
16 in front of you --

17 A Yes.

18 Q -- Sally?

19 A Yes.

20 Q The third paragraph, would you read that
21 into the record, please?

22 THE COURT: Excuse me. Mr. Osheyack, we're
23 not reading anything else into the record today.

24 MR. OSHEYACK: Okay.

25 THE COURT: It's already -- you're moving it

1 in the record, and when we get to that point, if I
2 receive it, it will be in the record.

3 Q (By Mr. Osheyack) Fine. Can you interpret
4 this letter for us, Sally, as best you can?

5 A Well, I believe that I would probably --
6 might come to a different interpretation than
7 Commissioner Deason did. Bear in mind that he was not
8 employed at the Commission when Order 12765 was
9 issued, nor was I. But when I read it, as I mentioned
10 earlier today, this order covers a very wide range of
11 areas.

12 It includes switched access charges, special
13 access, billing and collecting, and directory
14 assistance. And there are statements near the
15 beginning of the order to indicate that one of the
16 prime goals of the proceeding was to ensure the
17 financial viability of the LECs.

18 I believe, however, in looking at this that
19 that was probably a primary motivation in the switched
20 access area, but I find -- I find nothing that
21 suggests it was a prime motivation in the billing and
22 collecting area. But it's easy to read this and come
23 to different contributions. I'm just saying I think I
24 would have come to a different conclusion than did
25 Commissioner Deason.

1 Q Well, you raise an interesting point, Sally.
2 Do you recall in a recent impact study that was filed
3 with the Commission, GTE stated that its revenues
4 today -- or not today, but in 1996 -- or 1995, rather,
5 from billing and -- from the sale of billing and
6 collection service were .88% of total revenues?

7 A That figure wouldn't surprise me. I don't
8 know, though, what it is.

9 Q I have it in the record in here somewhere.
10 But if that is true and if the revenues from billing
11 and collection were not essential to the local
12 companies, and in the context of today's market where
13 the local companies are competing head to head in the
14 long distance markets with the interexchange
15 companies, why would they want to hang on to this
16 business which helps only the interexchange companies?
17 Just to give them --

18 A You're saying why would the LECs want to
19 stay in the business?

20 Q No. Why would they want to continue to bill
21 and collect for the long distance companies?

22 A Well, I think they have an awful lot of --
23 Okay. Here's my opinion. They have an awful lot of
24 experience -- the LECs that is -- in the billing and
25 collecting area, something they're very conversant

1 with, and I think it's something they can do fairly
2 readily. And even if it doesn't amount to that much
3 revenue, I think it's probably good business for them
4 to be in, even if it -- even if it doesn't contribute
5 that much.

6 Q All right. That's an opinion based on your
7 experience?

8 A That's correct.

9 Q Right. Okay. All right. I don't think I
10 have any more questions, Sally. I think I've covered
11 it pretty well.

12 THE COURT: Any redirect?

13 REDIRECT EXAMINATION

14 BY MS. HELTON:

15 Q Are relayed service subscribers entitled to
16 basic service if they pay their bill?

17 A Say that again.

18 Q I said that wrong. Are relay service
19 subscribers -- do they have the opportunity to get
20 basic local telecommunications service if they pay
21 their telephone bill?

22 A Yes.

23 Q If IXCs didn't want to use local exchange
24 companies as billing agents, would they?

25 A Obviously there's a decision making process

1 they go through. They can always try to do it
2 themselves. They might be able to use credit card
3 companies. They obviously look at the various
4 alternatives and determine what's best for them, but,
5 you know, they do have -- they do have different
6 options.

7 MS. HELTON: We have no further questions.

8 MR. OSHEYACK: I have one other question, if
9 I may.

10 FURTHER EXAMINATION

11 BY MR. OSHEYACK:

12 Q Ms. Helton referred to the LECs as billing
13 agents. Sally, do the LECs have any financial risk in
14 the billing -- (inaudible) --

15 THE COURT REPORTER: I'm sorry. I can't
16 hear him.

17 WITNESS SIMMONS: Could you repeat that for
18 the court reporter?

19 Q (By Mr. Osheyack) Do the LECs, or the
20 local exchange companies, have any financial risk in
21 their contractual relationships with the interexchange
22 companies or the interstate companies with respect to
23 billing and collection operations? Do they have a
24 financial risk involved?

25 A I've got to think about that.

1 Q Let me help you. They've purchased the
2 accounts receivable, but there's a true-up provision
3 which enables them to send back the cost of
4 uncollectibles to the IXC that is the originator of
5 the charge. So is there a financial risk that accrues
6 to the local exchange companies?

7 A It seems -- and that's what I was trying to
8 sort through in my mind -- it seems offhand there
9 would be not -- there wouldn't be, but I also don't
10 know the intricacies of these contracts.

11 I mean, on the surface it would, and that
12 they wouldn't -- because they do have the liability
13 with -- by virtue of purchasing the accounts
14 receivable, but through the true-up process, in theory
15 at least, the uncollectibles are supposed to go to the
16 proper company; in theory. And my knowledge is not
17 detailed enough to be able to say absolutely there's
18 no liability. In theory there shouldn't be.

19 Q When a complaint comes in to a local
20 exchange company about an interstate bill, to the best
21 of your knowledge, what is done with it?

22 MS. HELTON: Your Honor, that goes beyond my
23 redirect.

24 WITNESS SIMMONS: I don't know.

25 THE COURT: All right. That resolves that.

1 **MR. OSHEYACK:** Okay. I have no other
2 questions.

3 **THE COURT:** I just have a couple of real
4 basic questions. What exactly is an alternative LEC?

5 **WITNESS SIMMONS:** An alternative LEC -- the
6 1995 rewrite to the Florida Statutes allowed
7 competition for basic local service, so that like, for
8 instance, in Tallahassee, Sprint-Centel is the
9 incumbent provider; it is now possible for another
10 company to come in and offer basic service here in
11 Tallahassee.

12 **THE COURT:** So the alternative just simply
13 connotes an alternative to the existing provider.

14 **WITNESS SIMMONS:** Yes; yes, exactly.

15 **THE COURT:** You made a point several times
16 that you thought that the statements in the '84 order
17 regarding a purpose of the order being to support the
18 financial viability of the LECs as not being a prime
19 motivating factor in terms of disconnect, but rather
20 in the area of switched access.

21 **WITNESS SIMMONS:** Right.

22 **THE COURT:** What do you mean by that,
23 "switched access"?

24 **WITNESS SIMMONS:** Okay. Switched access is
25 what the long distance company pays to the local

1 telephone company for access on a normal toll call,
2 like a normal message toll or 800 calling, anything of
3 that sort; normal long distance call, something -- a
4 long distance call that goes over the switch network.

5 If you're making a call, you need to be able
6 to get to the long distance company's facilities; and
7 your long distance company is paying switched access
8 charges to the local telephone company both on the
9 originating end of the call and on the terminating end
10 of the call.

11 **THE COURT:** You also made a point at the
12 beginning -- I'm not -- I want to make sure I followed
13 what you were saying. You were distinguishing -- I
14 think you were distinguishing between the -- what I
15 wrote down was "the billing and collection services as
16 being part of the services provided by the local
17 exchange company, but it's not part of the access
18 charge," or something to that -- it was right at the
19 very outset. Obviously I didn't follow it.

20 **WITNESS SIMMONS:** Okay. There's some
21 terminology confusion even when you look at this
22 order. The confusion is that billing and collecting
23 services are shown under the access tariff. All
24 right. But they're not typically thought of as access
25 charges.

1 Normally when someone speaks of access
2 charges, they're talking about switched access and
3 special access. That's -- the terminology makes it
4 confusing.

5 **THE COURT:** Okay. Now I understand. Thank
6 you. Any other questions of the witness? No other
7 questions?

8 **MR. OSHEYACK:** No.

9 **THE COURT:** All right. Thank you. You may
10 be excused.

11 **MR. OSHEYACK:** Thank you, Sally.

12 (Witness Simmons excused.)

13 - - - - -

14 **THE COURT:** No other witnesses?

15 **MS. HELTON:** No.

16 **THE COURT:** That concludes the testimony in
17 the case, unless there's rebuttal. No rebuttal?

18 **MR. OSHEYACK:** No rebuttal.

19 **THE COURT:** That leaves us with the question
20 of what to do with all of these exhibits. As I
21 understand it, there is -- I have officially
22 recognized, actually, all of the -- everything that's
23 been submitted by the Commission for official
24 recognition; and those are -- I don't think there's
25 anything we need to deal with with them; but then we

1 also have Mr. Osheyack's exhibits.

2 Mr. Osheyack, at the outset you indicated
3 that the reasons -- because you were refocusing your
4 presentation, you felt that some of these objections
5 would become moot or something would happen that
6 would -- are you planning to eliminate some of your
7 exhibits?

8 MR. OSHEYACK: Oh, yeah.

9 THE COURT: Okay. Let's focus on the
10 exhibits that you wish to put in evidence today.

11 MR. OSHEYACK: The letter from George Hanna,
12 which is No. 1. Mr. Hanna is a retired director of
13 the division of consumer affairs. He was the head of
14 the PSC division responsible for disseminating policy
15 information to the public and the press. It was not
16 his function, nor was it the function of his division
17 to create or interpret policy, but merely to convey --
18 (inaudible) --

19 THE COURT REPORTER: I can't hear him. I'm
20 sorry.

21 THE COURT: Just a minute, Mr. Osheyack.

22 MR. OSHEYACK: -- to reach a conclusion --

23 THE COURT: Mr. Osheyack. The court
24 reporter can't hear you.

25 MR. OSHEYACK: Oh, I'm sorry. Where did I

1 lose you?

2 THE COURT: Well, that's all right. What I
3 really want you to do at this point is simply identify
4 what exhibits you wanted.

5 MR. OSHEYACK: The letter from George Hanna.

6 THE COURT: Why don't you use the number.

7 MR. OSHEYACK: No. 1, No. 2, No. 3.

8 Withdraw No. 4, withdraw No. 5, withdraw No. 6.
9 No. 7, No. 8, No. 9, No.10. No, we withdraw No. 10.
10 Withdraw No. 11, withdraw No. 12. We should have
11 No. 13 in, and -- now, 11, 12 and 13, I think, are
12 already in the Commission's filing.

13 MS. HELTON: 11 would not be, and I doubt
14 that 12 is, also.

15 MR. OSHEYACK: All right. Well, I have to
16 look at what they are, then.

17 MS. HELTON: 11 is the statute of
18 limitations.

19 MR. OSHEYACK: Oh. Oh, no, scratch that.
20 12 --

21 MS. HELTON: And 12, I think, is the Florida
22 Fair Debt Collection Act.

23 MR. OSHEYACK: I've agreed to scratch that.
24 And 13; 13 we should leave in. 14, withdraw. 15,
25 withdraw. 16, withdraw. 17 is duplicated, so we'll

1 withdraw that. 18 should stay in. 19, 20, 21, 22, 23
2 and 25 are news clips, which I think are helpful as
3 explanatory exhibits, and 24 can be withdrawn.

4 THE COURT: 24 withdrawn?

5 MR. OSHEYACK: Withdrawn. 26 and 27 are
6 explanatory.

7 THE COURT: Hold on just a minute. 24,
8 you've got an A, B and C. You're withdrawing all of
9 those?

10 MR. OSHEYACK: Yes. Yes, withdrawing all of
11 those.

12 THE COURT: So you want 19, 22 and 23, which
13 actually has a number that looks like 23-E or C on it.

14 MR. OSHEYACK: 19, 20, 21, 22, 23 A, B and C
15 and 25. They're all news clips.

16 THE COURT: Okay. Now I see the rest of 23.
17 And 25. Okay.

18 MR. OSHEYACK: Okay. Withdraw 24A, B and C.
19 Include 26 and 27.

20 MS. HELTON: When would it be appropriate
21 for me to state my objections?

22 THE COURT: When we get through with this.
23 Are we up to 28 now?

24 MR. OSHEYACK: No, that's it. 27 is it.

25 THE COURT: 27 is it. You're withdrawing

1 the rest?

2 MR. OSHEYACK: That's --

3 MS. HELTON: Well, actually 28 through 32
4 are the Commission's exhibits, and we're not
5 withdrawing those.

6 THE COURT: Okay. My mistake. Off the
7 record -- well, for the record, these exhibits, 28,
8 29, 30, and 31, are these part of -- and 32, are these
9 part of official recognition documents?

10 MS. HELTON: No, those are --

11 THE COURT: Okay. These are additional
12 exhibits. Okay.

13 All right. Let's go through the exhibits
14 that you're offering now today. Which of these do you
15 object to being in evidence?

16 MS. HELTON: Object to Exhibit No. 1. It's
17 hearsay and draws a legal conclusion.

18 THE COURT: Okay. What's your response to
19 that, Mr. Osheyack?

20 MR. OSHEYACK: As I started to say before,
21 Mr. Hanna is a retired director of the division of
22 consumer affairs, was the head of the PSC division
23 responsible for disseminating policy information to
24 the public and the press. It was not his function,
25 nor was it the function of his division, to create or

1 interpret policy, but merely to convey it to the
2 public. Accordingly, to charge him with drawing the
3 legal conclusion is a bit of a stretch.

4 Quite the contrary. Where there was a legal
5 conclusion, it was his responsibility to report it
6 accurately as it existed. He was, by definition, a
7 spokesman for the PSC to the public, and his letter
8 which clearly defines the boundaries of intrastate and
9 the scope between FPSC jurisdiction should be
10 recognized. Moreover --

11 THE COURT: Let me interrupt you, because it
12 appears that you're reading from a response to the
13 objection; is that correct?

14 MR. OSHEYACK: Yes.

15 THE COURT: Have you prepared written
16 responses to all of these objections?

17 MR. OSHEYACK: I have.

18 THE COURT: Let me make this suggestion.
19 Why don't I -- why don't you submit your written
20 responses, and I will just rule on the objections and
21 your responses in my final order.

22 MR. OSHEYACK: Agreed.

23 THE COURT: Do you have anything to add to
24 the objections that are in your --

25 MS. HELTON: Well, I would like to add to

1 the objections that are listed here, that for those
2 exhibits which he didn't lay a foundation for, that I
3 would object for those reasons as well.

4 For instance, all of the newspaper articles,
5 I don't believe that he conducted any
6 cross-examination whatsoever on those, so I don't
7 believe there's been any foundation laid for them to
8 be offered into evidence.

9 And I honestly cannot remember at this stage
10 in the game whether the letter that Susan Clark wrote
11 to Representative Safley, which has been marked as
12 Exhibit No. 3, whether he conducted -- Mr. Osheyack,
13 did you conduct any cross-examination on Exhibit
14 No. 3?

15 MR. OSHEYACK: No.

16 MS. HELTON: No foundation has been laid for
17 Exhibit No. 3.

18 MR. OSHEYACK: The letter speaks for itself.
19 It did not require cross-examination. It's
20 explanatory and supplementary to evidence already
21 submitted.

22 MS. HELTON: I think that was the only other
23 comment I have.

24 THE COURT: All right. I'll consider that
25 objection as well as your oral response you just made,

1 and then I'll also consider your written responses
2 that you'll send me, and I'll rule on those in the
3 final order. And that would then conclude the
4 evidence in the case.

5 In terms of my final order -- is my final
6 product, my final work, you have an opportunity to
7 submit proposed final orders if you wish to. As to
8 the timing of those submissions, is either party
9 ordering a transcript of this hearing that should
10 precede the submission of proposed final orders?

11 MS. HELTON: Yes, sir. The Commission staff
12 will be ordering -- the Commission will be ordering a
13 hearing transcript.

14 THE COURT: Okay. I would ask if the
15 parties can submit their proposed final orders within
16 10 days from the filing of that transcript, or do you
17 need more time than that?

18 MR. OSHEYACK: Well, I need more time, your
19 Honor. I'm in the process of moving to Brandon on
20 July 1st. I won't have a phone, and I will have to
21 find a way to get a transcript; or, alternatively, I
22 might decide just to, as I say -- (inaudible) --

23 THE COURT REPORTER: I can't hear him.

24 THE COURT: You need to speak up a little
25 for the court reporter.

1 MR. OSHEYACK: Or, as I say, ride with my
2 initial brief and the transcript of the testimony and
3 a closing statement that I'd like to make --

4 THE COURT: All right. Well, let me --

5 MR. OSHEYACK: But I'll decide and let you
6 know.

7 THE COURT: Okay. Let me advise you that
8 you can either order a copy of the transcript -- the
9 original is going to be filed with me. I assume that
10 the Commission will be ordering the original plus a
11 copy for them. You can order a copy of the
12 transcript. You would have to pay for that. And if
13 you do, you will know when, approximately when the
14 original is filed with me.

15 If you don't order a transcript from the
16 court reporter, you would have to -- I would ask the
17 court reporter to give you notice of filing of the
18 original so you will know when the original is filed,
19 and that's when the time for proposed final orders
20 would run from that filing date.

21 Now, how much time are you asking for after
22 the filing of the transcript, assuming you do file
23 something? Why don't we do this: Why don't you think
24 about it and let us know because, as you said, you may
25 not even file a proposed final order.

1 **MR. OSHEYACK:** Yeah. I have difficulties
2 now, a combination of health concerns and moving, and
3 focusing is kind of hard for me and will be for a
4 couple months, and communication is going to be
5 impossible. So I just have to rely on what has
6 happened here today.

7 **THE COURT:** Okay. Well, in that case, I
8 think Ms. Helton has indicated that she can file hers
9 within 10 days from the filing of the transcript. So
10 unless we hear otherwise from you, that will be the
11 time frame for filing proposed final orders, and then
12 my final order should be submitted within 30 days from
13 the filing of the transcript. And other than any oral
14 closing statements, that would -- that's where we are
15 now.

16 **MR. OSHEYACK:** I have a closing statement,
17 and that ends my testimony.

18 **THE COURT:** I'm sorry?

19 **MR. OSHEYACK:** With all due respect --

20 **THE COURT:** What did you just say? Yes.
21 This is closing statement, right?

22 **MR. OSHEYACK:** Closing statement.

23 **THE COURT:** Okay.

24 **MR. OSHEYACK:** With all due respect, your
25 Honor, the disconnect authority rule and the

1 Commission's need to enforce it makes government a
2 debt collector for AT&T, Sprint and MCI, et al.

3 This should not be government's role.
4 Government has enough of a problem just collecting
5 taxes. The Commission seems to be driven by a well
6 ingrained cultural bias. They appear at times to feel
7 obligated to participate -- (inaudible) --

8 **THE COURT REPORTER:** I'm sorry. I can't
9 hear him.

10 **THE COURT:** Mr. Osheyack, the court reporter
11 is having a hard time keeping up with you reading the
12 statement.

13 Let me ask this: Once again, you're reading
14 from a prepared written closing statement, correct?

15 **MR. OSHEYACK:** Just notes, though, in note
16 form. It's a page and a half. It won't take long.

17 **THE COURT:** Okay. If you could read a
18 little more slowly and clearly so the court reporter
19 can take your --

20 **MR. OSHEYACK:** Okay. The Commission seems
21 to be driven by a well ingrained cultural bias. They
22 appear at times to feel obligated to participate in
23 the maintenance of the financial security of
24 corporations, even to the extent of assisting them in
25 debt collection and, in fact, providing them with

1 extraordinary protection from their customers to a
2 degree that goes far beyond industry standards and
3 societal norms. This cannot continue without
4 government accepting the unnatural role of accomplice
5 to corporate abuse.

6 Your Honor, the role of government is to
7 protect corporations from each other. That's what the
8 fair trade laws are for, to protect the consumer from
9 predation and abuse. That's what the fair pricing,
10 fair credit and fair debt collection practices laws
11 are for.

12 There is no need for government regulators
13 to protect the corporate giants from their customers.
14 That's what the courts are for. The disconnect
15 authority rule, as applied by the Commission, would
16 never survive in a fully competitive marketplace, yet
17 that is where the Commission is supposed to be leading
18 us.

19 We have a need, more so a responsibility, to
20 put the Commission back on track as defined by new
21 statutes and the new look of the Legislature. We
22 stand today but two and a half years from a new
23 millennium, yet we have over the past years, and even
24 unto today, heard the Public Service Commission of
25 this innovative and progressive state of Florida

1 defend debt collection practices and regulations which
2 may have been appropriate in 1984, but are rendered
3 obsolete by both state and federal communications acts
4 passed within the past two years.

5 Your Honor, I believe we have accepted the
6 challenge of the burden of proof, and I believe we
7 have met the test. We have had little need to go
8 beyond the words of the State Legislature, and the
9 Commission itself, as expressed in its prior orders,
10 to prove our case.

11 Now, therefore, we respectfully request that
12 the Court fulfill its responsibility to the public
13 interest and declare the Florida Administrative Code
14 Rule 25-113(1)(f) to be invalid and order it be struck
15 from the code.

16 That concludes my statement.

17 MS. HELTON: The Commission waives any
18 closing statement.

19 THE COURT: Okay. Incidentally, I did not
20 specifically deal -- I overlooked dealing with the
21 Commission's Exhibits 28 through 32. Do you object
22 to -- you had objected --

23 MR. OSHEYACK: No objection.

24 THE COURT: No objection?

25 MR. OSHEYACK: No objection.

1 **THE COURT:** They will be received. Thank
2 you. And if there's nothing further, that would
3 conclude the proceedings for today.

4 (Thereupon, the hearing concluded at 4:20
5 p.m.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

3
4 I, H. RUTHE POTAMI, CSR, RPR Commission
Reporter,

5 DO HEREBY CERTIFY that the Hearing in DOAH
6 Case No. 97-1628RX, was heard by the Division of
Administrative Hearings at the time and place herein
7 stated; it is further

8 CERTIFIED that I stenographically reported
the said proceedings; that the same has been
9 transcribed under my direct supervision; and that this
transcript, consisting of 221 pages, constitutes a
10 true transcription of my notes of said proceedings.

11 DATED this 30th day of June, 1996.

12
13 
14 H. RUTHE POTAMI, CSR, RPR
Official Commission Reporter
(904) 413-6734

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