

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

June 30, 2010 – 10:00 a.m. – 1:30 p.m. (Morning session only)
Concord, New Hampshire

RE: DT 10-137

Northern New England Telephone Operations, LLC dba FairPoint
Communications – NNE Petition for Authority to Disconnect
Global NAPs, Inc.
(Technical Session)

PRESENT FROM

PUC STAFF:

Lynn Fabrizio, Esq.
Kathryn Bailey, Director, Telecom Division
Michael Ladam, Assistant Director, Telecom Division

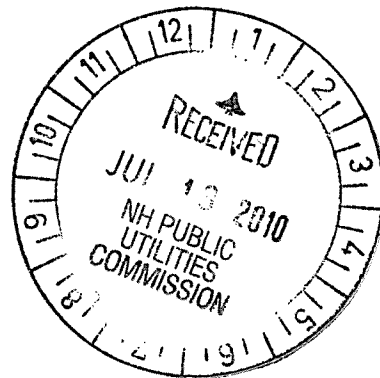
OTHER

APPEARANCES:

Reptg. Global NAPs, Inc:
Joel Davidow, Esq.

Reptg. FairPoint Communications:
Frederick Coolbroth, Esq.
Sarah Davis, Esq.

Reptg. TDS Telecom:
Tom Murray
Paul Phillips, Esq.



1 WITNESSES: Reptg. BroadVoice:

2 Leslie Berry

3
4 Reptg. Convergent Technologies:

5 Greg Eccles

6
7 Reptg. Global NAPs, Inc:

8 Brad Masuret

9 Dr. John Fike

10
11 RECORDED FROM TAPE.

12
13 PROCEEDINGS

14
15 MS. FABRIZIO: Okay we are we're now on the record being
16 recorded and I understand that the parties had some discussion while I was out of the room as to
17 how they would like to proceed in this tech session.

18
19 MR. DAVIDOW: I think it was agreed that basically I would
20 introduce each of my final 4 witnesses elicit a little bit of information from them in something
21 akin to direct exam and then open them up to questions both from FairPoint and Staff and as I
22 said there were 4 of them and.

23
24 MS. FABRIZIO: Mm hmm. And shall we swear them in so that
25 this will be a formal deposition type proceeding?

26
27 MR. DAVIDOW: Yes let's do that.

28
29 MS. FABRIZIO: Okay.

30

1 MS. BAILEY: And you don't object if the intervenors want to ask
2 questions? That's typically the way we do it. Is that okay?

3
4 MR. DAVIDOW: Absolutely. No objection.

5
6 MS. FABRIZIO: And just for purposes of this recording and its
7 future use if you could identify yourself when you first start speaking that would be helpful.

8
9 MR. COOLBROTH: Just one other procedural matter. Because
10 we're agreeing to deposition style inquiry here we're not waiving our right to further deposition I
11 guess would be another point we'd make.

12
13 MS. FABRIZIO: Mm hmm.

14
15 MR. DAVIDOW: We there was a desire for speed and we there
16 are procedures such as written and interrogatory to follow up or telephone or other methods that
17 bringing my people all back here you know would be something I'd like to avoid if there's a
18 procedural way to avoid it while we could still preserve the right to do whatever needs to be done
19 to follow up on factual points.

20
21 MS. BAILEY: Do you think that once we establish their voices on
22 a tape and we've sworn them in here that we could do a follow up deposition maybe by phone?
23 Taped or.

24
25 MR. COOLBROTH: We could take that up at the time.

26
27 MS. BAILEY: Yeah.

28
29 MR. COOLBROTH: But I'm not sure it's going to be needed.

30
31 MS. BAILEY: Okay, all right.

1 MS. FABRIZIO: Okay.

2
3 MR. DAVIDOW: All right. Okay. Let me start with Leslie
4 Berry. Mr. Berry is everything you say today do you swear will be the truth the whole truth and
5 nothing but the truth?

6
7 MR. BERRY: Yes it will be.

8
9 MR. DAVIDOW: What company do you work for?

10
11 MR. BERRY: I work for BroadVoice.

12
13 MR. DAVIDOW: What's your title there?

14
15 MR. BERRY: I am the president of BroadVoice.

16
17 MR. DAVIDOW: What is the business of BroadVoice?

18
19 MR. BERRY: BroadVoice is a voice over IP provider providing
20 consumer and small business with the opportunity to send phone calls over the Internet.

21
22 MR. DAVIDOW: And how many states does BroadVoice
23 service?

24
25 MR. BERRY: BroadVoice services all 50 states in the United
26 States.

27
28 MR. DAVIDOW: So BroadVoice services New Hampshire.

29
30 MR. BERRY: Yes we do.

31

1 MR. DAVIDOW: And does BroadVoice obtain New Hampshire
2 phone numbers?

3
4 MR. BERRY: Yes we do obtain New Hampshire phone numbers.

5
6 MR. DAVIDOW: Can you give me a rough figure of how many
7 New Hampshire phone numbers BroadVoice has obtained?

8
9 MR. BERRY: BroadVoice has now in our inventory
10 approximately a little over 19,000 New Hampshire telephone numbers.

11
12 MR. DAVIDOW: Can BroadVoice calculate the number of
13 minutes that pass between BroadVoice and New Hampshire?

14
15 MR. BERRY: Yes.

16
17 MR. DAVIDOW: And in the year 2009 about how many minutes
18 was that?

19
20 MR. BERRY: 2009 New Hampshire was a little bit over 4 million
21 minutes.

22
23 MS. BAILEY: Could I? I didn't hear the question that you asked.
24 Was the question how many minutes of traffic are in New Hampshire or are originated?

25
26 MR. DAVIDOW: Pass between New Hampshire and
27 BroadVoice's headquarters.

28
29 MS. BAILEY: Okay. And what was the answer in 2009?

30
31 MR. BERRY: A little over 4 million minutes.

1 MR. DAVIDOW: If somebody wants to get to BroadVoice so that
2 BroadVoice will make a VOIP call for them how do they get to BroadVoice?

3
4 MR. BERRY: Let me explain a little bit about the means in which
5 our customers connect to us. BroadVoice supplies what is called an analog telephone converter
6 to our customer base.

7
8 MS. BAILEY: It's called a what?

9
10 MR. BERRY: An ATA it converts analog to digital.

11
12 MS. BAILEY: Oh analog.

13
14 MR. BERRY: Yes I'm sorry. And that device is pre-configured
15 with BroadVoice's addresses IP addresses. When they plug the device in it actually connects.
16 There's 2 requirements for BroadVoice before going further. One is that they have power the
17 other one is they have high speed Internet at their house. Those are the only 2 requirements we
18 have. They connect their connector or their adapter up to the Internet it automatically over the
19 Internet connects to the BroadVoice service at which time we authenticate that they are a
20 customer indeed and we either provide them dial tone through a digital signal over the Internet
21 and/or the ATA that we provide them provides them dial tone. Either way it allows them to pick
22 up their phone dial the number and they would connect to an analog telephone to this adaptor by
23 the way. They pick up the phone they dial the number it goes out says oh you're a BroadVoice
24 customer send it to BroadVoice via the Internet sends our sends the signal to BroadVoice
25 BroadVoice looks and sees where the call's going. At that point we'll actually route the call
26 based on pricing you know other providers anywhere in the United States and/or internationally.

27
28 MS. BAILEY: Can I ask a follow up?

29
30 MR. DAVIDOW: Of course you can.

1 MS. BAILEY: Why don't you just give it right to Global NAPs?
2 Why does it go through CommPartners or Transcom?

3
4 MR. DAVIDOW: It doesn't.

5
6 MS. BAILEY: Some of your traffic goes directly from
7 BroadVoice to Global NAPs?

8
9 MR. DAVIDOW: Yeah.

10
11 MS. BAILEY: Okay so can you explain that? So.

12
13 MR. DAVIDOW: Let me.

14
15 MS. BAILEY: You? Okay go ahead.

16
17 MR. DAVIDOW: Let me explain it in the sense that and perhaps I
18 was overly simplistic. Global NAPs has 2 carriers one called Ymax Magic Jack and the other
19 called BroadVoice in which it is the only forwarder. There is.

20
21 MS. BAILEY: So Ymax Magic Jack is a customer.

22
23 MR. DAVIDOW: Yeah.

24
25 MS. BAILEY: 'Cause you didn't identify them before you said
26 there were 3.

27
28 MR. DAVIDOW: Well they're very very small. Tiny. But they
29 are customers. They're number they're number 6 and they're the smallest.

30
31 MS. BAILEY: So there's more than 3.

1
2 MR. DAVIDOW: Yeah 90 something is the big 3. And the next
3 biggest is BroadVoice and then there's one called Rainier? What?

4
5 MR. MASURET: Reynwood.

6
7 MR. DAVIDOW: Reynwood is very small and Magic Jack is a
8 couple of calls.

9
10 MS. BAILEY: And if I can ask the technical witness. So
11 technically how are the calls interconnected when they go they go from BroadVoice directly to
12 Global NAPs and then Global NAPs gets them to their termination destination?

13
14 MR. BERRY: Yes. We use least cost routing as one method.

15
16 MS. BAILEY: And Global NAPS is least cost 'cause it's free?

17
18 MR. BERRY: And so. No. We pay for the service.

19
20 MS. BAILEY: What? How do you pay for the service?

21
22 MR. BERRY: I'm BroadVoice.

23
24 MS. BAILEY: Yeah. How does BroadVoice take it from Global
25 NAPs?

26
27 MR. BERRY: They're we're one of their customers.

28
29 MS. BAILEY: Right so how do you pay? What's the bill look
30 like?

31

1 MR. BERRY: An invoice.

2

3 MS. BAILEY: And for how much?

4

5 MR. BERRY: It varies on the number of calls. It's not only.

6

7 MS. BAILEY: Is there a per minute rate?

8

9 MR. BERRY: Excuse me?

10

11 MS. BAILEY: Is there a per minute rate?

12

13 MR. BERRY: I believe there is yes.

14

15 MS. BAILEY: But you don't know what it is.

16

17 MR. BERRY: I'm not no I am not sure.

18

19 MS. FABRIZIO: Is it negotiated between Global NAPs and?

20

21 MR. BERRY: That contract was actually negotiated prior to me
22 becoming president. I haven't had to be honest.

23

24 MS. FABRIZIO: But it's a contract.

25

26 MR. BERRY: I didn't look at it when I came up before I came up
27 here.

28

29 MS. FABRIZIO: It's a negotiated rate though is what you're
30 saying.

31

1 MR. BERRY: I believe it is yes.

2
3 MR. PHILLIPS: Does Mr. Masuret know the rate?

4
5 MR. MASURET: I believe it started out as a flat rate. I can talk
6 about our services I don't know if this is out of turn or if I should wait my turn.

7
8 MR. DAVIDOW: Well the only question was about their paying.

9
10 MS. FABRIZIO: Mr. Davidow perhaps we just should swear in all
11 4 witnesses just in case there is cross-pollination of.

12
13 MR. DAVIDOW: Okay all right. Mr. Eccles do you swear to tell
14 the truth the whole truth and nothing but the truth?

15
16 MR. ECCLES: I do.

17
18 MR. DAVIDOW: Mr. Masuret do you swear to tell the truth the
19 whole truth and nothing but the truth?

20
21 MR. MASURET: I do.

22
23 MR. DAVIDOW: And Dr. Fike do you swear to tell the truth the
24 whole truth and nothing but the truth?

25
26 DR. FIKE: I do.

27
28 MS. FABRIZIO: And could we identify the witnesses just for the
29 record.

30

1 MR. DAVIDOW: All right Mr. Eccles is the Chief Engineer and
2 Executive of Convergent which is a global company that is the equipment supplier within the
3 global group of companies. The equipment that actually converts traffic.

4
5 MR. COOLBROTH: And what is his name and business office
6 and so forth?

7
8 MR. ECCLES: My name is Greg Eccles E-C-C-L-E-S and I'm
9 Vice President of software and conversion networks which is located at 9 Executive Park Drive
10 Billerica Massachusetts.

11
12 MS. BAILEY: Well it wasn't Chief Engineer what was it?

13
14 MR. ECCLES: Vice President of software.

15
16 MS. BAILEY: Thanks.

17
18 MR. COOLBROTH: And what city is that located in did you say?

19
20 MR. ECCLES: Billerica. B-I-L-L-E-R-I-C-A.

21
22 MR. DAVIDOW: Where is BroadVoice?

23
24 MR. BERRY: In Billerica as well.

25
26 MR. DAVIDOW: Mr. Masuret.

27
28 MR. MASURET: My name is Brad Masuret spelled M-A-S-U-R-
29 E-T. I'm Vice President of Sales at Global NAPs.

1 MR. COOLBROTH: Now Global NAPs is that Global NAPs, Inc.
2 or which entity is it?

3
4 MR. MASURET: Global NAPs, Inc. And, uh, my office is in
5 Quincy, Massachusetts.

6
7 MR. DAVIDOW: Dr. Fike.

8
9 DR. FIKE: I'm a retired associate professor telecommunications
10 engineering technology. Associate professor Emeritus I guess is the proper title. Texas A&M
11 University in College Station.

12
13 MS. BAILEY: Could Leslie could you spell your name for us?

14
15 MR. BERRY: L-E-S-L-I-E last name is B-E-R-R-Y.

16
17 MS. BAILEY: Thank you.

18
19 MR. DAVIDOW: Should I go on with my direct to Mr. Berry?

20
21 MS. FABRIZIO: Actually I think Mr. Masuret was in the middle
22 of explaining the rate it started as a flat rate.

23
24 MR. DAVIDOW: And there was something about a flat rate.

25
26 MR. MASURET: Global NAPs offers its products as a flat rate
27 offering so an easier way to understand it would be if you have an unlimited offering at home
28 from a telephone company where you can make as many calls or as few calls as you want in a
29 month and you would simply pay the monthly amount.

30
31 MS. BAILEY: Is this Global NAPs, Inc.?

1 MR. MASURET: This is Global this is I work I get paid by the
2 Global NAPs, Inc.

3
4 MS. BAILEY: Yep.

5
6 MR. MASURET: And.

7
8 MS. BAILEY: Who provides the service to Broadview?

9
10 MS. MASURET: To BroadVoice?

11
12 MR. BERRY: BroadVoice.

13
14 MS. BAILEY: BroadVoice sorry.

15
16 MR. MASURET: I the corporate structures I don't know I handle
17 the sales so from my answer it would be Global NAPs, Inc. but I'm not answering it from the
18 corporate structure perspective.

19
20 MS. BAILEY: Do you know who you write the checks to?

21
22 MR. BERRY: I don't write the checks. I.

23
24 MS. BAILEY: Do you know who BroadVoice writes the checks
25 to?

26
27 MR. BERRY: I whether it's Inc. or corporate.

28
29 MS. BAILEY: So it's all the same company?
30

1 MR. BERRY: I just I don't know the difference as far as what's
2 on the check. I don't see the check. I see an invoice I approve an invoice.

3
4 MR. PHILLIPS: Who sends you the invoice?

5
6 MR. BERRY: Global NAPs.

7
8 MR. PHILLIPS: Global NAPs, Inc.?

9
10 MR. BERRY: I'm not sure.

11
12 MS. BAILEY: Somebody from Global NAPs.

13
14 MR. BERRY: I'm not I don't look at it that closely. I see Global
15 NAPs and I it's Global NAPs to me.

16
17 MR. DAVIDOW: Okay. We should make one explanation.
18 There is a holding company in Massachusetts which pays taxes and has its own tax ID. It's
19 called Ferrous Miner.

20
21 MS. BAILEY: Right.

22
23 MR. DAVIDOW: Ferrous Miner owns all companies with the
24 word Global so there could be 12 companies there could be Global South or Global Pennsylvania
25 or so on whatever it is it's all has the identical ownership, that is it's owned by Ferrous Miner
26 and its revenues are consolidated in Ferrous Miner. In return the other point is that Global which
27 only has 30 employees tops they have about 7.

28
29 MS. BAILEY: Global who?

30
31 MR. DAVIDOW: Global, Inc. I suppose you would say. When it.

1 MR. COOLBROTH: So the employees are within Global NAPs,
2 Inc.

3
4 MR. DAVIDOW: I believe so. That when it went from state to
5 state and created Global NAPs Pennsylvania or such it created no new group. It didn't staff up
6 state things with new separate staffs. There's no more people back in Quincy except for the
7 original ones.

8
9 MS. FABRIZIO: And there's no one based in New Hampshire.

10
11 MR. DAVIDOW: No.

12
13 MR. PHILLIPS: And then what is the relationship between Global
14 NAPs, Inc and Global NAPs Network Services and.

15
16 MR. DAVIDOW: They're just names companies owned by
17 Ferrous Miner. Everything with the word Global is on an equal line as being 100% owned by
18 Ferrous Miner.

19
20 MR. PHILLIPS: Then who owns Ferrous Miner?

21
22 MR. DAVIDOW: The owners of Ferrous Miner primarily Frank
23 Gangi.

24
25 MR. PHILLIPS: Are there other owners besides Frank Gangi?

26
27 MR. DAVIDOW: I don't remember. It's come up in hearings and
28 other courts but I don't recall.

29
30 MR. PHILLIPS: Does Mr. Masuret know?

31

1 MR. MASURET: No I do not.

2
3 MR. PHILLIPS: You don't know whether Frank has other owners
4 of Ferrous Miner?

5
6 MR. MASURET: I do not.

7
8 MS. BAILEY: Does Ferrous Miner own BroadVoice?

9
10 MR. DAVIDOW: I think not no.

11
12 MS. BAILEY: So who owns BroadVoice and how is it affiliated
13 with Global NAPs?

14
15 MR. DAVIDOW: I believe it's commonly owned by Frank Gangi.

16
17 MR. BERRY: We're a parent company of Convergent Network.

18
19 MS. BAILEY: What's that?

20
21 MR. BERRY: Say it's a subsidiary of Convergent.

22
23 MR. DAVIDOW: I think Frank Gangi owns Convergent and
24 Convergent owns BroadVoice. If you have Frank Gangi is the ultimate owner. He owns Ferrous
25 Miner which owns Global companies and he owns Convergent which in turn owns BroadVoice.

26
27 MR. PHILLIPS: So 3 of your witnesses are paid by Frank Gangi
28 ultimately.

29
30 MR. DAVIDOW: Yup.

31

1 MS. FABRIZIO: And are those companies also subsumed under
2 their receivership?

3
4 MR. DAVIDOW: Yes.

5
6 MR. PHILLIPS: So in terms of the rate structure it's not an arms'
7 length rate negotiation. It's all internal within the family of companies.

8
9 MR. MASURET: I believe so.

10
11 MS. BAILEY: So it's a flat rate and what is it?

12
13 MR. MASURET: So we have a customer base so the flat rate you
14 can really break it down by sessions so if you had a single line at home I would refer to that as a
15 session for instance. So historically we used to sell in increments of 672 sessions which is a DS3
16 number of sessions in a DS3 type for instance. So that's how it began many years ago and so we
17 would sell a flat rate on that type of increment of sessions 672. You can now buy it in any sort
18 of increments in the world of IP. It's moved into that and \$28,000 for 672 sessions is a
19 reasonable number.

20
21 MS. BAILEY: Per month?

22
23 MR. MASURET: Give or take depending on that's correct per
24 month give or take depending on the size of the account.

25
26 MS. BAILEY: So it's about \$28,000 for a DS3.

27
28 MR. MASURET: For 672 sessions that's correct.

29
30 MS. BAILEY: So if they had a DS3 but they add 600 sessions
31 would the rate be lower?

1 MR. MASURET: Yes.

2

3 MS. BAILEY: Okay.

4

5 MR. MASURET: That doesn't happen but you're correct you
6 could sign up for say 200 sessions and I would price it accordingly.

7

8 MS. BAILEY: So if I divided 672 by 28 or 28,000 by 672 that
9 would be the price per session.

10

11 MR. MASURET: Yep.

12

13 MS. BAILEY: And a session is if I'm a BroadVoice customer I'm
14 one session.

15

16 MR. MASURET: Okay so I guess I'm just going to talk.

17

18 MR. DAVIDOW: Yeah.

19

20 MS. FABRIZIO: Thank you.

21

22 MR. MASURET: Okay so from a Global NAPs perspective when
23 we sell termination we go out to a customer base and the customer base for me is I refer to is
24 enhanced service providers. So the enhanced service providers that we were named in this case
25 are CommPartners, Transcom, Unipoint aka Point One, IDT, and.

26

27 MR. DAVIDOW: That's defunct?

28

29 MR. MASURET: IDT.

30

31 MS. BAILEY: No.

1 MR. MASURET: No IDT is defunct.

2
3 MR. DAVIDOW: Okay.

4
5 MS. BAILEY: IDT is actually registered and operating in New
6 Hampshire.

7
8 MR. MASURET: Okay.

9
10 MS. BAILEY: And they pay access.

11
12 MR. MASURET: Okay. And there are 2 I won't call them ESP's,
13 enhanced service providers although they might fall in that category. They'd be more
14 straightforward known as a voice over IP account means that would be a BroadVoice and I
15 believe with Magic Jack.

16
17 MS. BAILEY: And Rain something?

18
19 MR. MASURET: Reynwood is another account of Global NAPs
20 it's spelled R-E-Y-N-W-O-O-D. I don't know if they're terminating or sending us traffic for
21 New Hampshire or New Hampshire trunks are full and so we stopped offering New Hampshire
22 to new customers as they came on board and so when we set up interconnections with these
23 customers it can be over a TDM connection it can be over an ATM connection it can be over an
24 IP connection. IP is you know pretty much where everything is right now and that's transitioned
25 over time over the course of say the past 6 years and so when you set up a number of sessions
26 and price it accordingly and they simply send minutes to us over those sessions so if someone
27 bills up you know 2,000 sessions with us they can send minutes all day long over that. They can
28 send one minute they can send 10 million minutes in a month whatever they send they send and
29 we terminate that to our footprint just like a phone company would at home so we would send it
30 to New Hampshire in the case of these 6 accounts that were mentioned. We would also send it to
31 Massachusetts to New York to New Jersey to D.C. to our entire footprint.

1 MS. BAILEY: Can you still send traffic in Massachusetts?

2

3 MR. MASURET: Yes.

4

5 MS. BAILEY: Okay.

6

7 MR. MASURET: Our inbound network would shut down. The
8 case that keeps being referenced here.

9

10 MS. BAILEY: Yeah.

11

12 MR. MASURET: The Massachusetts case was an inbound case
13 so.

14

15 MS. BAILEY: Just for ISP traffic?

16

17 MR. MASURET: So Verizon traffic coming to Global NAPs to
18 our ISP's.

19

20 MS. BAILEY: Got shut down.

21

22 MR. MASURET: This case if I'm not wrong is Global NAPs
23 sending traffic to FairPoint saying terminate this for us. Two entirely different applications.

24

25 MS. BAILEY: Yup. Okay. So.

26

27 MR. MASURET: And so it's a flat rate.

28

29 MS. BAILEY: So in the universe of customers that Global NAPs
30 transfers traffic for is ESP customers which include IDT, CommPartners, Transcom and

1 Unipoint and ISP customers BroadVoice, Ymax Magic Jack and what's Reynwood are they an
2 ISP an ESP?

3
4 MR. MASURET: So you'll see in the world right now a lot of
5 companies that go out there and offer IP services to in the case of a BroadVoice or a Vonage to
6 residences and then you'll have companies like a Reynwood that will go to businesses so they're
7 offering IP centrex services to businesses.

8
9 MS. BAILEY: Oh so ISP is a misnomer. They're really VOIP
10 providers. BroadVoice, Ymax Magic Jack are residential.

11
12 MR. BERRY: BroadVoice is a VOIP provider.

13
14 MS. BAILEY: A residential VOIP provider and Reynwood is a
15 business VOIP provider.

16
17 MR. MASURET: Yes.

18
19 MS. BAILEY: Okay. And is Reynwood affiliated with.

20
21 MR. MASURET: No.

22
23 MS. BAILEY: Global NAPs?

24
25 MR. MASURET: No the only company affiliated with Global
26 NAPs in this instance is BroadVoice that I've named is BroadVoice that I just named.
27 Everybody else is un-affiliated with the company.

28
29 MS. BAILEY: Independent. Okay.

1 MR. MASURET: Just a customer. I think the reason why correct
2 me if I'm wrong BroadVoice is here just to eliminate any confusion is BroadVoice can state
3 definitively that they send traffic to Global NAPs that is destined for New Hampshire so we then
4 take it and send it to FairPoint and that's an example of a call that might be viewed by FairPoint
5 as an intralata call because it may in some cases have a NH DID number originating the call and
6 is terminating in New Hampshire so it terminates in New Hampshire. That is originated by a
7 voice over IP residential user that can be anywhere in the world.

8
9 MS. BAILEY: Um hm. Do you let me.

10
11 MR. MASURET: That's why I believe he's here I mean I don't
12 want to speak for Joel.

13
14 MS. BAILEY: Well let me ask Leslie this. You said that there are
15 about 19,000 New Hampshire telephone numbers that BroadVoice uses.

16
17 MR. BERRY: That is correct.

18
19 MS. BAILEY: And do you know of any of those 19,000 that have
20 been assigned to customers whose billing address or whose residence address is not in New
21 Hampshire?

22
23 MR. BERRY: Specifically from an example standpoint I don't
24 have one in front of me. Historically you all we require is a credit card address the bank has on
25 record. You can have a virtual number anywhere you have power and high speed Internet. I can
26 be in New Hampshire and have a New York number and it looks like it's coming from New
27 York.

28
29 MS. BAILEY: Yeah oh I understand that.

30
31 MR. BERRY: I mean that's.

1 MS. BAILEY: But typically.

2

3 MR. BERRY: All we require I mean all we require is a valid
4 credit card address that the bank recognizes.

5

6 MS. BAILEY: Yep.

7

8 MR. BERRY: And we go out and validate the credit card.

9

10 MS. BAILEY: Um hm.

11

12 MR. BERRY: I don't have an example in front of me.
13 Historically yes I could say there are plenty of them.

14

15 MS. BAILEY: Is it the majority that are the majority of the people
16 with New Hampshire numbers not in New Hampshire do you think?

17

18 MR. BERRY: No I couldn't say that.

19

20 MS. BAILEY: Okay.

21

22 MR. COOLBROTH: Is there any 911 service for those customers?

23

24 MR. BERRY: Yes we offer enhanced 911 we point it to a
25 company a 3rd party called Intrado. Intrado then routes it to correct PSAP depending on the
26 registered address that the actual customer puts into their portal.

27

28 MR. COOLBROTH: So there, so there are addresses then for that
29 purpose.

30

31 MR. BERRY: No she asked about the credit card not about 911.

1 MS. BAILEY: Well no I mean I think he's getting to the same
2 thing that I was getting to. Can you figure out?

3
4 MR. BERRY: Okay what's your question then?

5
6 MS. BAILEY: Well my question was can you figure out where
7 your customers usually plug into your service?

8
9 MR. BERRY: We could yes there's many ways of doing that one
10 is the IP address. I mean we call this all Internet we actually collect the IP address the customer
11 connects to us with.

12
13 MS. BAILEY: So you know you have the ability to know for each
14 call.

15
16 MR. BERRY: We have the.

17
18 MS. BAILEY: For each call where it's originating physically.

19
20 MR. BERRY: Not pinpointed because you have a Comcast that
21 shares a multiple IP block between Massachusetts and New Hampshire maybe. I mean it's not
22 scientific is what I'm saying. Yeah we could probably we could probably get close.

23
24 MS. BAILEY: Okay.

25
26 MR. BERRY: There's no geographical boundaries to voice over
27 IP.

28
29 MS. BAILEY: I understand that.

30

1 MR. BERRY: And that's what makes it difficult to answer the
2 question.

3
4 MS. BAILEY: Yep.

5
6 MR. COOLBROTH: So Comcast is a customer did I hear that?

7
8 MR. BERRY: No sir.

9
10 MR. COOLBROTH: I thought I heard Comcast.

11
12 MS. BAILEY: I think he's talking about the Comcast broadband
13 connection that somebody might subscribe to BroadVoice over.

14
15 MR. COOLBROTH: I see.

16
17 MR. MASURET: So if I may just comment.

18
19 MS. BAILEY: Well if do they get the IP address from Comcast in
20 that case?

21
22 MR. BERRY: I don't care about the Internet. All I require is high
23 speed Internet. I use Comcast as an example of an Internet provider that could share an IP block
24 between 2 states. Thus making it impossible for me to say with 100% accuracy that that
25 customer is here or here. That's all I was stating.

26
27 MR. MURRAY: So yet you mention the portals. If I'm a customer
28 and I've got one of your boxes and I'm at my home I've got my address essentially hardcoded in
29 that so that's what goes to 911?

30

1 MR. BERRY: No it is not. Let me explain the 911 process.

2 Maybe that'll help you. When you register to become a user you have to go in and register a 911
3 address because there's no geographical boundaries that the 911 or enhanced 911 system
4 operates on today. There's no way of pointing that phone call to the correct PSAP just based on
5 information from the phone call. You have to actually push an address to it. We use Intrado
6 they go in and actually enter they can change their 911 address every day. If they're in Derry,
7 New Hampshire one day and Manchester the next they can go into the portal and change it and
8 when they dial 911 that address that they've changed it to is sent to the correct PSAP.

9
10 MR. MURRAY: Right but if they don't change it then their
11 original address they put in there is what's sent to the PSAP.

12
13 MR. BERRY: That is correct.

14
15 MR. MURRAY: So if I'm in Hong Kong for the weekend and I
16 dial 911.

17
18 MR. BERRY: That is correct.

19
20 MR. MURRAY: I end up having it dispatched to my New
21 Hampshire residence.

22
23 MR. BERRY: That is absolutely correct.

24
25 MR. MURRAY: Okay.

26
27 MS. FABRIZIO: Is BroadVoice registered to do business in New
28 Hampshire or just Massachusetts?

29
30 MR. BERRY: I believe it's only in Massachusetts.

31

1 MR. DAVIDOW: Let me go on to Mr. Eccles. Tell us what
2 Convergent is please.

3
4 MR. ECCLES: Okay Convergent is a switch manufacturer and we
5 make a packet to we make a telephone switch that switches calls from a TDM network to an IP
6 network or an IP to IP or IP to ATM so I mean it can basically has 3 different types of
7 connections IP, TDM and ATM and it will switch calls between any of those 3. We make this
8 equipment. We've been in business since '98 we were purchased by Frank Gangi companies in
9 2003 and we've been working under his direction since then.

10
11 MS. BAILEY: And who else do you sell are these like routers
12 these switches or are they?

13
14 MR. ECCLES: They're application specific they are routers in the
15 sense that they do route the calls but they're not like you would think of as an IP router that does
16 computer packets. Which it's more it brings in a phone call it looks up based on the DID where
17 the call should go and then routes it out to the appropriate interface to get there.

18
19 MS. BAILEY: And can you identify some other customers that
20 aren't Global NAPs?

21
22 MR. ECCLES: Yes there's a company called Single Pipe they're
23 like somewhere in Kentucky CommPartners has been a customer I don't know their current
24 status right now there's a company called Telnet in Michigan I don't know they're not under
25 maintenance right now but I believe the switches are still in use.

26
27 MS. BAILEY: But Global NAPs is your primary customer would
28 you say?

29
30 MR. ECCLES: We also sell equipment to BroadVoice.
31 BroadVoice uses our equipment as a border route -- border controller.

1 MS. BAILEY: Any other VOIP providers use Convergent?

2
3 MR. ECCLES: No.

4
5 MS. BAILEY: No? Okay.

6
7 MR. DAVIDOW: In 2009 CommPartners was a customer was it
8 not?

9
10 MR. ECCLES: Correct yes.

11
12 MR. DAVIDOW: And what was CommPartners doing with your
13 equipment?

14
15 MR. ECCLES: CommPartners was had our equipment deployed
16 in their in space that they rented so they would put our switches in and route use it to route calls
17 between between their customers and their the people that they bought service from. So for
18 instance one of the people they buy service from is Global NAPs. They also have trunks directly
19 into the ILEC's and I don't know if they have service in New Hampshire they certainly do in
20 Mass and New York and so we would have trunks from the ILEC into the switch and the calls
21 would come in from CommPartners customers to get switched out to the appropriate place based
22 on their routing tables. They may switch it Global NAPs they may switch it directly to a LEC
23 they may switch to another what they refer to as drains. Level 3 it's just where the call goes so.

24
25 MS. BAILEY: So why you know maybe BroadVoice maybe
26 Leslie you can't answer this question but what what the question that I have and that I don't
27 understand in my mind is you have an end user provider like Vonage and Vonage sends its
28 traffic to CommPartners and CommPartners gives it to Global NAPs and Global NAPs gives it to
29 FairPoint to terminate. Why are there 2 intermediate carriers in that call?

30

1 MR. DAVIDOW: I can answer that. One is that Vonage has
2 testified in New York and elsewhere that it's not a mover at all it's a software seller.

3
4 MS. BAILEY: I understand that. But you and CommPartners are
5 both movers.

6
7 MR. DAVIDOW: Well yes but we are licensed in New Hampshire
8 they're not then they would have to become licensed in New Hampshire and we have an
9 Interconnection Agreement in New for New Hampshire they don't so in order for them to
10 replace us they would have to go through the expense and whatever litigation risks that
11 FairPoint's a very litigious company.

12
13 MS. BAILEY: So Vonage in the first instance gives all its traffic
14 to CommPartners, CommPartners terminates it where it can and where it can't you pick it up for
15 them 'cause you're certified in other areas.

16
17 MR. DAVIDOW: Or have the and or have the I.

18
19 MS. BAILEY: Interconnection.

20
21 MR. DAVIDOW: The Interconnection Agreement.

22
23 MR. COOLBROTH: Of course they don't pay for anything.

24
25 MS. BAILEY: Well.

26
27 MR. MASURET: And at the end of the day Vonage is an IP
28 company.

29
30 MS. BAILEY: Right.

31

1 MR. MASURET: So if you're Vonage you can't send correct me
2 if I'm wrong there's no IP carrier Interconnect Agreement with the LEC's.

3
4 MS. BAILEY: Right.

5
6 MR. MASURET: So you can't.

7
8 MS. BAILEY: Right.

9
10 MR. MASURET: The LEC's didn't know how to deal with
11 Vonage.

12
13 MS. BAILEY: No I get that but what I didn't get what was you
14 have CommPartners who has the same switch that you guys have and it seems like a lot of these
15 calls are going through CommPartners and Global NAPs or Transcomm and Global NAPs and I
16 didn't understand why.

17
18 MR. MASURET: And another reason is just life meaning Vonage
19 has a lot of requirements and Global NAPs is a wholesaler so I we as a company can't deal with
20 the you know 9 out of 10 things that Vonage requires of their vendors because we just we're not
21 staffed with 1,000 people. CommPartners is so they can do all of their reporting and all of their
22 order processing and other things for Vonage. And therefore CommPartners gets 100's of
23 millions of minutes. I don't want to speak for them but.

24
25 MS. BAILEY: Yeah.

26
27 MR. MASURET: Transcomm gets 100's of millions of minutes.
28 Point One gets 100's of millions from the Vonages from the Skypes. We can't deal directly with
29 a Skype or a Vonage 'cause we're not staffed to handle that and therefore whatever these
30 companies don't handle directly or through other relationships they send to us when they're
31 terminated.

1 MR. COOLBROTH: Does the identification of the calling party
2 change at all either through your equipment or during the course of the transmission?

3
4 MR. MASURET: Do you mean the originating number the
5 terminating number?

6
7 MR. COOLBROTH: Right.

8
9 MR. MASURET: No. We don't touch anything. So we don't re-
10 populate it with a billing number that makes it look like its local and that's what some other
11 carriers do with you guys. We simply pass it on and it is what it is it's VOIP and we feel like we
12 should pay VOIP rates so we're not masking we're not changing we're not doing anything
13 different despite the smirks and the shaking of the heads. So I don't know what questions you'd
14 like to ask me but go right ahead I'm not hiding anything here in this trial.

15
16 MR. COOLBROTH: Well it's not a trial.

17
18 MR. MASURET: The traffic is our traffic. It is what it is.

19
20 MS. DAVIS: And where's the VOIP rate?

21
22 MR. MASURET: Excuse me?

23
24 MS. DAVIS: The VOIP rate you're referring to where is that?

25
26 MR. MASURET: Where is whose VOIP rate?

27
28 MS. DAVIS: You said you'd like to pay a VOIP rate I'm curious
29 where you find that VOIP rate.

30
31 MR. MASURET: I will leave that to Joel.

1 MR. DAVIDOW: I was the one who found it. It's there in the
2 contracts the contracts are public.

3
4 MS. BAILEY: But it's not in a contract with FairPoint is it?

5
6 MR. DAVIDOW: No it's with Verizon.

7
8 MS. BAILEY: But you're not dealing with Verizon in New
9 Hampshire.

10
11 MR. DAVIDOW: Well but when we signed the agreement with
12 Verizon we weren't in the business we couldn't arbitrate a VOIP rate at the time. A weakness of
13 the '96 Act is it doesn't allow subsequent arbitrations under the cost plus standard when you
14 change businesses. So that we're in a whole bunch of contracts which were signed when we
15 were a dial up company.

16
17 MS. BAILEY: When you were a carrier for dial up companies.

18
19 MR. DAVIDOW: Yes and that point we could not didn't know we
20 were going to go into the VOIP business which we did desperately when the dial up fell apart.

21
22 MS. BAILEY: So do you agree that this Interconnection
23 Agreement was written to deal with traffic that was dial up Internet traffic and not VOIP traffic?

24
25 MR. DAVIDOW: No.

26
27 MS. BAILEY: Isn't that what you just said though?

28
29 MR. DAVIDOW: Well no because Verizon already had VOIP
30 customers we found very similar clauses there's one in Bell South and so on because there was a
31 period where Bell South dealing with AT&T and so on realized that in 2003 and 2004 that the

1 price for VOIP was up in the air and they put this in because they believed that the FCC any day
2 would set a VOIP rate.

3
4 MS. BAILEY: Right.

5
6 MR. DAVIDOW: And so it was put in to say there's no VOIP rate
7 now until the FCC sets one. And that's remember this clause should be to use the term construed
8 against Verizon/FairPoint 'cause they put it in and they put it in and Verizon put it in because
9 Verizon was in the process which happened all over the country of negotiating the 00045
10 because that was the industry's estimate of what the FCC would make the rate big.

11
12 MS. BAILEY: But you have the ability to ask that this
13 Interconnection Agreement be modified and until you do I don't understand how you can sit
14 there and tell me that this Interconnection Agreement doesn't apply that you've opted into some
15 Interconnection Agreement in some other state.

16
17 MR. DAVIDOW: We're not saying we're saying the
18 Interconnection Agreement applies and the Interconnection Agreement applies by concluding
19 that the parties will not know how much they owe each other for VOIP until the FCC acts.

20
21 MS. BAILEY: Where does it say that in this Interconnection
22 Agreement? Show me that.

23
24 MR. DAVIDOW: Well if you look in our stipulation.

25
26 MR. COOLBROTH: No no.

27
28 MS. BAILEY: No just tell me in the Interconnection Agreement.

29
30 MR. DAVIDOW: Well it's.

31

1 MS. BAILEY: Do you have it?

2
3 MR. DAVIDOW: Yeah sure. It's a combination of clause 2.43
4 that I think is the definition. Oh yeah I have the agreement. By the way I did think this was a
5 technical hearing not a legal briefing.

6
7 MS. BAILEY: Well it's not a legal briefing 'cause I'm not a
8 lawyer so.

9
10 MR. DAVIDOW: All right. Well but I'm saying the purpose was
11 to find what our traffic was but the general counsel or somebody else and it's 8.1 is the clause in
12 question but it obviously 2.3 the definition of Internet has to go onto 8.1 and 8.1 page 64 of the
13 agreement is there under other types of traffic 8.1 and it says that the rights relating to
14 intercarrier compensation may be due with their exchange in Internet traffic shall be governed in
15 exchange an exchange who is going either way.

16
17 MS. BAILEY: Shall be governed by the terms of the FCC Internet
18 order.

19
20 MR. DAVIDOW: The FCC Internet order and other applicable
21 FCC orders and regulations.

22
23 MS. BAILEY: So what FCC Internet order are you referring to?
24 The recip/comp one that sets it at .0007?

25
26 MR. DAVIDOW: I'm saying I was very careful in my statement
27 to say that in the decision Paetec vs CommPartners came out 3 months ago. Judge Robertson he
28 said what everybody in the industry knows there has never been a VOIP number issue since then
29 as one judge said it's like waiting for Godot.

30
31 MS. BAILEY: Yup.

1 MR. DAVIDOW: And therefore the answer is that the only that
2 why the .00045 emerged as the dominant rate in the industry is everybody is waiting for this rate
3 to emerge and when it didn't emerge people guessed what it would be and what they could live
4 with.

5
6 MS. BAILEY: But it's not guessed here. It's not in here. So
7 you're saying the FCC order applies there is no FCC order so that means.

8
9 MR. DAVIDOW: So there's no rate at all.

10
11 MS. BAILEY: Well that no that means the old rates apply I would
12 think. Well I mean.

13
14 MR. DAVIDOW: Well I mean you wouldn't say that is as every
15 professor of contract could say to say that we signed a rate that is 100 times our cost that
16 bankrupts us. Nobody reads a vague contract or an ambiguous contract to ruin one party.

17
18 MS. BAILEY: Right so why have you asked to renegotiate this?

19
20 MR. COOLBROTH: There's no such rule of law.

21
22 MR. DAVIDOW: This isn't an equitable thing of whether we're a
23 nice company. Why first of all a year ago we offered to negotiate. We've only known them for
24 2 years. At the end of a year they wrote us about the dispute we wrote back and said we'll pay
25 0045 that's what Verizon charges people we know it 'cause we were just in the trial and they
26 said we want the ruinous rate we want 2.8 cents you may only be paying 2/10 of a cent per
27 minute as a forwarder and we know that you really can't pay this is just you know to drive you
28 into the ground no one believes that a company can possibly pay.

29
30 MR. COOLBROTH: So you continued to use the service anyway.

31

1 MS. DAVIS: And moreover where do you say that we continue to
2 drive you into the ground and?

3
4 MR. COOLBROTH: Well you don't have to take FairPoint
5 service. We can solve that problem.

6
7 MR. DAVIDOW: All right. Well we're now deep into equity as
8 far as I know this was as there is a legal question here which is 8.1 the definition 2.43 is the
9 definition.

10
11 MS. BAILEY: I've seen that definition.

12
13 MR. DAVIDOW: Okay. And as far as we understood that
14 someone the general counsel will decide whether our reading of the contract's right or wrong.

15
16 MS. BAILEY: The general counsel of the PUC?

17
18 MR. DAVIDOW: Well whoever decides what the law is.

19
20 MS. FABRIZIO: The Commission. The Commission decides.

21
22 MR. DAVIDOW: The Commission besides who some of them are
23 lawyers or all of them are lawyers.

24
25 MS. FABRIZIO: Two out of 3.

26
27 MR. DAVIDOW: Two are lawyers. And there is a contract term
28 and they can look at rules for construing the terms. One of the things I'm saying is they wrote it
29 so it's construed against them not for them.

30
31 MS. BAILEY: Who wrote it?

1 MR. DAVIDOW: Verizon.

2

3 MS. BAILEY: This was arbitrated.

4

5 MS. FABRIZIO: Arbitrated.

6

7 MS. BAILEY: This was arbitrated between Global NAPs and

8 Verizon.

9

10 MR. DAVIDOW: I know but Global NAPs I put my man on to
11 testify we weren't in the VOIP business we wouldn't have written it. It was in the contract
12 because Verizon had it there. They didn't write it we didn't write it. The only one left that it
13 wasn't arbitrary. Verizon wrote it. You can check it. That's the fact.

14

15 MS. BAILEY: Well it was arbitrated 'cause we hired an arbitrator
16 to do it.

17

18 MR. DAVIDOW: No but that that was the meaning of that clause
19 or trying to change that clause wasn't arbitrary.

20

21 MS. BAILEY: Which clause are we talking about?

22

23 MR. DAVIDOW: 8.1.

24

25 MS. BAILEY: Okay.

26

27 MR. DAVIDOW: So 8.1 would go back to Verizon. I think if you
28 ask anyone they will say that it never changed.

29

30 MR. COOLBROTH: Let me just try to understand. Does that
31 mean that for any service provided by FairPoint to Global NAPs whether it be under tariff, state,

1 in-state tariff, interstate tariff or this Interconnection Agreement if the service is used for calls
2 that touch the Internet in any way there is no charge for that service. Is that your position?

3
4 MR. DAVIDOW: I think it would vary. You're perfectly free to
5 argue given the particular service the FCC has already clarified that that does not present an
6 issue.

7
8 MS. BAILEY: You mean the FCC has already clarified that that's
9 not the case?

10
11 MR. DAVIDOW: Well I'm saying that it the holding of let's say
12 Judge Robertson last month was that the FCC has not clarified the intercarrier compensation rate.
13 Now if the FCC has long ago clarified that there's a rate for number portability something
14 requires then it's clarified and for that purpose it something the we are only relying in this
15 purpose in regard to the acknowledged lack of clarification for intercarriers switched access
16 charges as they apply.

17
18 MS. BAILEY: So that means it's free.

19
20 MR. DAVIDOW: No it means that you either negotiated or you
21 wait I mean that is if tomorrow morning they come out and they then send us a bill or that rate
22 say it's been clarified and you signed a contract and we believe the contract's retroactive and
23 they send us a bill. It's not free.

24
25 MS. FABRIZIO: Or a 3rd option might be going to dispute
26 resolution under the ICA to determine the appropriate rate?

27
28 MR. DAVIDOW: Well we did that. They said no they want the
29 ruinous rate.

30
31 MS. FABRIZIO: You formally requested dispute resolution?

1 MR. DAVIDOW: Absolutely. A year ago.

2
3 MS. BAILEY: Do you have it in writing?

4
5 MR. DAVIDOW: Yeah I think we submitted it.

6
7 MR. COOLBROTH: It was for Maine and Vermont.

8
9 MR. DAVIDOW: It was for Maine and Vermont but they said
10 those.

11
12 MS. BAILEY: That's not dispute resolution under the New
13 Hampshire Interconnection Agreement. That was arbitrated here.

14
15 MR. DAVIDOW: Well they told us no and they I spoke to Sarah
16 and she said we're not doing it.

17
18 MS. BAILEY: Okay so you haven't formally requested dispute
19 resolution.

20
21 MR. DAVIDOW: Only in Maine and Vermont but not New
22 Hampshire.

23
24 MS. BAILEY: In New Hampshire.

25
26 MR. COOLBROTH: Let me just try to understand that obviously
27 the case here is about switched access but for special access ordered out of FairPoint's interstate
28 special access tariff is it Global NAPs' position that if those services are used for transmissions
29 that touch the Internet that there is no charge for that interstate special access.

30

1 MR. DAVIDOW: No charge that the charge would have to be
2 negotiated.

3
4 MR. COOLBROTH: And for co-location if Global NAPs acquires
5 co-location facilities from FairPoint and uses those for transmissions that at any point touch the
6 Internet is it Global NAPs' position that they're not liable for co-locations?

7
8 MR. DAVIDOW: I have not read this clause or thought about it
9 through all that. I think the answer is, I'll pass on this. I have not.

10
11 MR. COOLBROTH: If Global NAPs orders interoffice units.

12
13 MR. DAVIDOW: I get your point but the purpose of this hearing
14 was technical discussion of the nature of traffic. The if you think there's something wrong with
15 our legal construction then that's for briefs that's not for today.

16
17 MR. COOLBROTH: Trying to understand the position.

18
19 MR. DAVIDOW: I understand that. I can only give those
20 positions that I've prepared to discuss. The only issues that I am free to discuss that has to do
21 with the bills the bills cited in the petition to disconnect are failure to pay switched access. The
22 other theories of which we didn't pay is not in the petition that started this hearing.

23
24 MS. DAVIS: Right it's in the notice of disconnection.

25
26 MS. BAILEY: 'Cause we don't have jurisdiction over interstate
27 special access.

28
29 MR. DAVIDOW: Oh I see. All right.

30
31 MS. BAILEY: We don't.

1 MR. DAVIDOW: Well, then it's.

2
3 MS. BAILEY: I don't think.

4
5 MR. DAVIDOW: Then my position on it would be irrelevant to
6 this commission because they don't have jurisdiction over it anyway.

7
8 MS. BAILEY: Well I thank you for that because I like to
9 understand everything so.

10
11 MR. DAVIDOW: Yep. It's interesting.

12
13 MS. FABRIZIO: Let me interrupt and introduce Michael Ladam,
14 who is the Assistant Director of the Telecom Division here. He's our resident IP Internet expert.

15
16 MS. BAILEY: He was at another meeting this morning so.

17
18 MR. DAVIDOW: All right. Let me turn now to Dr. Fike. Dr.
19 have you worked with Global NAPs before?

20
21 DR. FIKE: I have.

22
23 MR. DAVIDOW: Could you give a statement of the things that
24 you've done for Global NAPs in the past?

25
26 DR. FIKE: I performed an investigation about the nature of Global
27 NAPs traffic by interviewing 2 of Global NAPs major customers. I believe that was Transcomm
28 and Point One. I also checked their websites as well as talking to their people and then I testified
29 I was prepared to testify in the hearing in Maryland and was not called. And I testified at the
30 hearing in Harrisburg Pennsylvania.

31

1 MR. DAVIDOW: And when you testified in the hearing in
2 Harrisburg Pennsylvania did the ALJ qualify you as an expert?

3
4 DR. FIKE: I believe he did.

5
6 MR. DAVIDOW: Are you familiar with the definition 2.43 in the
7 contract?

8
9 DR. FIKE: This is the agreement between Global NAPs and
10 Verizon?

11
12 MR. DAVIDOW: Yes.

13
14 DR. FIKE: Internet traffic. Traffic that is transmitted to or
15 returned from the Internet at any point during the duration of the transmission?

16
17 MR. DAVIDOW: Yes.

18
19 DR. FIKE: Yes.

20
21 MR. DAVIDOW: So you've read that and thought about it.

22
23 DR. FIKE: I believe I have understanding as far as what the words
24 say. Yes.

25
26 MR. DAVIDOW: All right then the question is did you reach a
27 conclusion as to whether Global's traffic comes within that definition? Global's VOIP traffic.

28
29 DR. FIKE: Yes I have reached a conclusion.

30
31 MR. DAVIDOW: What is the conclusion?

1 DR. FIKE: That it does fall under the definition.

2
3 MR. DAVIDOW: Could you explain the reasoning behind your
4 conclusion?

5
6 Well as already been discussed here, at least for that portion of the traffic that originates
7 with companies like BroadVoice, Magic Jack and Vonage which is Vonage traffic some Vonage
8 traffic that flows to Global NAPs that traffic is an IP IP frames at the time that it leaves the
9 Vonage or Magic Jack customer premise. So it clearly crosses the Internet. Other traffic is in IP
10 form during at least part of its journey or all of its journey and is crosses the Internet during that
11 journey from the originating caller to the company like Transcomm then to Global NAPs and it's
12 an IP in that portion.

13
14 MS. BAILEY: Can I ask him a question?

15
16 MR. DAVIDOW: Absolutely.

17
18 MS. BAILEY: So you're a telecom expert so you're familiar with
19 switched access correct?

20
21 DR. FIKE: Well yes.

22
23 MS. BAILEY: And can you tell me what your understanding of
24 terminating switched access is?

25
26 DR. FIKE: Terminating switched access would be where a call
27 arrives at let's say a tandem and.

28
29 MS. BAILEY: Yeah. What kind of call? A call in TDM format?

30
31 DR. FIKE: Probably the tandem is only going to handle TDM.

1 MS. BAILEY: Okay so a call.

2

3 DR. FIKE: In this day and time at least.

4

5 MS. BAILEY: Okay yep so a call arrives at a tandem in TDM
6 format and then what happens?

7

8 DR. FIKE: Along with the signaling.

9

10 MS. BAILEY: Yep.

11

12 DR. FIKE: That says here's where it goes the tandem then
13 switches it on to a trunk that goes to the terminating central office. The terminating central
14 office looks at the signaling message and says here's the subscriber that it goes to terminating
15 central office probably at this point since the subscriber probably does not terminate TDM and
16 converts it to analog switches it to the subscriber's access line and applies bringing voltage to the
17 subscriber's line.

18

19 MS. BAILEY: Okay and how does a call that's originated by a
20 VOIP customer and handed off to Global NAPs to be delivered to an ILEC in New Hampshire
21 how does the switch how does the termination of that call differ? Does it get to the tandem in
22 TDM?

23

24 DR. FIKE: The tandem probably only accepts it in TDM.

25

26 MS. BAILEY: And who gives it to them in TDM?

27

28 DR. FIKE: Presumably Global NAPs.

29

30 MS. BAILEY: Okay so Global NAPs gives.

31

1 DR. FIKE: The Global NAPs network.

2
3 MS. BAILEY: Yep. So Global NAPs gives it to the tandem in
4 TDM and then what happens? Same thing?

5
6 DR. FIKE: We just described that.

7
8 MS. BAILEY: Same thing. So how why and explain to me why
9 you think they should pay a different rate for the same exact service.

10
11 DR. FIKE: You're asking me a legal question and I.

12
13 MS. BAILEY: No I'm not I'm asking you as a telecom expert
14 who has experience I think nationally with all things telecom.

15
16 MR. DAVIDOW: Well I'm not. You know it's a mild protest but
17 this is a technical session and I asked for the hearing to look at one term in the contract does it
18 touch the Internet or not. Why the parties wanted to write that is their own business. The
19 answer is they wrote an exception as I see it for things that touch the Internet. I brought Dr.
20 Fike here prepared to discuss whether in fact it does touch the Internet or whether it doesn't.

21
22 MS. BAILEY: But you've conceded when this language was
23 written there was no VOIP traffic and that things that touched the Internet were dial up. That
24 this was written in.

25
26 MR. DAVIDOW: No no no I certainly did not.

27
28 MS. BAILEY: I thought I heard you say that this applied to dial
29 up traffic.

30

1 MR. DAVIDOW: No absolutely not. Absolutely not. I said that
2 Verizon wrote the language because VOIP was starting and they knew that they wanted to know
3 what the FCC was going to do with it. So Verizon put it in so that the biggies who care about
4 this stuff would have some way of figuring out what to do with VOIP. Because you already
5 have since 1983 and '86 an ESP exemption which had created great confusion and put into the
6 Telcom Act that any traffic that's changed in form or content is not regular traffic it's something
7 called an information service. Because the information service caused confusion in the industry
8 the major carriers put these clauses in and they put them in order to create an effort to predict
9 when the FCC finally gets around to this what are they going to put in? And the general answer
10 was the FCC had discussed bill and keep they had discussed 0007 which is what Wisconsin
11 found and they had discussed everything in between. There's an affidavit by CommPartners in
12 the Paetec case in which they said that in every state in which they've negotiated a rate the rate is
13 between bill and keep and 0006 because those are the only economic rates that allowed fully for
14 evolution to occur.

15
16 MS. BAILEY: So.

17
18 DR. FIKE: I don't want to sound evasive here so let me try to
19 answer your question or that portion of it.

20
21 MS. BAILEY: Okay.

22
23 DR. FIKE: I'm not saying it's .00045 or anything else but what
24 I'm saying is that it's an IP during a portion of its journey that lines up at the tandem and then
25 delivered to the FairPoint customer.

26
27 MS. BAILEY: Before it gets to the tandem.

28
29 DR. FIKE: Yeah.

30
31 MS. BAILEY: Yep.

1 DR. FIKE: Yeah. That's what I'm saying. And whatever the
2 billing and regulatory consequences of that are beyond my.

3
4 MS. BAILEY: Okay.

5
6 DR. FIKE: My appropriateness. I've taught telecommunications
7 policy for 35 years in graduate and undergraduate seminars.

8
9 MS. BAILEY: I know and I'm fascinated by that.

10
11 DR. FIKE: I'm not an attorney. I'm not an attorney so.

12
13 MS. BAILEY: Neither am I. And so I want to understand from
14 you from a national somebody who's expert at national policy how it's not discriminatory to
15 charge one kind of carrier one rate which is almost free to do the same thing that we charge
16 another carrier a lot more money for. How's that not discriminatory?

17
18 DR. FIKE: Can I have a little more breadth to respond to that?

19
20 MS. BAILEY: Yeah.

21
22 DR. FIKE: This if I were still teaching ENTC 325 this fall this
23 would be a classic example of the regulatory structure for all of its merit being behind the
24 technology and that's really what's going on here if you can view many things about the I'm not
25 going I can't comment on that one way or another. Clearly different categories of customers
26 receive different types of service. From the global exchange companies who have who are the
27 foundation of many things in our society.

28
29 MS. BAILEY: But is Global NAPs receiving a different service
30 than a regular traditional toll carrier who terminates traffic in FairPoint's area?

31

1 DR. FIKE: In the picture that you draw of or that we drew of the
2 terminating traffic arriving at the tandem they're receiving exactly the same service as AT&T
3 Long Distance receives when they send traffic to that tandem as well.
4

5 MS. FABRIZIO: Who converts that to TDM format is it Global
6 NAPs who does the conversion?
7

8 MR. MASURET: Yeah. We convert it to hand off to FairPoint.
9 Your point is valid and we lived through the frustration of doing exactly what you just said and
10 being told that oh you know what Global NAPs and companies like Global NAPs I know you're
11 terminating these calls just like you would for a regular phone call and you're handing them to
12 the Earthlinks and the AOLs of the world we know you're doing the same thing but you're going
13 to get 0007 for that not the intercarrier compensation.
14

15 MS. BAILEY: You weren't handing them to Earthlink you were
16 getting them from Earthlink.
17

18 MR. MASURET: No we were giving them to Earthlink.
19

20 MR. DAVIDOW: We're saying it was used against us. The.
21

22 MR. MASURET: It was used against us for the first 6 years of our
23 lives.
24

25 MR. COOLBROTH: An incredible abuse.
26

27 MR. MASURET: Excuse me?
28

29 MR. COOLBROTH: It was an incredible abuse.
30

31 MR. MASURET: Of what?

1 MR. COOLBROTH: It was supposed to be a reciprocal system of
2 traffic in balance that was all one way. It was a money issue.

3
4 MR. MASURET: And that's and that's a fair point so you are you
5 saying if the balance was there we should get paid for doing that? Because that's okay it takes a
6 little it's but your point is valid and we lived through it.

7
8 Mr. DAVIDOW: You're a fact witness let's hold the fact witness
9 let's let the lawyers.

10
11 MS. FABRIZIO: At this point the stenographer is going to be
12 coming back at about 1:15, 1:30 would you like to break for lunch?

13
14 MR. DAVIDOW: Yes.

15
16 MS. FABRIZIO: Until 1:30 is that enough time?