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STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

June 30, 2010 - 1:47 p.m.
Concord, New Hampshire

P.M. SESSION ONLY

RE: DT 10-137
NORTHERN NEW ENGLAND TELEPHONE
OPERATIONS, LLC d/b/a FAIRPOINT
COMMUNICATIONS-NNE: Petition for
Authority to Disconnect Global NAPs.
(Technical Session - P.M. Session only)

NHPUC JUL09'10 PM 3:28

PRESENT:

Reptg. FairPoint Communications-NNE:
Frederick J. Coolbroth, Esq. (Devine...)
Sarah Davis, Esq.
Michael Skrivan
Kevin Shea

Reptg. Global NAPs:
Joel Davidow, Esq. (Kile, Goekjian, Reed...)
Lucy J. Karl, Esq. (Shaheen & Gordon)
John Fike
Brad Masuret
Greg Eccles
Les Berry

Reptg. the TDS Companies:
Paul J. Phillips, Esq. (Primmer, Piper...)
Thomas Murray

Reptg. Granite State Telephone:
William Stafford

Reptg. PUC Staff:
Lynn Fabrizio, Esq.
Kate Bailey, Director-Telecom Division
Michael Ladam, Telecom Division
Les Stachow, Telecom Division

Court Reporter: Steven E. Patnaude, LCR No. 52

ORIGINAL

1 T E C H N I C A L S E S S I O N

2 (P.M. Session only)

3 (Technical session resumed at 1:47 p.m.)

4 MS. FABRIZIO: Okay. It looks like
5 everyone is here. We can resume.6 MR. DAVIDOW: Let me resume by reacting
7 to a few things that occurred, and trying to clarify
8 things where I can. First of all, the issue was raised
9 with Dr. Fike as to "why there should be different rates,
10 if termination is the same?" Obviously, Dr. Fike was not
11 put here as an ethics professor or a -- or even a person
12 to, for the moment, testify on telecommunications policy.
13 But I should point out that I had already said that
14 Verizon tells AT&T, or any other carrier, "if you send
15 this traffic and swear that it's not VoIP, you pay a penny
16 a minute. And, if you swear it is VoIP, you pay 00045."
17 AT&T -- and, Verizon is obviously performing the identical
18 termination service, but has agreed, and the question is
19 "why did they agree?" Well, one answer is, Verizon bought
20 MCI. So, Verizon both buys VoIP and sells VoIP. And, it
21 wants its VoIP to be cheap and be competitive in the \$14 a
22 month service. And, in order to have its VoIP company be
23 competitive, it does what it has to do, which is to give
24 people, VoIP providers, what it wants its VoIP provider to

1 have. The whole point of the '96 Act was to get cheaper,
2 faster international service for \$15 a month, then the
3 answer is people in the industry adjust to that by
4 offering both VoIP service and non-VoIP service. If they
5 don't, they become obsolete and they have to be begged to
6 be subsidized by state commissions, because they can't
7 compete, and because the landline business is vanishing.

8 In any event, beyond that, the issues
9 were raised about two issues that I was not prepared for.
10 Because I believe this was a hearing on whether we owed
11 access charges, I presented everything I think I needed,
12 the contract provision and the technical testimony, to
13 make the best case I think we can make as to why we don't
14 owe access charges at the billed amount. What happens
15 next, whether there's a negotiation, a waiting period, an
16 imposed rate or something else follows later. The issue
17 was raised about some rentals of trunks, and an issue
18 about fees for our equipment being in a collocation place,
19 which has a monthly rental. It's relatively small. And,
20 I would say two things: One is, my statement that I was
21 "done today and didn't need any further time" was --
22 assumed that the only issue is whether we owed the access
23 charges that had been mentioned. And, if we were to
24 debate the tandem charges, the trunk charges, and the

1 collocation, I would want another day of hearing, and we
2 would prepare and would have the contract clauses, the
3 history of the bills, any witness. It wouldn't be all
4 these people, wouldn't need it, probably need only one
5 witness.

6 I would say on a particular point,
7 collocation, that this is not a service that we any longer
8 require from FairPoint. They seem very anxious to not do
9 business with us. And, I can make the offer that, if they
10 will give us 60 days, we will be out of their collocation
11 shacks, and, therefore, the issue of having to give us
12 anything in the collocation area ever again, unless they
13 want to negotiate something reasonable, we'll be gone.
14 So, if that is allowed, we will be down to the trunk
15 charges.

16 What I understand the issue is on the
17 trunk charge is that there's I think a trunk from the
18 tandem to the POI. And, I think that their theory is that
19 "it's our traffic on there and therefore we owe them
20 rent." But our people tell us that both they and we send
21 traffic in and out of those trunks. And, my understanding
22 of the law of the industry and the fairness is that, if
23 both sides have trunk, and they're sending stuff in and
24 out, getting paid for it or whatever, getting paid by the

1 person whose traffic it was in the first place, that
2 either neither -- it's bill-and-keep, neither side charges
3 --

4 MS. BAILEY: For a trunk? A physical
5 connection?

6 MR. DAVIDOW: Well, it's a -- well, once
7 it's a physical connection, if it's supposedly rented to
8 us, then they have no right to use it. That's clear. If
9 they "sign a little paper" that says "I rent you this
10 trunk for one month." Then, it means only us. It doesn't
11 mean "I'm letting you throw some traffic on and I'm going
12 to use it, too." And, if they do use it, then both sides
13 owe each other, or nobody owes either.

14 MR. MASURET: I think there's separate
15 trunk groups in this case, inbound and outbound. It's not
16 like AT&T, where they're mutual, bidirectional. So, I
17 think each company would have a trunk group.

18 MS. BAILEY: So, they pay for their
19 trunk and you pay for your trunk?

20 MR. DAVIDOW: Or, in which case it
21 cancels out.

22 MS. DAVIS: But they don't pay for the
23 trunk.

24 (Interjection by the court reporter -

1 multiple parties speaking at the same
2 time.)

3 MS. DAVIS: One, they don't pay for the
4 trunks regardless. So, they're not their trunks.

5 MR. DAVIDOW: Well, if we found out that
6 they're using them, too, and we don't get our exclusive,
7 then we believe it balances out or we don't have to. But,
8 in any event, we're starting in on the issue that I was --
9 I was able to get five minutes of preparation at lunch on
10 an issue that I was not expecting. And, I'm saying we
11 would need another, on the trunks, we'd need another day,
12 where we'd say which trunk it is, what the contract said,
13 what bills said, what we -- we had some of our people
14 check what was happening. It's too long a story for me to
15 -- I remember hearing it discussed, but I didn't bring a
16 team to draw a picture of the particular trunk or show the
17 bills or any such thing. Yes.

18 MR. LADAM: Could I ask, regarding
19 trunks, which of the trunk types these would be? The
20 agreement, in 2.2.1, says "In interconnecting their
21 networks, the parties will use the following separate and
22 distinct trunk groups:" And, I think there's three of
23 them.

24 MR. DAVIDOW: Do we have a witness that

1 knows the answer to that? No, we'd have to bring that
2 witness on the day we have a trunk hearing. I hate to
3 truncate this hearing, but we thought this was -- that
4 this was an access charge hearing.

5 MR. LADAM: Well, and the reason I ask
6 is because I'm trying to follow through on the definition
7 I heard cited earlier on "Internet traffic", 2.43, --

8 MR. DAVIDOW: Yes.

9 MR. LADAM: -- and understand which of
10 these three trunk types would be appropriate for that
11 traffic, because they're defined in terms of what they're
12 expected to carry.

13 MR. DAVIDOW: Well, I think they're
14 defined in terms of what they're expected to carry,
15 subject to the exception in 8.1, which is that whatever
16 this posted traffic, you would also have to know the rate.
17 And that, when Verizon put this clause in, one didn't know
18 the rate. Now, the trunk is a rental charge. And, I
19 don't think the rental charge depends on what's in the
20 trunk. It might in some way, but it's -- the clauses in
21 question I thought were dealing with access charges, not
22 rental charges. As I was saying, the trunk is so much per
23 month, as opposed to so much per minute.

24 MS. FABRIZIO: Could I interject for a

1 clarification maybe from Fred or his team. Are we talking
2 now about a new claim of nonpayment or is this subject of
3 trunks and payment for trunks integral to the question of
4 what kind of traffic this is?

5 MR. COOLBROTH: This is interstate
6 special access. We have given the notices to terminate.
7 Our view is we legally now have the legal right to
8 terminate those trunks. They haven't paid for any of the
9 service. And, we legally do have the right to terminate.
10 It is interstate special access.

11 MS. FABRIZIO: Okay. Now, a follow-up
12 to that is this proceeding, docket DT 10-137, stems from a
13 petition for nonpayment under the intrastate access
14 tariff.

15 MR. DAVIDOW: Right. It does.

16 MS. FABRIZIO: Now, the demand for
17 assurances that FairPoint has filed with you to my
18 knowledge has not been filed with the Commission for
19 adjudication.

20 MR. DAVIDOW: That's right.

21 MS. FABRIZIO: But are we now somehow
22 melding the two issues or is there some way to separate
23 those issues in this proceeding?

24 MR. COOLBROTH: That is separate. That

1 is under the interconnection agreement. We are not
2 required under the interconnection agreement to present
3 that to this Commission. We have not received the
4 assurance of payment. If it is not received by July 2nd,
5 our legal position is, on July 17, all services under the
6 interconnection agreement terminate.

7 MS. BAILEY: And, did you, in your
8 assurances bill, or whatever you want to call it, include
9 the charges for the interstate special access trunks and
10 the collocation?

11 MS. DAVIS: We did include that notice
12 of disconnection.

13 MS. BAILEY: But that's not --

14 (Interjection by the court reporter -
15 multiple parties speaking at the same
16 time.)

17 MS. DAVIS: What I was saying to the
18 Staff is that the charges for the trunks, as well as the
19 charges for collocation, were included in our letter,
20 notice of disconnection under the ICA in New Hampshire.

21 MS. FABRIZIO: But not included in the
22 petition before the Commission in this docket?

23 MS. DAVIS: Well, we filed the petition
24 before the -- we filed a motion to the Commission in a

1 separate docket. We believe that's what we were directed
2 to do by that docket. This docket kind of came out of
3 nowhere. It wasn't like we filed a petition for a new
4 docket. We filed a motion and this --

5 MS. FABRIZIO: Actually, I just mean the
6 petition that was filed in the proceeding we're in now did
7 not include the collocation and the trunk charges, is that
8 correct?

9 MR. COOLBROTH: I think Sarah is right.
10 We didn't file a petition, we filed a motion in 08-028, --

11 MS. FABRIZIO: A motion.

12 MR. COOLBROTH: -- and that somehow
13 wound up in a new docket. We hadn't filed a petition that
14 opened this docket. The Commission took our motion from
15 the other docket and moved it and created a new docket,
16 which was kind of to our surprise.

17 MS. FABRIZIO: Right. Sorry, just this
18 does get confusing. But that motion did not include the
19 trunk charges and --

20 (Interjection by the court reporter.)

21 MS. FABRIZIO: But that that motion for
22 authority to disconnect did not include a discussion of
23 charges, the trunk charges and collocation charges?

24 MR. COOLBROTH: That is correct.

1 MS. FABRIZIO: Okay.

2 MR. COOLBROTH: And, just to further
3 answer your question, our demand for assurances references
4 nonpayment under the interconnection agreement and
5 applicable tariffs. So, this demand for assurances
6 relates to all outstanding amounts under intrastate
7 tariffs, interstate tariffs, and the interconnection
8 agreement.

9 MR. DAVIDOW: And, let me comment on
10 that, if I may. Recognizes, as I understand it, the --
11 you have three and a half million dollars in contested
12 access charges, the VoIP issue or the "it touches the
13 Internet" issue. You have maybe half a million dollars in
14 trunk charges and 50,000 or \$70,000 in collocation. Now,
15 if you were to strip out what's in this proceeding so far,
16 namely, the three and a half million dollars at 2.8 cents
17 a minute for access, and you're left now with a quarter or
18 a third of that, then the size of the bond for the
19 continued rental of the trunk or the bond for the
20 continued collocation, rather than being 360,000, which is
21 a very heavy bond, might, in fact, be \$50,000. And, if we
22 agree to get -- we won't use the collocation anymore, then
23 it's a little smaller. So, obviously, we would prefer a
24 bond that's based on items that are not subject to this

1 in-your-face issue, which is "what is the meaning of 2.43
2 as it relates to VoIP and Internet?"

3 So, we assume that any issue between two
4 parties to an ICA is in front of this Commission, because
5 you signed the -- and approved the ICA. And, an argument
6 that the ICA allows them to go to court without coming to
7 you or an agreement that they can use a tariff instead of
8 the FCC rate is an interpretive argument, which they have
9 to present to you. So, they can't run around you by
10 saying, "well, as we read the ICA, we don't have to come
11 back to the Commission."

12 MS. FABRIZIO: But my understanding is
13 that the agreement is not automatically before the
14 Commission.

15 MR. DAVIDOW: Well, it's always -- it's
16 automatically before it if we defend, then you're the body
17 that's supposed to interpret it. That, you know, I can
18 show you cases from eleven circuits that say that the
19 plenary authority of state commissions to interpret is not
20 questioned.

21 MS. BAILEY: They haven't asked us to
22 interpret this.

23 MR. DAVIDOW: No, we have.

24 MS. BAILEY: You have asked what?

1 MR. DAVIDOW: That you interpret the
2 ICA.

3 MS. BAILEY: With respect to whether
4 access charges apply?

5 MR. DAVIDOW: Well, and we would ask you
6 on the other two issues, if they -- if we had known that
7 that's what they wanted to talk about or cut us off for.

8 MS. BAILEY: Okay. Well, you haven't
9 done that?

10 MR. DAVIDOW: No. But I will, tomorrow,
11 whenever you want me to.

12 MS. BAILEY: I don't care.

13 MS. FABRIZIO: Is there a dispute
14 resolution process that you have to follow first under the
15 terms of the agreement?

16 MR. DAVIDOW: Well, we've said it was
17 futile, and I think they can speak for themselves. They
18 said we either mail them the undiscounted amount of all
19 their charges, regardless of our theories or hearing any
20 facts, witnesses or anything else, there was nothing else
21 to negotiate.

22 MR. COOLBROTH: This is not the amount
23 that's due.

24 MS. BAILEY: Right.

1 MR. COOLBROTH: This is to cover the
2 cost of carrying their business while they engage in this
3 exercise. They want it all on our nickel. And, that's
4 not appropriate. We have the legal right under the
5 contract to require assurance, and we have done so.

6 MR. DAVIDOW: Well, as I understand the
7 law on bonds, that what bonds are supposed to do is cover
8 your out-of-pocket costs. And, they know perfectly well
9 that, and recall that, in the five contracts that Verizon
10 signed with Global, 3, and everyone else, by certifying
11 that the agreed rate for VoIP is 0045, they're asserting
12 that that's an above-cost rate. In any event, the idea
13 that you use your retail price to protect yourself during
14 a dispute is not the typical law of New Hampshire or any
15 other state.

16 MS. BAILEY: What retail price are they
17 using?

18 MR. DAVIDOW: Well, the question is,
19 what does it "cost them" to keep us on two months? And,
20 the answer is "turning a switch". That might cost a tenth
21 of a penny to keep us on. They gave no evidence as to
22 what it would cost them. They simply said "we have this
23 disputed 2.8 cent retail rate." And, if we assume that it
24 cost us, you know, as if they had some other person or it

1 was a zero-sum game, that is, by coming in they can't get
2 any other business or such, or that anyone else would pay
3 them 2.8 to deliver VoIP, or could. So, the -- And, the
4 answer is, if this Commission is supposed to approve the
5 amount of the bond, I think the Commission would ask them
6 to say how much it's actually going to cost them.

7 MS. BAILEY: Do you know if Level 3 pays
8 terminating access charges?

9 MR. SKRIVAN: I don't know.

10 MS. DAVIS: They do.

11 MS. BAILEY: How is that different?

12 MR. MASURET: Is it for VoIP?

13 MS. BAILEY: I think --

14 MS. DAVIS: I'm not 100 percent on what
15 they have had.

16 MR. MASURET: That's the appropriate
17 question.

18 MS. BAILEY: But Level 3 doesn't have
19 any end-users in New Hampshire.

20 MR. DAVIDOW: Well, all right. We know
21 that CommPartners testified that it pays between zero and
22 -- between bill-and-keep and 0006, and I can send you the
23 affidavit tomorrow.

24 MS. BAILEY: But that's not relevant in

1 New Hampshire, because CommPartners I don't believe
2 directly interconnects with any LECs. Do you know that?

3 MR. DAVIDOW: Well, --

4 MS. BAILEY: That's why you're doing it.

5 MR. DAVIDOW: All right. In any event,
6 at the moment, we didn't know that this was a hearing on
7 the amount of the bond.

8 MR. COOLBROTH: It's not.

9 MS. BAILEY: It's not.

10 MS. FABRIZIO: It's not.

11 MR. DAVIDOW: All right. I had a couple
12 more points I wanted to raise for purposes of the
13 technical hearing, if I may?

14 MS. BAILEY: Okay.

15 MR. DAVIDOW: Dr. Fike, in regard to
16 that traffic that comes to, let's say, New Hampshire
17 through Global, and did not originate in IP, but instead
18 went through the ESP companies, have you previously
19 testified whether that service is -- that that traffic is
20 changed in form and content by those companies?

21 MR. FIKE: I didn't -- I didn't
22 specifically look at New Hampshire, obviously, in a
23 Pennsylvania proceeding.

24 MR. DAVIDOW: Yes.

1 MR. FIKE: But, as a general answer, I
2 have testified on that matter, yes.

3 MR. DAVIDOW: What did you conclude?

4 MR. FIKE: I concluded that it is all --
5 I think your term just now was "form and content"?

6 MR. DAVIDOW: Yes.

7 MR. FIKE: Was changed in form and
8 content.

9 MR. DAVIDOW: Is that also called
10 "enhanced"?

11 MR. FIKE: That's called "enhanced".

12 MS. BAILEY: How was it changed?

13 MR. FIKE: That's one definition of
14 "enhanced" anyway.

15 MR. DAVIDOW: You did testify as to how
16 it was changed, didn't you?

17 MR. FIKE: Yes, I did.

18 MR. DAVIDOW: And, you have been asked
19 that question now.

20 MR. FIKE: I didn't hear the question.

21 MS. BAILEY: How was it changed?

22 MR. FIKE: How was it? It was enhanced
23 in at least three ways. The -- I think Transcom I believe
24 calls it their "Veraz VOX". Veraz is the manufacturer of

1 this equipment. It removes background noise. A classic
2 example is a baby crying or a call made from a cellphone,
3 perhaps in a crowded room.

4 Because this traffic often moves across
5 the public Internet, it is subject to loss packets. Loss
6 packets are replaced, not by a level algorithm that looks
7 at the previous level and decides to project that forward,
8 but rather a form of linear interpolation that makes a
9 pretty good guess about what the loss packet would be.

10 Short codes, the third item, are
11 recognized, if their particular customer has paid for that
12 service, where the user can key a magic sequence on their
13 keypad and enter in to bring up a webpage or something
14 like that.

15 And, then, sometimes noise, usually
16 called "comfort noise", is actually injected into an
17 otherwise quiet circuit, to reassure the caller that the
18 system is still there and hasn't gone away. So, I guess
19 that's four, come to think of it.

20 MS. BAILEY: So, noise injected --

21 MR. FIKE: Yes. This --

22 MS. BAILEY: -- to make the caller
23 comforted that this call hasn't been taken down is an
24 enhancement?

1 MR. FIKE: A digital -- this goes all
2 the way back to the very first transatlantic
3 communications satellite, as a matter of fact, where
4 people would hang up because the circuit was so quite that
5 they thought that the call had been dropped when it
6 hadn't. And, that's the term of art is "comfort noise".

7 MS. BAILEY: I'm familiar with that. I
8 just don't understand how you call that an "enhancement"
9 to the call?

10 MR. FIKE: Well, --

11 MS. BAILEY: It's not changing the form
12 or content.

13 MR. FIKE: It is a -- we could argue
14 about that definition, but it's something that is, for a
15 company like Vonage, and I don't know if Vonage pays for
16 that or not, but, for a company like that, it's worth --
17 they're willing to pay for that service from a company
18 like Transcom.

19 MS. BAILEY: I understand why a carrier
20 might do that, though. I don't understand how that makes
21 the call "enhanced"?

22 MR. FIKE: Well, I threw that in. If
23 you'd like to just leave it on the first three, I'm okay
24 with that.

1 MS. BAILEY: And, "short codes", can you
2 go -- can you expand upon that a little bit? That's to
3 access Internet pages?

4 MR. FIKE: It's to escape, in the
5 meaning of the "escape" key, it's to escape from the
6 strictly voice session and bring in some sort of a data
7 session as well associated with the call.

8 MS. BAILEY: So, can you give me an
9 example of that? If I'm a BroadVoice customer, what would
10 I use it --

11 MR. FIKE: I don't know if BroadVoice
12 does that, as a matter of fact. But I can -- if I'm on a
13 call, and my company has subscribed to that, this might be
14 used a little more often with IP PBX customers, but they
15 can dial a magic sequence, *, you know, 783, and I don't
16 know if that's a valid one or not, and associate their
17 browser with that call at that point, and then be able to
18 do things while they're still on the call, something like
19 that. In other words, it gets you beyond the voice
20 session or supplements the voice session, if you like
21 that.

22 MR. LADAM: You spoke of that, you were
23 speaking in terms of Enhanced Service Providers just now,
24 is that correct?

1 MR. DAVIDOW: Yes.

2 MR. LADAM: And, you're not saying that
3 these capabilities would be part of all VoIP traffic, but
4 some providers are offering them?

5 MR. DAVIDOW: We're saying that
6 90 percent of our traffic comes through three "customers",
7 if you want to call it that, Transcom, CommPartners, and
8 these have been investigated by here, and we've also
9 looked at their websites. We also said that 55 to
10 75 percent of the traffic that comes to them and then to
11 us, or comes to us directly, began in IP, but of that, 15
12 or 20 or 25 percent that did not begin, it began on the
13 TDM, but it was sent to Texas for enhancement, and then
14 comes to us. And, the question is "what happens to that
15 traffic?" And, he had said earlier that the first thing
16 that happens is anything they do to it, they have to --
17 they have to break it up into packets before they can do
18 it. Because whatever they're charging you for, they can't
19 do the thing they're charging you for without breaking it
20 into a packet switch. Once they have done that, they can
21 compress it to save money, they can do the four things he
22 mentioned, and possibly some others. That's what we're
23 talking about. So, we're talking about what happens to
24 25 percent, let's say, of our traffic that didn't begin in

1 IP. Remember, we're in a contract which talks about a
2 "waiting for a federal rate on all traffic that touches
3 the Internet at any point during the duration of the
4 call", that's the key phrase in this case. The contract
5 provided between the parties, that there is -- that will
6 await an FCC rate for traffic which touches the Internet
7 at any point during the duration, that is it doesn't have
8 to begin in IP under the contract.

9 MR. LADAM: And, here you're referring
10 to --

11 MR. DAVIDOW: 2.43 and 8.1.

12 MR. LADAM: And, your position is that
13 the language that it's "transmitted to or returned from"
14 is the same as "touches"?

15 MR. DAVIDOW: Yes. Or, I didn't ask him
16 the word "touches". I asked Dr. Fike, in his opinion,
17 that "all our traffic that we deliver to New Hampshire or
18 anywhere else go to or from the Internet at any point?"
19 And, he said "yes." That's his factual, technical
20 testimony in this kind of technical hearing.

21 MR. COOLBROTH: But, just to close the
22 loop, in each case, whether the traffic originated in IP
23 or went through this conversion process in the middle of
24 the call, when it is presented to FairPoint at the tandem,

1 it is presented in exactly the same manner as traffic that
2 is presented at the tandem from AT&T Long Distance.
3 That's right?

4 MR. DAVIDOW: That is the losing
5 argument by our opponents in every state where we won.
6 Yes.

7 MR. COOLBROTH: Is the answer "yes" or
8 "no"?

9 MR. DAVIDOW: Well, it's the fifth time
10 it's been raised as if it was a new point. Why are we
11 wasting our time with it? I said "yes."

12 MR. COOLBROTH: Is the answer "yes"?

13 MR. DAVIDOW: Of course it is.

14 MR. COOLBROTH: Thank you.

15 MR. LADAM: When you speak of the
16 traffic "originating as IP", where do you mean? I mean --

17 MR. DAVIDOW: Well, we mean that the
18 person has a modem or said that the person's house is
19 wired for the Internet, that the subscriber is wired for
20 the Internet, and that's how he began the call.

21 MR. LADAM: So, when you say it
22 originated there, you're talking about some
23 interconnection point of where the network provider -- I
24 mean, when I pick up a handset, it originates

1 acoustically, and then it gets --

2 MR. DAVIDOW: Well, we sell you a
3 handset, our own very handset.

4 MR. LADAM: Okay.

5 MR. BERRY: We sell an ATA, which
6 converts an analog signal into a digital signal.

7 MR. LADAM: Right.

8 MR. BERRY: That digital box, that
9 converter is connected to your broadband connect Internet.

10 MR. LADAM: Right.

11 MR. BERRY: It talks, in my case,
12 BroadVoice, as soon as you plug it in, our IP addresses
13 are, you know, provisioned into it. As soon you pick up
14 that handset, it's going over the Internet.

15 MR. LADAM: Right.

16 MR. BERRY: The only two things we
17 require when we went in there was power and broadband.

18 MR. LADAM: Uh-huh.

19 MR. BERRY: We don't support any of the
20 POTS, any type of connectivity to the real telephone
21 system. It's all IP.

22 MR. LADAM: You do not provide like an
23 RJ-11 that somebody would connect a traditional -- an
24 analog phone they got down at Staples?

1 MR. BERRY: No. The analog phone is
2 connected to our converter.

3 MR. LADAM: Okay.

4 MR. BERRY: The analog phone is then
5 converted to a digital signal.

6 MR. LADAM: Understood.

7 MR. BERRY: Then, the digital signal
8 goes out over the Internet.

9 MR. LADAM: Understood.

10 MR. BERRY: And, that's how we control
11 all the flow of our, you know, call processing.

12 MR. DAVIDOW: Let me add one point on
13 this, because I left it out in the beginning. And that
14 is, we're dealing with contract language here, not with
15 some others. And, this -- the nature of our argument does
16 not turn on, there's a phrase called "nomadic VoIP", and
17 "nomadic VoIP" roughly means it's portable. But, if our
18 defense is "our stuff touches the Internet at any point",
19 it turns out, if it's non-nomadic VoIP, that is, assume
20 that the traffic that comes to us started 60 percent with
21 Vonage and people who have nomadic VoIP, and another
22 25 percent with Time Warner, or about the 25 percent of
23 Americans who begin their thing in fixed cable, that is
24 that their house is wired and they can't carry it

1 anywhere. Our view is, for purpose of the contract, which
2 simply talks about the Internet, but doesn't talk about
3 "nomadic Internet", for purpose of the contract, that's
4 still Internet traffic. It starts in IP, in the Internet.
5 So, it doesn't matter, for the argument we're making here,
6 whether it's nomadic or not, because nomadic would get us
7 a qualification for a federal exemption. We're not asking
8 for a federal exemption, we're asking for an ICA
9 exemption.

10 MS. BAILEY: So, if this same
11 interconnection agreement were between Time Warner and
12 FairPoint, --

13 MR. DAVIDOW: Yes.

14 MS. BAILEY: -- and Time Warner has
15 fixed telephone service over Internet Protocol, but it
16 doesn't go over the public Internet, how would this
17 language be interpreted?

18 MR. DAVIDOW: Well, if Time Warner takes
19 it outside -- Time Warner isn't in the regular long
20 distance business. Well, first of all, it couldn't get to
21 us that way. Remember, Time -- we may get traffic that
22 started in Time Warner, but, to get to Global, Time
23 Warner, and then when they testified in Pennsylvania, said
24 "we don't do long distance, not regular long distance.

1 But, if our subscribers want to do regular long distance,
2 they can hire Global Crossing and somebody, and Global
3 Crossing can take a least cost route service."

4 Now, I'm told that Time Warner and
5 various other carriers in some cases "pay access", either
6 because they happen to get it back in some circumstances
7 and they can survive that way or as a public relations
8 gimmick, in states like New Hampshire, where they can
9 afford it, and they don't have to do it in big states like
10 New York.

11 MS. BAILEY: So, is part of your
12 argument is that you shouldn't have to pay access, because
13 you don't have any end-users from which to receive access?

14 MR. DAVIDOW: Well, I don't care -- I'm
15 really not -- I don't understand how "shoulds" get
16 involved in a contract case. You know, *pacta sunt*
17 *servanda*. It's a contract. I'm a lawyer. What I should
18 do next, after you -- I mean, the New York State
19 Commission, in commenting on my petition in the FCC in
20 this regard said "We hated making the decision in Mr.
21 Davidow's favor, but we had to. That's the law compared
22 to the facts." They said, "if we had any discretion, if
23 we had -- we'd create a new system and they'd pay at least
24 half and we would make them start over. We would do

1 wonderful things." But they said "It's just a case. A
2 certain amount of facts, a certain amount of law, words in
3 a contract; get it in, get it out. You want to go to
4 Congress and get the whole intercarrier done another way
5 or lean on the parties to do something reasonable, be
6 that."

7 But the word -- I didn't believe I was
8 ever going to have the word "should" in a technical
9 hearing on a contract. Other than, certainly, every
10 contract says that "an interpretation that ruins one party
11 that nobody would have ever signed." Global would
12 certainly have never signed a contract saying that it
13 would pay 2.8 cents a minute for something it's paid a
14 tenth of a cent a minute to deliver.

15 MS. BAILEY: And, that's because Global
16 wasn't in the business --

17 MR. DAVIDOW: That's right.

18 MS. BAILEY: -- that they're in now --

19 MR. DAVIDOW: Right.

20 MS. BAILEY: -- when they negotiated
21 this contract?

22 MR. DAVIDOW: And, they were told that
23 this is, for want of a better word, a contract, this is a
24 standard Verizon contract existing at the time. And, so,

1 when they went into the VoIP business, they inherited
2 whatever typical VoIP contract Verizon happened to like at
3 that time, in light of its global interests. And, one of
4 its global interests was to hold the world steady on VoIP
5 until it evolved a tragedy. It's strategy was buy MCI and
6 go into the VoIP business, and then go for low rates.

7 MS. FABRIZIO: Excuse me. Have we now
8 moved from an argument from Global NAPs that you don't owe
9 the tariff access rates, but a lower VoIP type rate, and
10 now you're saying "no, you're actually totally exempt
11 under the interconnection agreement"?

12 MR. DAVIDOW: No. Let me say the
13 argument is in two steps. The argument is, Step 1, the
14 contract says, clearly says, that the words of this
15 contract trump the tariff. That's also federal law. And,
16 in fact, we cited federal cases to you that say "there is
17 no such thing as a pure tariff charge between two parties
18 who sign a contract." Usually, the contract -- the end of
19 the contract says, in essence, that "this contract is the
20 entire agreement between the parties." So, our view is
21 the contract trumps the tariff, because it says it does.

22 MS. FABRIZIO: Okay.

23 MR. DAVIDOW: And, we would certainly
24 have an argument under the recent decision of Judge

1 Robertson that our stuff is nomadic VoIP and doesn't pay
2 under federal law on a tariff. But this isn't a tariff
3 case; it's a contract case.

4 MR. COOLBROTH: I just want to bring up,
5 just to make sure --

6 MR. DAVIDOW: Yes.

7 MR. COOLBROTH: -- the parties are
8 aware, we do not, by our silence, acquiesce in that legal
9 position at all.

10 MR. DAVIDOW: Yes. I mean, I can show
11 the clause which says that the contract trumps it. I
12 think we cited it.

13 MS. BAILEY: 1.2?

14 MR. DAVIDOW: Yes, 1.2. Says that "in
15 order of preference". The first preference is the words
16 of the contract. The second is the tariffs.

17 MS. BAILEY: All right. But that
18 doesn't mean -- I don't think that means that "the
19 contract trumps the tariff", if the contract says the
20 tariff applies.

21 MR. DAVIDOW: Oh, of course. No. The
22 contract trumps the tariff. The contract creates an
23 exemption that is not in the tariffs, then an exemption is
24 created.

1 MS. FABRIZIO: What is the second part
2 of your argument?

3 MR. DAVIDOW: Remind me of the second
4 part of your question.

5 MS. FABRIZIO: No. You said "there are
6 two steps to your argument now." One is "the contract
7 trumps the tariff." What was the second one?

8 MR. DAVIDOW: And, the second one is
9 that we don't have to meet the federal test for exempt
10 traffic. That is, there are federal arguments about the
11 traffic is changed in form or content, there were federal
12 arguments about nomadic VoIP. We're happy to debate those
13 points. But the contract keys the -- its "postponement"
14 which I call it, rather than "exemption", its postponement
15 of the rate on all traffic that goes to or from the
16 Internet. So, it doesn't have the word "nomadic" in it,
17 and it doesn't say all -- an "exemption for all traffic
18 changed in form or content." So, although we've discussed
19 the federal standards of like "nomadic" or "changed in
20 form and content". The only standard that matters, if
21 that term of the contract is decisive, is whether it went
22 to or from the Internet.

23 The question, what other people have
24 negotiated at various points, I mean, there's anecdotal

1 evidence from me, from Ms. Bailey, that this person pays,
2 doesn't pay, negotiated it, when they did it historically,
3 why they did it. We don't know. We certainly know that
4 it's been litigated, and the FCC has been begged to
5 clarify the issue, because one of the things they said
6 about VoIP in the beginning is they wanted one rate
7 nationally. They sure haven't got it.

8 MS. FABRIZIO: Can I interject again?
9 And, I'm trying to understand where we're at.

10 MR. DAVIDOW: Yes.

11 MS. FABRIZIO: Are you arguing that this
12 interconnection agreement exempts Global NAPs from any
13 charge on the traffic that is at issue in this case?

14 MR. DAVIDOW: I think, let me say it as
15 precisely I can. That the language says that "we will
16 know what is owed when the FCC says so." I didn't say it
17 was exempt. We're not exempt. And, that I believe that
18 recent cases have concluded the FCC hasn't said so yet.

19 MS. FABRIZIO: Okay.

20 MR. DAVIDOW: So, it is postponed, as I
21 would put it. We might owe millions.

22 MS. FABRIZIO: Mr. Davidow, so, there is
23 no room in this agreement, you're saying, for a negotiated
24 rate between the two parties?

1 MR. DAVIDOW: Oh, no. No, I said all
2 along, there's a dispute settlement rate, that, as soon as
3 we were called, I had just finished a trial in New York, I
4 knew what the VoIP rate was, it was 00045, that's what all
5 the big boys pay, that's what's affordable. We offered it
6 immediately. And, we did not -- we got the return that we
7 should immediately pay 2.8 cents a minute in full,
8 \$4 million, in regard to, you know. And, so, the answer
9 is, "yes", we, when the dispute arose, we offered under
10 dispute settlement to negotiate. And, we, I think, also
11 have offered in this state to sign new agreements with any
12 and all parties in the state at 0045. Or, if they offer a
13 slightly higher rate, we would submit it to the Commission
14 on -- where they would look at the discrimination
15 question, they look at the cost question, and we would
16 then know a rate. Whether that rate should go backwards
17 would be a separate question.

18 MS. BAILEY: Can I ask a technical
19 question? This is for one of you guys back there. Does
20 Global NAPs transmit any of its traffic to the Internet?

21 MR. DAVIDOW: Yes, happens all the time.

22 (Ms. Bailey interrupting.)

23 MR. DAVIDOW: Yes. Okay.

24 MS. BAILEY: Let your witnesses answer

1 please.

2 MR. DAVIDOW: Yes.

3 MR. MASURET: Could you ask that again
4 please.

5 MS. BAILEY: Does Global NAPs transmit
6 any of its traffic to the Internet from New Hampshire?

7 MR. MASURET: So, traffic that is
8 destined for New Hampshire, that's what you want to talk
9 about?

10 MS. BAILEY: I want to talk about New
11 Hampshire traffic, and I want to talk about this
12 definition that says "any traffic that is transmitted to
13 or returned from the Internet." Do you transmit any
14 traffic to the Internet?

15 MR. MASURET: Okay. So, just so we're
16 on the same page here. So, if somebody hands me a call in
17 New York, say, and it's destined for New Hampshire, do I
18 get it to New Hampshire to the TDM connection with
19 FairPoint over the Internet?

20 MS. BAILEY: Do you?

21 MR. MASURET: Is that your question?

22 MS. BAILEY: My question is, "do you
23 transmit any traffic to the Internet?"

24 MR. MASURET: It's a very vague

1 question.

2 MR. DAVIDOW: Ms. Bailey, --

3 MS. BAILEY: That's what the terms of
4 the interconnection --

5 MR. DAVIDOW: No, it doesn't, Ms.
6 Bailey.

7 MS. BAILEY: It does --

8 MR. DAVIDOW: No. And, Ms. Bailey, let
9 me explain the confusion, I think. We're a forwarder.
10 And, the issue is, "do we transmit any traffic?" But
11 through somebody we deal with either comes from or gets to
12 the Internet.

13 MS. BAILEY: Is that what you think --

14 MR. DAVIDOW: We're always in the
15 middle. And, whether something comes from the Internet
16 and through us and then to New Hampshire or we send it to
17 AOL, which sends it to the Internet, the -- remember, one
18 of the points was that Verizon's purpose in writing this,
19 its first of its two purposes, was to make sure that it
20 would never again have to pay us 2.8 cents when we send
21 something to the Internet via EarthLink. And, so, it was
22 saying, if the traffic reaches the Internet, then what we
23 owe you under recip. comp. goes down from 2.8 to 0007.
24 Verizon is trying to get itself a discount.

1 MS. BAILEY: Well, that's kind of really
2 not relevant. Because you're asking us to interpret this
3 language in 2.43 to say that, and you keep repeating it,
4 anything that "touches the Internet", but the words don't
5 say "touches the Internet".

6 MR. DAVIDOW: Well, the traffic that
7 come from or went to the Internet, but it doesn't say
8 we're the person who gets it there. Our friends get it
9 there.

10 MR. LADAM: It doesn't say "went to or
11 comes from", it says --

12 MR. DAVIDOW: Yes.

13 MS. BAILEY: "Transmitted to" --

14 MR. LADAM: "Transmitted to or returned
15 from it".

16 MR. DAVIDOW: But it doesn't say by us.

17 MR. LADAM: And, I recently --

18 MS. BAILEY: But, excuse me, if it
19 different say by you, this interconnection agreement is
20 between you and them, FairPoint.

21 MR. DAVIDOW: Well, I know that, but
22 that's why we lose a lot of cases, because we have to put
23 in a witness to say "the traffic I gave Global, I brought
24 it from the Internet." But the answer is "that's good

1 enough." When we win, that's what we prove.

2 MS. BAILEY: Okay.

3 MR. DAVIDOW: We prove that the traffic
4 that we forward was sent to the Internet by somebody, who,
5 in that chain of that very call, that very call went to or
6 got to the Internet in its little great circle around the
7 world.

8 MS. BAILEY: I understand.

9 MR. PHILLIPS: We were talking about
10 this point as well. And, I think the language is
11 specific. And, I understand that you keep interpreted the
12 language to say something else, but the words are
13 "transferred to" --

14 MS. BAILEY: "Transmitted".

15 MR. PHILLIPS: - "transmitted to and
16 returned from". "Returned" means that it started with
17 you, you took it somewhere else, then it was returned to
18 you. "Returned".

19 MR. DAVIDOW: I don't know of the word
20 "us", it's the "traffic" that is defined.

21 MR. PHILLIPS: But "returned" suggests
22 that you had it at one point.

23 MR. DAVIDOW: No. No, I think that's
24 talking about the direction. That, obviously, if Verizon

1 is dealing with us, and they send us a call, and we send
2 it to EarthLink, and it goes onto the Internet. And,
3 Verizon wants not to pay us 2.8 cents, so they say "that
4 call got to the Internet."

5 MR. PHILLIPS: Uh-huh.

6 MR. DAVIDOW: Now, vice versa, if the
7 traffic starts at grandma's house in Holland, and she's
8 got Wifi. So, it starts by leaving her house on the
9 Internet, the only way it gets to Vonage or somebody is --
10 or to Transcom is that way, then it goes to the Internet,
11 then through us, and then back to FairPoint.

12 MR. PHILLIPS: How is that "returned
13 from the Internet"?

14 MR. DAVIDOW: Well, it's returned
15 because the housewife sent it to the Internet, and then it
16 returned from the Internet to the TDM conclusion.

17 MR. PHILLIPS: You used the term
18 "brought from the Internet", that's different from
19 "returned from the Internet".

20 MR. DAVIDOW: Well, once it got there,
21 when it comes back to TDM, then it's returned.

22 MR. PHILLIPS: It's returned to TDM.

23 MR. ECCLES: Can I? If I may, a phone
24 call has traffic in both directions and transmits and

1 receives, very much like a call to a dial-up call to an
2 ISP. And, so, there's traffic which goes from the user to
3 the Internet and there's traffic on that call that comes
4 from the Internet to the user. And, Voice-over IP is very
5 much the same, where the voice is going in both
6 directions. It's transmitted to and returned from in the
7 same call. And, I don't know the legal interpretation of
8 it, but, certainly, that's the way I read it.

9 MR. LADAM: What I'm wrestling with I
10 think is different from that point.

11 MR. ECCLES: Okay.

12 MR. LADAM: I recently booked a flight
13 to Sacramento, but I didn't really, I booked a flight to
14 Denver, staying overnight and continuing on. And, the
15 fact that I specified I was going to Denver actually cost
16 me some more money. Now, I might have ended up stopping
17 in Denver, and by one definition I'm transmitted to
18 Denver, by another I'm not, because it wasn't my
19 initiative and I didn't specify that I need to go through
20 there. I'm wrestling with whether there's a similar
21 distinction for traffic routing here. If there was no
22 explicit requirement that a call traverse the Internet,
23 because it's going to gain something by doing that, as
24 opposed to a call happened to ride over the Internet, does

1 that make a difference? And, I'm just wrestling with what
2 the language says here.

3 MR. BERRY: But, as a Voice-over IP
4 provider, all of my calls are going to the Internet. And,
5 as Greg said, the return of that voice is returned from
6 the Internet. Every one of them, there's no exceptions.
7 There's no -- you know, it can't happen on a Tuesday that
8 I just pick up my analog phone and BroadVoice is there.

9 MS. BAILEY: Right. But --

10 MR. LADAM: I do understand that.

11 MR. BERRY: That's what I'm trying --

12 MR. LADAM: I do understand that. But
13 that means all of your traffic is transiting the Internet.

14 MR. BERRY: And returned.

15 MR. LADAM: Is transiting.

16 Bidirectionally transiting it, but it doesn't terminate
17 there. This is a question of termination.

18 MR. FIKE: Does anything terminate on
19 the Internet?

20 MR. LADAM: Sure.

21 MS. BAILEY: Dial-up calls used to.

22 MR. FIKE: Well, a webpage is not the
23 Internet. A webpage is a web server.

24 MS. BAILEY: My distinction I think is

1 that this interconnection agreement is not with you. And,
2 so, yes, it's true that your traffic may originate inter
3 -- may be transmitted to or returned from the Internet.

4 MR. BERRY: But I thought it was, from a
5 BroadVoice perspective, and when I'm sending Voice-over IP
6 calls to Global NAPS, that is all Voice-over IP over the
7 Internet.

8 MS. BAILEY: Yes, it gets to them over
9 the Internet. Well, it gets to CommPartners over the
10 Internet.

11 MR. BERRY: Not necessarily.

12 MS. BAILEY: So, it doesn't get to them
13 over the Internet?

14 MR. BERRY: No, no, no, no. It always
15 get to -- you put "CommPartners" in there, that's what I
16 said "not necessarily" about. It could be another
17 provider.

18 MS. BAILEY: Right.

19 MR. BERRY: We use multiple providers.

20 MS. BAILEY: Okay.

21 MR. BERRY: All of the Voice-over IP
22 calls that my customers make go out to the Internet and
23 it's returned from the Internet. If I'm interfacing with
24 Global NAPS, it goes out to the Internet, Global NAPS, and

1 it's returned from the Internet, Global NAPs, to me, as a
2 customer.

3 MS. BAILEY: And, does Global NAPs use
4 the Internet to get it --

5 MR. BERRY: I can't speak for them, to
6 be honest, from a technical standpoint.

7 MS. BAILEY: Okay. So, I understand
8 that the customer, the end-user customer who picks up the
9 phone, uses the Internet to get the call going.

10 MR. BERRY: And the provider.

11 MS. BAILEY: Yes.

12 MR. BERRY: They use a service provider.

13 MS. BAILEY: Correct.

14 MR. BERRY: They use it to route the
15 calls --

16 MS. BAILEY: Okay.

17 MR. BERRY: -- to Level 3, Global NAPs,
18 iBasis, whomever.

19 MS. BAILEY: And, when you get that call
20 from your customer, what do you do with it?

21 MR. BERRY: Explain what you're talking
22 about.

23 MS. FABRIZIO: Maybe I can put it in
24 dummy terms, from my perspective. Is Global NAPs somehow

1 connected to the Internet or is Global NAPs --

2 MR. MASURET: Yes.

3 MS. FABRIZIO: And, how is Global NAPs
4 directly feeding into and out of the Internet?

5 MR. MASURET: So, we receive phone
6 calls, are transmitted to us, --

7 MS. FABRIZIO: From a customer such as
8 BroadVoice?

9 MR. MASURET: From a customer like a
10 BroadVoice, like a customer like a MagicJack, like a
11 customer like a Transcom, over the Internet, the public
12 Internet.

13 MS. FABRIZIO: So, that it --

14 MR. MASURET: So, we receive calls into
15 our switches, our conversion switches, and that's where
16 Greg works, over the Internet, see what we need to do with
17 them. And, in the case of this, of this, of why we're
18 here today, route them to New Hampshire. Convert them at
19 our point of interconnection with FairPoint to TDM, to
20 hand off to FairPoint.

21 MS. FABRIZIO: So, it goes to New
22 Hampshire via Internet, and it's converted at the tandem?

23 MR. MASURET: It comes into our network,
24 the Global NAPs network, as IP, and then we put it over

1 our own backbone, which happens to be ATM, and IP is
2 involved with it as well.

3 MS. BAILEY: But it's not on the public
4 Internet, your backbone?

5 MR. MASURET: At that point.

6 MS. BAILEY: Okay.

7 MR. MASURET: It could be. I mean,
8 could it be?

9 MR. ECCLES: It could be.

10 MR. MASURET: It could be. So, --

11 MS. FABRIZIO: Between you, on your
12 network when you convert it, and when you send it to
13 FairPoint's tandem, there's no Internet involved with it
14 from there to there?

15 MR. MASURET: Right. So, when we
16 finally get to the point of interconnection with
17 FairPoint, we have to, because they don't offer anything
18 else, turn it into TDM in order to hand off to them.

19 MS. FABRIZIO: And, you do it on your
20 network, which is not the Internet, it's your network?

21 MR. MASURET: When we get to that last
22 interface, that last box, we have to turn it into TDM.
23 So, from ATM, from IP, into TDM.

24 MS. FABRIZIO: But to get it from you to

1 that point of interconnection?

2 MR. MASURET: Yes. ATM and IP. And, if
3 there is anything that you would like to add, feel free.

4 MR. DAVIDOW: To go back, the most key
5 three words in the whole contract are the words "at any
6 point". It says that the "waiting for federal guidance is
7 for all calls that are in the Internet at any point during
8 the duration of the call." The English language can't be
9 any clearer than the words "at any point", and that's what
10 Verizon wanted.

11 MS. FABRIZIO: Okay. Let me just
12 interject again. It sounds to me like we're really
13 leaning heavily towards a legal interpretation of the
14 interconnection agreement at this point. What do the
15 parties want to do? Fred, do you have more questions to
16 ask of the Global NAPs witnesses? Do we want to --

17 MR. PHILLIPS: I have a couple more
18 questions.

19 MS. FABRIZIO: Okay. We have more
20 questions for the witnesses. And, then, we just need to
21 be thinking about whether we want to adjourn here and do
22 further discovery, do we want to do briefing on the legal
23 issues? How do we want to go from here? So, we'll let
24 Paul.

1 MR. PHILLIPS: Well, so, for these major
2 customers, CommPartners, Transcom, "UniPoint", is that
3 what it is?

4 MR. DAVIDOW: Yes.

5 MR. PHILLIPS: And IDT. Those are the
6 major ones?

7 MR. DAVIDOW: IDT is not major, but it's
8 a fourth customer.

9 MR. PHILLIPS: Okay. Are they -- do
10 they have direct trunks to the Global NAPs switch?

11 MR. MASURET: Yes, they do. They have
12 -- they can interconnect over IP, TDM, and ATM. So, they
13 can use any three of those technologies.

14 MR. PHILLIPS: And, Dr. Fike, you talked
15 about IP as a protocol, and you were using that
16 interchangeably with the Internet. But I think some of
17 the later questions made a distinction between, you know,
18 something that's in IP format that might be within an
19 internal system and something that is actually on the
20 public Internet. Do you want to speak to that
21 distinction?

22 MR. FIKE: Well, a good portion of my
23 time in the last few weeks has been to try to get a
24 definition of the "Internet". There is no definition of

1 "the Internet", except one place in -- a couple of places
2 actually in the U.S. Code, which is not particularly
3 helpful. There's a very good paper by a gentleman at the
4 FCC that investigates this in I guess 40 pages and decides
5 there's not really a definition, but I can talk about it
6 if you'd like. But the public Internet really isn't
7 defined, but the Internet, with a "I", what we always
8 think of, is usually defined by application. And, I'm
9 going to get to your question, but I want to deal with
10 this issue, the public Internet, first.

11 People will tell you "the Internet is
12 the Web" or "the Internet is e-mail." It really isn't.
13 Those are just applications that are hung onto a network.
14 A slightly better definition is "connectivity". You could
15 get anywhere from here, unless you're blocked, such as in
16 China, of course, which implies a uniform address space.
17 The definition is often used of a common protocol stack, a
18 TCP/IP protocol stack. Okay? You see IP already. And,
19 the fourth one is, which is really part of the
20 connectivity, is accessibility or reachability.

21 Now, what you're suggesting is that
22 traffic that is transmitted in IP frames across a private
23 line, I believe, meets the protocol test, but it does not
24 meet the reachability test on that private line. And,

1 therefore, it would not be said in common terminology to
2 be on the public Internet.

3 And, I would say, if any of the switches
4 that that traffic traverses have access to the global
5 Internet or the Internet address space, then that makes
6 those lines reachable, even though we would, I think, or
7 these guys would agree that the voice packets that we're
8 talking about don't go across the public Internet in that
9 instance. So, we're talking about something that's
10 connected to the Internet and could get to the Internet if
11 it wanted to. And, I don't mean to be evasive, but that's
12 -- that I think would be my answer.

13 MR. MURRAY: So, just to be clear, I use
14 the corporate network, for example.

15 MR. FIKE: Yes.

16 MR. MURRAY: I mean, our organization
17 has --

18 MR. FIKE: An intranet, a commonly used
19 public term.

20 MR. MURRAY: Well, yes. So, by your
21 example, our traffic in my corporation is on the Internet,
22 even though we have a completely private network and
23 there's multiple jump-on and jump-off points to the
24 Internet.

1 MR. FIKE: You have a big firewall and
2 it's hard to get through it, I would suggest that if your
3 switches are all completely partitioned, so that there is
4 no way that anybody in your corporate network can get to
5 the public Internet, that they would have to make a
6 different connection with a different wire from their
7 desktop to get to the public Internet, then I would agree
8 that you have a completely private network. But, if they
9 can dial a -- if they could enter a password to get out to
10 the public Internet, the privileged few that can do that
11 from their desktop, then I would argue that your network
12 is part of what is called the "deep Internet", which is
13 not normally addressable, but which is there. And, that
14 might come as a surprise to your system administrator.

15 MS. FABRIZIO: Fred, do you have --

16 MR. PHILLIPS: I have one more, one more
17 question.

18 MS. FABRIZIO: Oh, I'm sorry.

19 MR. PHILLIPS: You raised, Mr. Davidow,
20 before the Commission the possibility that Global NAPs
21 would cooperate with the TDS Companies in effectuating
22 this blockage of the traffic.

23 MR. DAVIDOW: Yes.

24 MR. PHILLIPS: And, I guess, for

1 purposes of the technical work session, which partly has
2 to do with settlement issues, --

3 MR. DAVIDOW: Yes.

4 MR. PHILLIPS: -- I wonder if you could
5 just elaborate on what you mean by that and what you're
6 proposing, so that we can have kind of a good discussion
7 about it?

8 MR. DAVIDOW: Mr. Masuret, please.

9 MR. MASURET: I would recommend that our
10 technical people, our routing people, get together with
11 whoever appropriate at your companies to review a list of
12 codes, and possibly OCN numbers. And, once we are on the
13 same page as to what the identifier is, I believe it will
14 be OCN, do you think it would be OCN that we would block
15 traffic to certain telephone companies in New Hampshire?
16 I think we would do it by OCN, but I would let the
17 technical people come up with that.

18 MR. ECCLES: It gets more complicated
19 with LMP, but it's basically a list of numbers that can
20 take another route.

21 MR. MASURET: So, we would publish this
22 to our customer base and say "These are no longer routed
23 through Global NAPs. Please don't send them to us." And,
24 then, we would block them in our switches as well. So,

1 you should not get any calls to those numbers. We have
2 done this in Palmerton, down in Pennsylvania, and it was
3 successful. I don't know of any complaints. And, we can
4 implement it very quickly.

5 MR. PHILLIPS: It came up in the course
6 of the underlying proceeding in reference to the TDS CABS
7 bills, that the OCN that appeared, which he had tracked
8 back through the LERG through Global NAPs, was an OCN that
9 your former counsel, Mr. Scheltema, said was only used by
10 Global NAPs in New York State. And, so, he said "there's
11 no way that traffic from this OCN could ever get to New
12 Hampshire." And, yet, the CABS bills, you know, plainly
13 demonstrated that the calls had terminated in New
14 Hampshire. So, there's -- I know there's a bit of
15 weariness from my clients, in terms of knowing that the
16 OCNs are accurate and complete, and, you know, that we've
17 identified the right ones, and that there's not a way to
18 get around that. So, if that can be part of the
19 discussion?

20 MR. MASURET: Sure. Absolutely.

21 MR. PHILLIPS: Okay.

22 MS. BAILEY: Are you talking about, you
23 would identify the traffic by the Global NAPs OCN or by
24 the terminating OCN?

1 MR. MASURET: The terminating OCN.

2 MS. BAILEY: So, it would be their OCN?

3 MR. MASURET: Correct. That's how we
4 would pull those out --

5 (Interruption by the court reporter.)

6 MR. MASURET: I'm sorry.

7 MS. BAILEY: That's how we would pull
8 out --

9 MR. MASURET: Greg, do you know the
10 process? If you know the process, you can speak to it.

11 MR. ECCLES: Well, there's a set of
12 numbers that are assigned to your companies, to the
13 companies that you represent. And, those numbers are
14 defined in the LERG. They're relatively easy to pull out
15 of the LERG, and they're very easy in the routing engines
16 to block those, to block access to those numbers. There's
17 also, with local number portability, numbers which belong
18 to other carriers, the block belongs to other carriers'
19 OCNs, but they have been ported into your carriers, they
20 will terminate on your carriers' switches. Those numbers
21 are harder. They have to -- we have to somehow get into
22 the NPAC or get a list of numbers from your carriers that
23 then we can go in, "we" being Global NAPs, and Convergent
24 supports the switches. So, it's a pretty straightforward

1 process to take a set of numbers and not route to them.

2 MR. MASURET: I also believe that the
3 porting issue isn't a big issue when it comes to the
4 independent telephone companies, because there isn't a lot
5 of porting going on. Is that fair to say? I mean,
6 there's not a lot of competitive CLECs who are taking
7 numbers from you and vice versa.

8 MR. PHILLIPS: Yes. I mean, we have an
9 issue with IDT actually, which is coming up tomorrow
10 before this Commission, that does have an issue of
11 porting. I think one of the TDS companies has ported
12 about 400 numbers to IDT. So, there's, I mean, it's not
13 huge, but there is some going on.

14 MS. BAILEY: But could I ask a question
15 about that? If your customer has ported a number to IDT,
16 because they're now a MetroCast customer, or they have
17 ported a number to Comcast, then it's not going to go to
18 you anymore, right?

19 MR. MURRAY: On the terminating side.
20 But, if they -- if somebody is a Vonage customer, for
21 example, that's coming through Global NAPs, trying to call
22 that customer, if they blocked us at the NPA NXX level,
23 that may -- that may die on their network.

24 MS. BAILEY: Oh. So, it would prevent

1 termination of a call to a Comcast customer who has ported
2 their number from you?

3 MR. MURRAY: It could be one of the
4 problems that would come out of it, yes.

5 MR. MASURET: But that would just mean
6 we would just refuse it to our customers, which is okay.

7 MR. MURRAY: Right. And, they would
8 find a way.

9 MR. MASURET: So, I think that this
10 would not be a problem --

11 MR. MURRAY: So, let me ask you this
12 question. I mean, if, you know, we've been talking to
13 FairPoint about implementing a disconnect, would you guys
14 object to us continuing to pursue that and have FairPoint
15 turn off that traffic at their level? Because I'm a
16 little more comfortable, in terms of the visibility,
17 because we don't have a lot of visibility to what you guys
18 -- you guys throw stuff at the tandem and it comes to us
19 over our tandem trunk groups, and we don't have any way
20 really to discern that it's your traffic versus a customer
21 from XYZ, you know, Long Distance in Colorado.

22 So, I guess my question to you is, if we
23 were to -- if we were to ask FairPoint to implement that
24 exact same block, for all intents and purposes, it would

1 stop your traffic from hitting our network, would you guys
2 object to that?

3 MR. MASURET: On the surface, no. From
4 a technical perspective, --

5 MR. ECCLES: You'd prefer both. I mean,
6 obviously, if the calls are going to fail, it would be
7 better to fail them sooner. Certainly, I don't see why it
8 would be an issue to have FairPoint do it, but it would be
9 helpful if those same numbers could be given to Global, so
10 that Global could do it as well, just because then the
11 call -- the call won't go to the tandem.

12 MR. DAVIDOW: "Belt and suspenders" we
13 lawyers like to say.

14 MR. MASURET: We don't want to send
15 calls that are just failing then. We would rather fail
16 them as well.

17 MR. PHILLIPS: And, then, just finally,
18 Mr. Davidow, you were talking about the rates and the
19 00045.

20 MR. DAVIDOW: Yes.

21 MR. PHILLIPS: And, I think you said
22 there was a willingness on Global NAPs's part to go a
23 little higher than that. And, I don't want to talk about,
24 you know, previous settlement negotiations, particularly

1 with a transcript being made. But is it your
2 understanding that Global NAPs is willing to go higher
3 than a 0007 rate, in terms of --

4 MR. DAVIDOW: Well, we can't -- we can't
5 make a living above 007. Also, when we say "rate", you
6 have a rate going forward, you have a rate going back.
7 And, if you're going back with late charges, without late
8 charges, back one year, back three years. So, you have a
9 range of negotiations about the amount of money, and then
10 you have a question of whether you would accept time
11 payment or you don't. I don't think we can conduct all
12 that right here.

13 MR. PHILLIPS: No.

14 MR. DAVIDOW: But I'm saying that the
15 rate itself is only one of about four variables in that
16 negotiation.

17 MR. PHILLIPS: I think all I'm looking
18 for is a sense that I didn't get in my prior settlement
19 talks that there is some flexibility?

20 MR. DAVIDOW: Yes.

21 MR. PHILLIPS: Okay.

22 MR. DAVIDOW: Also, you're negotiating
23 with a different person, because I negotiate with the
24 counsel to the receiver. The receiver is supposed to

1 operate Global NAPs in a way to maximize its continuing
2 economic value. How he sees that is how he sees it, and
3 he's his own person.

4 MR. PHILLIPS: I was negotiating with an
5 attorney named "Davidow", but unfortunately it wasn't
6 Joel.

7 MR. DAVIDOW: A very irrational person,
8 and immature, too. He's my little brother.

9 MR. PHILLIPS: And, then, in terms of
10 the bond, I know we haven't asked for a bond, but, in
11 Vermont, in an analogous case involving the TDS Companies,
12 --

13 MR. DAVIDOW: Yes.

14 MR. PHILLIPS: -- we did ask for a bond.
15 And, we were told by, again, Mr. Scheltema that "as much
16 as Global NAPs might be willing to," --

17 MR. DAVIDOW: Yes.

18 MR. PHILLIPS: -- "unfortunately, you
19 were constrained by the receiver in Massachusetts from
20 doing so." Is that the same situation still?

21 MR. DAVIDOW: It was at the time two --
22 three things. There were a variety of injunctions, all of
23 which had been gathered, SNET had its own injunction,
24 which was in front of one judge, then Verizon had one, and

1 there was a person called an "auditor". We now -- all
2 injunctions are superseded by the receivership order. So,
3 it would -- we would have had to say "are we violating
4 Judge Magonety's [*sic*] thing in the SNET case?" So that
5 I'd have to research it.

6 MR. PHILLIPS: So, in terms of posting a
7 bond in New Hampshire, you're saying -- you're suggesting
8 that there might be a constraint on Global NAPs's ability
9 to do that?

10 MR. DAVIDOW: Well, first of all, well,
11 if the receiver won't do it, he won't do it, but that
12 wouldn't be based on my legal advice or anything else.
13 And, if he would do it at one price and not another, then
14 we would do what we did. And, if we went into federal
15 court, it would be something else. So, I think we're
16 speculating on speculations. It's highly speculative at
17 this point.

18 MR. PHILLIPS: Yes, which raises another
19 question for me. Which is that, you know, we have what we
20 consider to be a substantial arrearage that we're owed by
21 Global NAPs in New Hampshire. And, one of the questions
22 that has come up for us, looking at cases from around the
23 country, is whether Global NAPs, Inc., which is the
24 certificated -- the authorized provider, has sufficient

1 assets to cover that obligation, if that obligation were
2 to be found?

3 MR. DAVIDOW: There will be a report.
4 The receiver is charged by Judge Zobel to both inventory
5 the assets, where the asset has no known value except by
6 putting it up for auction, to find out what to auction,
7 and, in some cases, we ask an expert, such as a venture
8 capital firm, what their opinion of the value is. So,
9 until the receiver makes a report, I can't answer your
10 question. That's the question that the receiver is
11 supposed to answer to the judge. I mean, I've heard
12 values of Global NAPs of anything from \$50,000 to
13 100 million, depending on who was bidding for it on which
14 day, and what the FCC had said about the rates it would
15 have to pay. I can't say.

16 MS. FABRIZIO: Are those invoices from
17 TDS to Global NAPs before the receiver? Are they part of
18 --

19 MR. DAVIDOW: No. The receiver at this
20 point is not a bankruptcy. It's a different proceeding.
21 The receiver simply says that, due to two particular
22 bills, which are unpaid, but on cases still on appeal;
23 6 million to AT&T, 57 million to Verizon, one of which
24 could be reversed by the Supreme Court, the other I argued

1 in the Second Circuit ten months ago and they never
2 decided. That, in order to make sure that there is money
3 available in light of that, that all revenues that come to
4 any Global NAPs company go into the account of the
5 receiver, not into the account of Frank Gangi or the
6 Company. And, that all checks payable to anybody are
7 co-signed or signed by the receiver. At this point, the
8 checks are to vendors who relate to the ongoing conduct of
9 the business. There are no checks which go to people who
10 have disputed claims.

11 MS. FABRIZIO: So, the TDS invoices are
12 not considered part of accounts payable currently under
13 the receiver, they are somewhere in limbo as disputed?

14 MR. DAVIDOW: That's right. They are in
15 with, at this point, as I understand it, the statute of
16 our challenging those invoices in federal court is four
17 years.

18 MS. FABRIZIO: Because, technically,
19 you're still connected with TDS, right? And, --

20 MR. PHILLIPS: Indirectly, yes.

21 MS. FABRIZIO: And, there's an order --

22 MR. DAVIDOW: Well, it's --

23 MS. DAVIS: Excuse me. Can you add
24 FairPoint to all of this?

1 MS. FABRIZIO: Well, I'm discussing this
2 one in particular because there's an order out that says
3 you owe something to TDS. The connection is still there,
4 but the invoices, you're saying, are --

5 MR. DAVIDOW: Well, the invoices are I
6 think of lesser status than those that are the ones on
7 which the receivership was based, but I'm not an expert on
8 receivership. You know, my understanding is that, if
9 there is an order of this Commission, and, well, I believe
10 that, for instance, if they wanted to try to enforce it by
11 attaching a piece of property, the receivership order says
12 they can't. It says everything in Global, everything in
13 the world is now owned by the receiver. And, therefore,
14 if they wanted a penny, they could only get it when the
15 receiver gives them it. There's no Global to give them
16 the money. Global doesn't have any money.

17 MS. FABRIZIO: I understand that. I'm
18 just wondering if the receiver is busily paying off past
19 due invoices?

20 MR. DAVIDOW: Not unless they relate to
21 the forward movement of the business. The receiver is
22 allowed to pay anything that allows Global to earn new
23 revenue. All -- Anything for a past dispute is not a
24 priority of the receiver.

1 MS. FABRIZIO: Do you have more
2 questions, Paul?

3 MR. PHILLIPS: No. I mean, that was
4 very helpful. I guess that also goes to the question I
5 had for the Staff, which is that, back in the fall, prior
6 to the final order in the case, the November order, the
7 Staff had filed a memorandum recommending that Global
8 NAPs's authority to serve in New Hampshire be revoked.
9 And, I guess I'm wondering whether you've heard anything
10 today relative to subsequent conduct by Global NAPs or its
11 financial condition that would cause you to want to move
12 that recommendation forward?

13 MS. BAILEY: I think the Commission
14 heard some things that are relevant to that
15 recommendation. So, we'll see where it goes.

16 MR. PHILLIPS: I've got nothing further.

17 MS. FABRIZIO: Before we give Fred a
18 chance to continue his questions, do -- have we agreed
19 that the three parties now are going to work together to
20 cooperate to terminate any Global NAPs traffic to TDS
21 termination?

22 MR. DAVIDOW: Yes. We did.

23 MS. FABRIZIO: Granite State has already
24 -- not offering?

1 MR. STAFFORD: No, we're not. We have
2 not --

3 (Interruption by the court reporter.)

4 MR. STAFFORD: Yes. My name is Bill
5 Stafford, with Granite State Telephone. Yes. Granite
6 State has not taken any action to disconnect Global NAPs
7 at this point. But we wish to do that in the most
8 expeditious manner possible. Whether it's through
9 FairPoint and possibly through Global NAPs, that's yet to
10 be determined. So, I'm not in a position to say which
11 methodology we're recommending. We would prefer, I think,
12 FairPoint.

13 MR. COOLBROTH: This kind of sticks me
14 in a little bit of a conflict position, but I'm not going
15 to -- I'll legally argue one way or the other, but the
16 client is advising me that there are costs associated with
17 having FairPoint do it. And, so, that's going to have to
18 be an issue that would have to be discussed with the
19 parties. But I can't make a --

20 MS. DAVIS: Yes. We'll continue to
21 discuss, we have a good relationship with these two
22 parties. The problem is, you know, it's really a stick in
23 the eye to continue to make us shoulder the burden of
24 costs that GNAPS is continually causing. And, this just

1 continues down the same road. Our engineers are, you
2 know, we'll just have to put in more time and effort and a
3 ton of money in assisting, you know, a problem that GNAPS
4 caused, frankly.

5 MS. FABRIZIO: And, this is certainly
6 not intended to stick a stick in your eye or --

7 MS. DAVIS: I mean, not you. I mean, it
8 just this continuing, continuing GNAPS saga is just, at
9 the end of the day, FairPoint keeps losing.

10 MS. FABRIZIO: And, we hope to expedite
11 the entire proceeding. And, I'm wondering --

12 MR. PHILLIPS: And, I would say, just in
13 response to that, that if the issue really is just one of
14 cost, --

15 MS. DAVIS: Uh-huh.

16 MR. PHILLIPS: -- I'm sure we can
17 resolve that, you know, --

18 MS. DAVIS: Absolutely.

19 MR. PHILLIPS: -- to everyone's
20 satisfaction. And, so, if that's the only issue, and it's
21 not one of authority or, you know, your sense of how the
22 dockets line up or something like that, I'm sure we can
23 get to a resolution of it.

24 MS. DAVIS: And, I mean, I think, from

1 what we've heard today, we have less of a question of
2 authority now, and I think it would move to cost and time
3 and engineers and all that stuff. So, --

4 MR. PHILLIPS: Good.

5 MS. FABRIZIO: So, can I put in my
6 report to the Commission of today's talk that the three
7 have agreed to cooperate --

8 MR. DAVIDOW: Can the witnesses leave
9 now? They have various places to go.

10 MS. FABRIZIO: Well, let Fred --

11 MS. BAILEY: Let's let Fred ask some
12 questions.

13 MR. COOLBROTH: We have no further
14 questions.

15 MS. BAILEY: Okay.

16 MR. DAVIDOW: All right. You can go.

17 MS. BAILEY: Thank you, guys, for
18 coming.

19 MS. FABRIZIO: Thank you.

20 MS. BAILEY: Appreciate it.

21 MR. DAVIDOW: One of them had a medical
22 reason to leave.

23 MS. DAVIS: I'll say that we'll continue
24 with discussions. And, I mean, I certainly don't have

1 authority to say that, you know, we'll do anything. But
2 we'll continue with discussions and we tend to work pretty
3 well with TDS and Granite to continue that.

4 MS. FABRIZIO: Can I stick in anything
5 about "we agree to cooperate and achieve termination
6 within 30 days" or is that pushing beyond your authority?

7 MS. DAVIS: Yes. I have -- I can't say
8 that.

9 MR. DAVIDOW: Well, Global NAPs would
10 agree --

11 MS. DAVIS: I just don't know what our
12 hearing schedule is.

13 MR. DAVIDOW: -- that it will terminate
14 within 30 days to the TDS and Granite setting. Whether
15 they want belt and suspenders, if we've terminated, we
16 think that does it. If they want FairPoint to double
17 terminate, I didn't offer that, I didn't ask for it. We
18 offered -- we found it was perfectly satisfactory in
19 Pennsylvania when we did it by ourselves.

20 MS. FABRIZIO: I'm hearing TDS say that
21 --

22 MR. DAVIDOW: They preferred it.

23 MS. FABRIZIO: -- they preferred both
24 ways. But they would be happy with Global NAPs

1 terminating it, but that Granite State would actually
2 prefer FairPoint?

3 MR. MURRAY: Yes, I think we both, the
4 preference obviously, because FairPoint has the throttle
5 at the tandem level, so that's our 100 percent kind of
6 assurance level that the traffic is turned off. So,
7 that's our preferred way, as it is with Granite State.
8 And, certainly, if Global NAPs is willing to mirror those
9 translations, then that would be even better. And, it
10 sounds like they want to do that for efficiency sake as
11 well. So, we --

12 MR. COOLBROTH: Well, actually, you
13 know, just before we spend all this money, I mean, the
14 other thing is is they have no business sending us traffic
15 to the tandem at all, because they don't pay for it. And,
16 so that there is an easy solution, which is to shut it all
17 down at the tandem, which is what we've asked for.

18 MR. DAVIDOW: This is a person who is a
19 party of *pacto sund servand*, that there's a contract with
20 them, and there is a federal duty that a pure monopoly in
21 America, these carriers were told what to carry. And,
22 they put in a clause to make sure that they paid us little
23 or nothing when we terminated Internet traffic for them.
24 The purpose of that clause going one way is they didn't

1 want to pay us, we were getting rich on 2.8 cents on the
2 Internet, so they put in this clause, which goes both
3 ways. And, that clause got them down between zero and
4 007. And, if you look at the opinion between MCI and AT&T
5 in the Wisconsin Public Utility Commission, the conclusion
6 of that case was VoIP does not pay access charges. And,
7 the only fair thing between the parties is, if the
8 contract from the old days said that the going to the
9 Internet is capped at 007, then going the other way is
10 capped at 007. And, I'll send you the opinion in the
11 morning, MCI versus -- so, the answer was, it took the
12 same clause, and the conclusion was the meaning of the
13 clause is it's 007 each way.

14 MS. FABRIZIO: Thanks. So, Global NAPs
15 is willing to disconnect?

16 MR. MASURET: Yes. I believe we've
17 already notified our customers. So, if somebody wants to
18 contact me, I'll forward them to the right person. And, I
19 got to believe it will be done within 48 hours.

20 MS. BAILEY: Forty-eight hours from now?

21 MR. MASURET: Yes, from -- 48 hours from
22 when I'm contacted. But my e-mail address is "brad",
23 b-r-a-d, --

24 MR. MURRAY: Do you have a card?

1 MR. MASURET: I don't have a card on me.
2 "@gnaps", "g" as in Global, "naps.com". And, I'll be able
3 to acknowledge it right away. And, like I said, you
4 should see your volume at the tandem go down immediately
5 for whatever volume it is.

6 MR. STAFFORD: And, Lynn, one
7 clarification for Granite State. For our order -- for
8 your order 25,108, we can't disconnect till on or after
9 July 14.

10 MS. FABRIZIO: Okay.

11 MR. DAVIDOW: You want to contact us
12 after then?

13 MR. MASURET: You can contact me and
14 just let me know what you'd like.

15 MS. FABRIZIO: Okay. And, then, I think
16 I will -- will you agree to report to the Commission that
17 this has been achieved?

18 MR. DAVIDOW: Absolutely.

19 MS. FABRIZIO: Okay.

20 MR. DAVIDOW: Absolutely.

21 MR. MASURET: If you would like to copy
22 them on the e-mail, that's fine.

23 MS. FABRIZIO: And, I will, just so you
24 know, the players here, I will circulate my draft report,

1 to make sure I'm capturing everything correctly, --

2 MR. DAVIDOW: Yes. Very good.

3 MS. FABRIZIO: -- and before I send it
4 to the Commission. Okay.

5 MR. COOLBROTH: Could we have, you know,
6 a ten minute break here?

7 MS. FABRIZIO: Sure.

8 MR. COOLBROTH: Just to chat among
9 ourselves?

10 MS. BAILEY: Do you want to go in Room
11 B, I think it's open?

12 MR. COOLBROTH: Sure. That would be
13 great, yes.

14 (Whereupon a recess was taken at 3:10
15 p.m. and the technical session resumed
16 at 3:32 p.m.)

17 MS. FABRIZIO: So, Fred, did you reach
18 some conclusions that you wanted to start off with,
19 because I think we're at the point of deciding now amongst
20 ourselves where we go from here procedurally?

21 MR. COOLBROTH: From our side, we had a
22 discussion, and felt that, with the transcript, with the
23 stenographer after lunch, together with hopefully a good
24 transcript of the morning session, and with an opportunity

1 to review those, we're willing to go forward on the basis
2 of that factual information and move right to briefs, on
3 the issues that are in this proceeding. We're not
4 proposing to expand the scope of this proceeding. And, we
5 would like to get this, you know, the briefs and reply
6 briefs done as soon as we can. Steve has graciously
7 indicated that he can have his transcript next Wednesday,
8 which is very helpful. For Lynn and Kate, I'm not sure
9 how quickly you think the taped portion can be
10 transcribed. I don't know how long you think that will
11 take?

12 MS. BAILEY: Would you like to have a
13 copy of the tape and your secretary -- I mean, it might be
14 faster if you have somebody transcribe it.

15 MR. COOLBROTH: Oh. Sure. Yes, we can
16 do that. Well, the trouble is, though, she is not going
17 to know who is here or who said what.

18 MS. FABRIZIO: There's one problem I
19 see, which is Monday is a holiday.

20 MR. COOLBROTH: Right. Right. Yes.

21 MS. FABRIZIO: So, it's really the next
22 two days or three days.

23 MS. BAILEY: I have no idea, because my
24 secretary has never done this before, so I don't know how

1 long it's going to take her. And, she is not going to
2 know who is speaking either. I don't know how we're going
3 to work that out, but --

4 MS. FABRIZIO: We can check and get back
5 to you, just sometime tomorrow.

6 MR. COOLBROTH: Okay.

7 MR. DAVIDOW: Shall we say what number
8 of days after transcript and put it that way?

9 MR. COOLBROTH: But I just wanted a
10 quick opportunity to review it when we get it,
11 particularly the tape portion, just to make sure we're all
12 comfortable with the content of it before it goes to the
13 Commission.

14 MS. FABRIZIO: So, Fred, if I
15 understand, you don't think you need any follow-up
16 discovery on what was said today?

17 MR. COOLBROTH: I think that's right. I
18 think we understand the position.

19 MS. FABRIZIO: And, Paul, do you feel
20 the same?

21 MR. PHILLIPS: Yes.

22 MR. DAVIDOW: We had discovery pending.
23 We would like the discovery in four days before the briefs
24 are due. That is, if you get the transcripts, and the

1 briefs were due -- we basically asked for some contract
2 history. And, it's a couple of memos, really, that either
3 exist or don't exist. And, --

4 MR. COOLBROTH: We don't really have
5 formal data requests at this point, I don't think.

6 MR. DAVIDOW: Well, yes. There were --
7 yes, there was a list of five things.

8 MS. BAILEY: No. Wait. Let me clarify
9 that.

10 MR. DAVIDOW: Yeah. It was --

11 MS. BAILEY: You don't have any formal
12 data requests, because the Commission said that your data
13 requests were premature. What I hear Mr. Davidow saying
14 is that he would like an opportunity to ask you formal
15 data requests. So, you'd have to submit them on --

16 MR. DAVIDOW: Well, I'm saying, if you
17 transform the five requests into "a formal data request"
18 as of today, and I get it in seven days, then I'll take
19 whatever briefing schedule we have, and I don't think I'm
20 going to be holding up the briefing schedule.

21 MS. FABRIZIO: Mr. Davidow, just a query
22 to you. Do you believe that that discovery is necessary
23 for a legal brief? Because it sounds like we're moving
24 onto legal briefs at this point, so unless they--

1 MR. DAVIDOW: Well, yes. We asked for
2 any memo construing that clause or applying it with
3 anybody else. Well, how could that be more relevant? The
4 legal brief is about the meaning of the clause. If my
5 opponent --

6 (Cellphone ringing.)

7 MR. DAVIDOW: If you give me one -- 30
8 seconds please. Excuse me. A small emergency.

9 (Off the record.)

10 MR. DAVIDOW: Sorry. And, the question
11 was raised, is why would I want documents that construe
12 the clause in the contract? The answer is, because we're
13 briefing what the clause of the contract means.

14 MS. FABRIZIO: So, you are asking for
15 FairPoint's or Verizon's or just FairPoint's past --

16 MR. DAVIDOW: If FairPoint has any
17 documents that have anything to do with any previous use
18 of, the dispute about, question of the clauses involving
19 the words in 2.43 and 8.1, then we wanted them.

20 MS. FABRIZIO: And, Fred, you've already
21 seen the requests. Do you think the Company can provide
22 responses within a short time?

23 MR. COOLBROTH: I mean, that's not
24 exactly what the requests were. He asked for "all

1 contract provisions or other documents indicating the
2 rates that either FairPoint has charged other carriers or
3 other carriers have charged FairPoint to terminate VoIP or
4 other Internet traffic." That is a very voluminous
5 request.

6 MR. DAVIDOW: Well, why is it
7 voluminous? Because most contracts can be word searched,
8 and, if the word "VoIP" doesn't appear, there's nothing to
9 produce. And, it's only going to be one clause in the
10 contract. If the clause -- if the word VoIP in the word
11 search doesn't come up --

12 MS. DAVIS: There's not a contract that
13 the word "VoIP" wouldn't come up in one way or another.

14 MR. DAVIDOW: Well, then you can answer
15 it by saying "We have no contracts which mention the word
16 "VoIP"."

17 MS. DAVIS: I said the opposite right
18 there. I said "every single contract will have the word
19 "VoIP" in one fashion or another." Every single --

20 MS. BAILEY: This one doesn't.

21 MR. DAVIDOW: Well, that's interesting,
22 because I win a lot of contracts that's never mentioned.

23 MS. DAVIS: No. It talks about the FCC
24 VoIP order. Almost every interconnection agreement cites

1 to the FCC VoIP order.

2 MR. DAVIDOW: Well, but is that in a
3 contract having to do with anybody pays anybody else?

4 MS. DAVIS: Right.

5 MR. DAVIDOW: If it's not a payment
6 clause, I don't care.

7 MS. DAVIS: But you said "you can search
8 for the word "VoIP". All I'm saying is, "no, it's not
9 that simple." Because in every interconnection agreement
10 that I have, I'm guessing, and maybe I'm being a little
11 overbroad, maybe it's not every single one, but it at
12 least refers to the "FCC VoIP order" or something like
13 that.

14 MS. BAILEY: It refers to the "FCC
15 Internet order". I don't believe the word "VoIP" is used
16 in this interconnection agreement, which is the problem.

17 MS. DAVIS: I don't disagree with you on
18 this one. I have many, many interconnection agreements
19 that use the word "VoIP", I promise.

20 MR. COOLBROTH: I mean, the long and the
21 short of it is, is if Global NAPS is pressing that data
22 request, we object, and we'll do a motion practice. We're
23 not going to -- we're not willing to, I mean, that's very
24 burdensome, it is beside the point, and we're not willing

1 to do it. So, we'll just do a motion practice on that.

2 MS. FABRIZIO: And, as I understand it,
3 Global NAPs would like to see what FairPoint is charging
4 other carriers for VoIP termination?

5 MR. DAVIDOW: Yes.

6 MS. FABRIZIO: And, --

7 MR. DAVIDOW: Well, the point, it seemed
8 to me, is that I've been in a courtroom where Verizon said
9 it charges Level 3 and Sprint and so on 0045. And, it's
10 unthinkable to me that that agreement, having been signed
11 by Verizon in 2004 or so, that FairPoint would have taken
12 over that contract and called up Level 3 or Sprint or
13 somebody and say "Hey, we're raising your rate to 2.8
14 cents from the 0045." They took over the Verizon
15 contracts as they were written.

16 MS. BAILEY: I don't believe any Verizon
17 contracts that were here before they took over had 0.00045
18 in them. Because, when you mentioned that, --

19 MR. DAVIDOW: Yes.

20 MS. BAILEY: -- that's the first time I
21 ever heard that rate.

22 MR. DAVIDOW: Well, --

23 MS. BAILEY: Not 100 percent positive,
24 but --

1 MR. DAVIDOW: Well, it was the rate, and
2 then the witness said "that's what they charged", that
3 they called it a "22 state agreement", was the phrase
4 used, including Verizon.

5 MS. BAILEY: In what year?

6 MR. DAVIDOW: 2004, I believe.

7 MS. BAILEY: Between AT&T and Verizon?

8 MR. DAVIDOW: Yes. But then it was
9 extended, he said, in testimony.

10 MS. BAILEY: Right. So, we should look
11 at the AT&T and Verizon agreement that we have here. Have
12 you looked at that on our website?

13 MR. DAVIDOW: No.

14 MS. BAILEY: Because all or a lot of the
15 interconnection agreements that have been filed here are
16 available on our website.

17 MR. DAVIDOW: Well, all right. We'll
18 search the website. If we can get the ones that interpret
19 the clause, that if you have any more contracts that have
20 the clause 8.1 and the clause 2.43, and there's been any
21 correspondence, litigation or anything else, for purposes
22 of your contracts, we'll search the New Hampshire website.

23 MS. FABRIZIO: And, it seems to me that
24 the other questions are really asking for legal

1 interpretations, which you would get in the briefs.

2 MR. DAVIDOW: And, I will go without
3 them.

4 MS. FABRIZIO: Okay.

5 MR. DAVIDOW: Let me not slow you down.

6 MS. FABRIZIO: Okay.

7 MR. DAVIDOW: I do not want to be
8 accused of --

9 MS. FABRIZIO: So, the only outstanding
10 data request that they're looking for is some indication
11 of rates. But now you're saying you're satisfied with a
12 search of the public Web?

13 MR. DAVIDOW: Yes.

14 (Multiple parties speaking at the same
15 time.)

16 MR. DAVIDOW: I'm saying, we'll conduct
17 the search of your website. You said we can go into your
18 website to get contracts?

19 MS. BAILEY: Copies of all the Verizon
20 interconnection agreements. And, if there's one that
21 you're looking for that you don't see, send me an e-mail
22 and I'll find it. Because we just started scanning them
23 in the last couple of years, so some of the really old
24 ones may not be there.

1 MR. DAVIDOW: Yes.

2 MS. BAILEY: But the interesting ones
3 are usually there.

4 MR. DAVIDOW: All right. Well, let's
5 move on then.

6 MR. COOLBROTH: So, if we get the
7 transcript and hopefully figure out a way to get the
8 morning tapes transcribed for next Wednesday, maybe get
9 two days to review them, that would be the 9th, and then
10 do a week from the 9th for briefs and a week from the 9th
11 -- a week from that, so from the 9th is the 16th.

12 MS. BAILEY: Fred, I can't commit to
13 getting those transcripts done by next Wednesday.

14 MS. FABRIZIO: Possibly by next Friday,
15 but we have to get back to you.

16 MR. DAVIDOW: Well, let's start with
17 Friday then.

18 MS. BAILEY: Sorry. She's not even here
19 today.

20 MR. COOLBROTH: Yes.

21 MR. DAVIDOW: So, that moves it to the
22 18th, instead of the 16, because it's two days later.
23 You're saying first briefs on the 18th, and reply briefs
24 on the 20 --

1 MS. KARL: Eighteen is a Sunday.

2 MR. DAVIDOW: On the 19th, and reply
3 briefs a week later, which would be the 26th.

4 MR. PHILLIPS: I know that I'm away from
5 the 22nd until the 2nd.

6 MR. DAVIDOW: Yes. Well, we were really
7 hoping that if we cut you, that you really don't -- we're
8 not clear what other ox you have to --

9 MR. PHILLIPS: To gored?

10 MR. DAVIDOW: Or, again, whether you
11 still have a dog in the hunt at that point.

12 MR. PHILLIPS: Yes. Understood. Until
13 we know for sure, I think we want to be included in the
14 briefing schedule.

15 MR. DAVIDOW: All right, for that
16 purpose, and I think we've said it's for sure, and every
17 way I can say it's for sure, it's for sure. So, --

18 MS. BAILEY: How about will you agree,
19 subject to them getting their traffic blocked in two days,
20 because they said they could do it in two days? And, you
21 guys ought to be able to look at the CABS bills and see if
22 you're getting anything from Global NAPS' OCNs.

23 MR. MURRAY: There's still the question
24 of the arrears, and I'm not sure that's relevant in this

1 whole thing. But --

2 MS. BAILEY: It sounded to me like he
3 was saying, "if there's no going concern, and they're
4 never going to make money from traffic going to you,
5 you're never going to get paid for that." That's what I
6 heard.

7 MR. DAVIDOW: Yes. You are correct.

8 MS. BAILEY: So, if they block the
9 traffic to you, they're done with you.

10 MR. PHILLIPS: Right. The question is,
11 "are we done with them?"

12 MS. BAILEY: Yes.

13 MR. DAVIDOW: That's between you and the
14 receiver.

15 MR. MURRAY: So, we'll consider that.
16 But, at this point, just give me some time to weigh that,
17 if you will.

18 MR. DAVIDOW: Okay. So, were we saying
19 the 19th and the 26th or some other? 19th and 27th or
20 whatever?

21 MR. COOLBROTH: Well, yes. If we get
22 the transcript Friday, the 9th, and basically take the
23 weekend to review it, make sure we're happy with it, and
24 then submit it to the Commission, I guess, Monday or

1 Tuesday, whatever, and then have briefs due the 19th and
2 reply briefs due the 26th?

3 MR. DAVIDOW: That's what I was -- we
4 seem to have an agreement. It was my dinner date. That
5 my daughter in Boston wants to eat dinner with me. I'm
6 trying to get out of here so I can do it. I don't see her
7 very often.

8 MS. FABRIZIO: It's up to you guys,
9 because Staff isn't going to be doing briefing.

10 MR. COOLBROTH: Okay. You okay with
11 that?

12 MR. SKRIVAN: Uh-huh.

13 MS. BAILEY: Well, Paul --

14 MS. FABRIZIO: Paul, were you planning
15 to brief on these issues or you wanted to reserve the
16 reply date?

17 MR. PHILLIPS: I think there are a
18 couple of issues that we are interested in briefing. And,
19 then, the only question is, since the reply briefs are due
20 during my vacation, whether we have -- whether we will
21 need an opportunity to file a reply brief.

22 MS. FABRIZIO: And, your vacation is
23 what week?

24 MR. PHILLIPS: I start the 22nd, then I

1 go until the 2nd of August. All right. We'll agree to
2 the schedule. And, we're going to see, you know,
3 basically how this blockage issue unfolds in the next
4 couple of days.

5 MS. FABRIZIO: Okay. Because now is the
6 time to see whether you'd object to doing reply briefs one
7 more week later.

8 MR. PHILLIPS: Well, I think Fred is
9 away the next week.

10 MR. COOLBROTH: No, I think that's
11 plenty of time.

12 MS. FABRIZIO: Okay. Okay. Do we want
13 to clarify what issues are being briefed?

14 MR. COOLBROTH: Well, the issues to be
15 briefed relate to whether or not FairPoint is entitled to
16 the relief that is requested in its motion.

17 MR. DAVIDOW: Well, I would suppose for
18 the grounds stated in its motion.

19 MS. FABRIZIO: And, this motion invokes
20 the intrastate access tariff, not the ICA.

21 MR. COOLBROTH: That's right.

22 MR. DAVIDOW: Well, I don't see that as
23 a difference, whether we invoke the ICA or they did.

24 MS. FABRIZIO: Well, if we're saying the

1 issues to be briefed --

2 MR. DAVIDOW: No. The reason I was
3 saying the issue should be briefed is that there -- at the
4 last minute there was this argument about whether we paid
5 collocation. And, the question was whether we were going
6 to brief collocation or not.

7 MS. FABRIZIO: Okay. I did not hear
8 that as a last minute addition to their motion. I heard
9 it as "and, furthermore, they haven't paid these fees."
10 Am I right?

11 MR. COOLBROTH: Right.

12 MR. DAVIDOW: Well, then -- Well, then,
13 I'm saying that the motion says that they want to cut it
14 -- they want your permission to cut us off, because we
15 didn't pay access fees, and we say we don't owe them, and
16 we say "that's what's being briefed." Now, it's a little
17 unclear to me whether they, let's say, we won that, would
18 then turn around and say "well, anyway, without any new
19 proceeding, we're going to cut you off, because you didn't
20 pay the collocation anyway." This is, you know, you'd
21 rather have all the issues in one brief, rather than have
22 some hanging out in federal court or hanging out somewhere
23 else, so I'm unclear what else to do. And, I offered, and
24 I didn't have an answer, that we'll give up collocation

1 within 60 days and not brief it.

2 MS. DAVIS: You have always had the
3 opportunity, to get rid of our argument that you don't pay
4 us for collocation, by paying in full the money you owe in
5 arrear for collocation. There is no dispute. Can't be
6 VoIP collocation. If you order collocation and you place
7 it in our COs, you owe us the money for it. And, if you
8 want it off the table and don't want us to argue it, all
9 you have to do, all you've ever had to do, is pay all the
10 money owed for collocation.

11 MR. DAVIDOW: Well, first of all, the
12 request in front of this Commission is for a cut-off.
13 And, the justification for that is new expenses. And,
14 this is now a request to go backwards, rather than --
15 that's not relevant to the question of avoiding new
16 expenses.

17 MS. BAILEY: I'm not sure it's only
18 based on new expenses. I don't think it's based on
19 collocation charges, I don't think it's based on
20 interconnection trunks. I think it's based on money that
21 they say you owe them that you haven't paid in the past.

22 MR. DAVIDOW: All right. That's fine.
23 Well, then they will, you know, I'm unclear whether they
24 -- the point is, we'd like to believe that, if this

1 proceeding is going along, we will not find, in the middle
2 of the proceeding, that we're cut off on other grounds
3 anyway.

4 MR. COOLBROTH: You may well find that.

5 MR. DAVIDOW: I see. Well, then, we
6 will obviously have to go to federal court and have
7 another proceeding. That's all right we me.

8 MR. COOLBROTH: Fair enough.

9 MR. DAVIDOW: I don't care how many
10 proceedings there are.

11 MS. DAVIS: We know that.

12 MR. DAVIDOW: I simply don't care.

13 MS. DAVIS: You've made very clear to
14 us, you don't care if there's 200 proceedings.

15 MR. DAVIDOW: Well, but you're the one
16 who keeps multiplying them. I mean, you come after us
17 every morning.

18 MS. FABRIZIO: Mr. Davidow, --

19 MS. DAVIS: You've never paid us.

20 MS. FABRIZIO: -- I haven't seen Global
21 NAPs ask the Commission to adjudicate the demand for
22 assurances.

23 MR. DAVIDOW: All right. We can start
24 that way. All right. We'll make our own decision what we

1 do next on the other issues. We know what's to be briefed
2 now. We know what it's like. And, we know the threat,
3 the latest threats from FairPoint, and we'll have to deal
4 with it, in how many forums it takes.

5 MS. FABRIZIO: So, the request for
6 demand for assurances is not part of the briefing?

7 MR. DAVIDOW: Nor --

8 MS. FABRIZIO: I'm just concerned that
9 the Commissioners are going to get a hodgepodge of
10 argument.

11 MR. DAVIDOW: Yes. No, nor is
12 collocation, nor is -- whether those will be briefed,
13 where they will be briefed, when they will be briefed,
14 that's, for the moment, that ball's in my court.

15 MS. FABRIZIO: Okay. My mind is a
16 little muddled right now to be able to actually state what
17 particular issues do and do not fall under here in the
18 scope. So, I will write up something as to my
19 understanding, and I'll circulate. And, if you have any
20 ideas for refinement or excision, let me know.

21 MR. DAVIDOW: I certainly think that
22 it's, on mine, extremely narrow, with the one exception.
23 The narrow issue is that they seek for you to find that we
24 truly do owe them standard access charges, and we say we

1 don't, because the contract says something that we
2 interpret one way, and we think our evidence at this
3 hearing puts us within that exemption. And that,
4 therefore, you ought to deny their motion. We see no
5 other issues as far as that, and that's it. Is how do the
6 facts go up against the piece of the contract as in light
7 of however factors one uses in interpreting a contract,
8 parole evidence, history, policy, words, all of the above.

9 MS. BAILEY: So, whether -- So, really,
10 the issue to be briefed is "whether Global NAPs owes
11 FairPoint for intrastate access charges under the terms of
12 the interconnection agreement?"

13 MR. DAVIDOW: Right.

14 MS. BAILEY: Do you agree with that?

15 MR. COOLBROTH: Yes. Yes, we do.

16 MR. DAVIDOW: Other than that obviously
17 has a factual component, --

18 MS. BAILEY: Yes.

19 MR. DAVIDOW: -- a legal component. The
20 factual component is the testimony today, and the legal
21 component is "what's the proper interpretation of those
22 clauses?" Again, it's one issue, exactly as you said.

23 MS. FABRIZIO: Paul, do you agree?

24 MR. PHILLIPS: Yes.

1 MS. FABRIZIO: Okay. So, we have our
2 dates. You have your marching orders. I'll draft up the
3 report and get it out to you tomorrow.

4 MR. COOLBROTH: That would be great.

5 MS. FABRIZIO: And, I will file that
6 with the Commission tomorrow, and hope to see transcripts
7 by the end of next week. Thank you. Thank you, Steve.

8 (Whereupon the technical conference
9 ended at 3:55 p.m.)
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