

1 STATE OF NEW HAMPSHIRE

2 PUBLIC UTILITIES COMMISSION

3
4 **May 24, 2012** - 10:07 a.m.
Concord, New Hampshire

NHPUC JUN07'12 AM 9:46

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7 **RE: DT 12-084**
8 **TIME WARNER ENTERTAINMENT COMPANY, LP,**
9 **d/b/a TIME WARNER CABLE:**
10 **Petition for Resolution of Dispute with**
11 **Public Service Company of New Hampshire.**
12 **(Prehearing conference)**13
14 **PRESENT:** Chairman Amy L. Ignatius, Presiding
15 Commissioner Robert R. Scott
16 Commissioner Michael D. Harrington

17 Sandy Deno, Clerk

18
19 **APPEARANCES: Reptg. Time Warner Entertainment Company**
20 **d/b/a Time Warner Cable:**21 Maria T. Browne, Esq. (Davis, Wright...)
22 Robert Scott, Esq. (Davis, Wright...)
23 David Anderson, Esq. (Pierce Atwood)
24 Julie P. Laine, Esq. (Time Warner)**Reptg. Public Service Co. of New Hampshire:**Sarah B. Knowlton, Esq. (PSNH)
Christopher J. Allwarden, Esq. (PSNH)
Charles P. Bauer, Esq. (Gallagher Callahan...)
Erik G. Moskowitz, Esq. (Gallagher...)**Reptg. Comcast of New Hampshire, Inc., et al:**Susan S. Geiger, Esq. (Orr & Reno)
Stacey L. Parker, Esq. (Comcast)

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

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APPEARANCES: (C o n t i n u e d)

Reptg. segTEL:

Jeremy Katz
Kath Mullholand

Reptg. Unutil Energy Systems, Inc.:

Gary Epler, Esq. (UES)
Harry N. Malone, Esq. (Devine Millimet...)

Reptg. PUC Staff:

Matthew J. Fossum, Esq.
Kate Bailey, Director/Telecom Division
Thomas Frantz, Director/Electric Division
Michael Ladam, Telecom Division

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1 MR. ANDERSON: Dave Anderson, from
2 Pierce Atwood, on behalf of Time Warner Cable.

3 CHAIRMAN IGNATIUS: All right.

4 MS. GEIGER: Susan Geiger, from the law
5 firm of Orr & Reno. I represent four Comcast entities
6 that are listed in the Petition for Intervention that I
7 filed. And, with me today from the Company is Stacey
8 Parker.

9 CHAIRMAN IGNATIUS: Good morning.

10 MR. KATZ: Good morning. I'm Jeremy
11 Katz. I'm the Vice President of segTEL, and with me is
12 Kath Mullholand.

13 CHAIRMAN IGNATIUS: Good morning.

14 MS. KNOWLTON: Good morning. For Public
15 Service Company of New Hampshire, my name is Sarah
16 Knowlton. I'm a Senior Counsel with the Company. And,
17 appearing with me today is my colleague, Christopher
18 Allwarden, who is also a Senior Counsel at the Company.
19 And, with us at counsel's table is Charles Bauer and Erik
20 Moskowitz, who are the Company's counsel in the lawsuit
21 that is pending between the parties. And, they are with
22 Gallagan -- the Gallagher firm. And, from the Company,
23 Allen Desbiens.

24 CHAIRMAN IGNATIUS: Good morning.

1 MR. EPLER: Good morning. I'm Gary
2 Epler, Chief Regulatory Counsel, Unitil Service Corp., on
3 behalf of Unitil Energy Systems, Inc. And, with me is
4 Attorney Harry Malone, of the law firm Devine Millimet.
5 Thank you.

6 CHAIRMAN IGNATIUS: Good morning.

7 MR. FOSSUM: And, good morning. Matthew
8 Fossum, for the Staff of the Public Utilities Commission.
9 And, with me are Kate Bailey, Michael Ladam, and Tom
10 Frantz, from Commission Staff.

11 CHAIRMAN IGNATIUS: Welcome, everyone.
12 We have three interventions that I'm aware of that have
13 been filed, requests for intervention: Comcast, segTEL
14 and Unitil. Are there any other parties seeking
15 intervention?

16 (No verbal response)

17 CHAIRMAN IGNATIUS: It appears not.
18 And, I also notice the OCA is in the back. But are you
19 planning to participate or simply observe?

20 MR. ECKBERG: We are not planning to
21 participate in this docket at this time. I'm just here
22 out of interest and curiosity about the proceedings today.

23 CHAIRMAN IGNATIUS: All right. Good.
24 So, on the issues of intervention, we've reviewed the

1 petitions. I don't know if there's any objections to them
2 from any of the parties and Staff. And, so, we want to
3 hear arguments on why you're seeking to intervene. And,
4 we've read what you've filed. But I want particular
5 focus, if you would please, on why your rights, duties or
6 privileges are affected by this docket. You certainly
7 have interest in it. It is interesting. And, it's
8 relevant to what you do. There's no question about that,
9 for the three parties that are seeking intervention. But
10 do they rise to the level of the legal standard for
11 intervention in our state law? So, as you explain your
12 Petition to Intervene and anything you want to stress from
13 that, you don't need to restate everything that's been
14 filed, but anything you can really clarify as to why your
15 legal interests are affected, rather than "these are
16 interests of concern" of yours, I would appreciate it.

17 So, Ms. Geiger, do you want to begin
18 with Comcast?

19 MS. GEIGER: Yes. Thank you, Chairman
20 Ignatius. As indicated in Comcast's Petition to
21 Intervene, Comcast is similarly situated to Time Warner,
22 in that Comcast also has interconnection -- excuse me,
23 pole attachment agreements with PSNH. And, to the extent
24 this docket will adjudicate the issue of whether or not

1 PSNH has properly charged Time Warner and other pole
2 attachers, that are essentially cable providers,
3 correctly, and, prospectively, what the appropriate rate
4 for those pole attachments are, Comcast's relationship to
5 PSNH, and rights, duties, privileges, and other immunities
6 that would be affected by the outcome of this docket are
7 the same as Time Warner's. And, therefore, we believe
8 would qualify for intervention.

9 CHAIRMAN IGNATIUS: But isn't this
10 essentially a contract dispute between two parties, and
11 Comcast is not one of those two parties?

12 MS. GEIGER: I think that, technically,
13 that's probably correct. But, upon information and
14 belief, and even though we've not conducted formal
15 discovery in this docket, the pole attachment agreements
16 that Comcast has with PSNH we believe are similar to Time
17 Warner's. And, therefore, to the extent that there is an
18 adjudication of any language or terms, conditions or other
19 obligations, rights and duties under those contracts, we
20 believe that that adjudication would constitute *res*
21 *judicata* with respect to our contracts. And, therefore,
22 for purposes of administrative economy, it makes more
23 sense for Comcast to be involved in this docket, rather
24 than to deal separately with these issues in another

1 docket.

2 CHAIRMAN IGNATIUS: All right. Thank
3 you. Before we move to the next request, do we want to
4 hear responses on the Comcast petition? Is there anyone
5 who's opposed to the Comcast Petition to Intervene?

6 (No verbal response)

7 CHAIRMAN IGNATIUS: All right. Seeing
8 nothing, Mr. Katz.

9 MR. KATZ: So, to start, segTEL is
10 similarly situated to both Comcast and Time Warner. Our
11 knowledge and belief, our pole attachment agreement with
12 Public Service of New Hampshire is substantially
13 identical, with the exception of the identification of the
14 rates that are charged annually. There's a schedule that
15 simply separates the cable TV rate and the telecom rate.
16 SegTEL is presently charged the telecommunications rate.
17 SegTEL is attached to over 30,000 poles throughout the
18 State of New Hampshire.

19 Essentially, there are several issues
20 that are brought up in this docket. And, the first is,
21 essentially, a request for a ratemaking of what the
22 appropriate rate should be for attachments. The Public
23 Utilities Commission rules, 1300 rules, on the matter are
24 pretty clear that pole attachments must be granted on a

1 non-discriminatory basis. And, to the extent that there's
2 a ratemaking that's going to determine a rate that applies
3 to pole attachments, under a contract that we have that is
4 substantially identical to the one that Time Warner has
5 with Public Service, our rights, duties, and privileges
6 would be substantially affected, and we have the
7 obligation to protect those rights, privileges, and
8 obligations.

9 CHAIRMAN IGNATIUS: Okay. Before you go
10 to number two, --

11 MR. KATZ: Sure.

12 CHAIRMAN IGNATIUS: -- take a breath.
13 Because either you or the court reporter is going to run
14 out of steam.

15 (Laughter.)

16 MR. KATZ: Just tell me when.

17 MR. PATNAUDE: Go ahead.

18 CHAIRMAN IGNATIUS: That's fine. Just
19 try to slow down a little bit.

20 MR. KATZ: Number two, there is a
21 substantial question that appears to be teed up for
22 litigation here, about whether the types of relief that
23 are available under pole attachment disputes are
24 prospective only, or can be applied to actual issues that

1 have occurred prior to the placement of the complaint.
2 That's based upon the filing that Public Service made in
3 response to the petition that Time Warner submitted. And,
4 to the extent that segTEL has, in the ordinary course of
5 business, many issues that come about in our seeking of
6 pole attachments and maintenance of pole attachments,
7 including rates, the adjudication of the issue that Time
8 -- that Public Service has brought up is going to
9 substantially impact our rights, privileges, and
10 obligations.

11 And, third, a substantial portion of the
12 Time Warner Petition has to do with the question of the
13 FCC's findings in their most recent rulemaking about pole
14 attachments, and what relation the FCC's findings might
15 have to the manner in which New Hampshire regulates pole
16 attachments. And, that is a issue that is substantially
17 going to affect segTEL's rights, duties, and privileges as
18 well. Thank you.

19 CHAIRMAN IGNATIUS: All right. Is there
20 any objection to segTEL's Petition to Intervenor?

21 MS. BROWNE: Yes. Time Warner actually
22 filed an objection. And, one of the issues that we are
23 really concerned about is expanding the issues within the
24 case beyond what they are presently in the Petition.

1 SegTEL, as a pole owner and conduit owner is actually in a
2 different position than attaching entities, such as Time
3 Warner Cable and Comcast, in that they have significant
4 leverage with respect to attaching entities in those
5 relationships. The FCC, in its April 2011 order, did
6 extend certain protections under the federal law to
7 incumbent local exchange carriers that own facilities, but
8 they did differentiate between those types of attaching
9 entities from attaching entities such as a cable
10 television operator or competitive local exchange carriers
11 that are not -- don't own those types of facilities.

12 So, our concern here is, and it's
13 amplified somewhat by the presentation that was just made,
14 that the issues will be expanded to include the rights
15 that pole owners may have vis-a-vis electric company
16 utility pole owners. And, those are not the issues that
17 are in the current Petition. The issues in the current
18 Petition are focused primarily on what the rate should be
19 during the time period when the Interim Rules were in
20 effect and the FCC's Rules were in effect, yes, but also
21 prospectively. And, I do think, with respect -- they are
22 only relevant to those entities that are attaching to
23 PSNH's poles. The rate that ultimately is set for Public
24 Service Company of New Hampshire is a rate just for Public

1 Service Company of New Hampshire. It's not the rate that
2 will then be charged by other pole owners in the state.
3 Yes, there may be some similarities, if you decide to
4 adopt -- if the Commission were to decide to adopt one
5 formula, for example. But it wouldn't necessarily be
6 applied in the same manner, because there are different
7 factual elements that go into setting the rate. And, so,
8 we think that, unless you are a specific attacher in the
9 same position as Time Warner in this case, that you
10 wouldn't -- that there's a risk that the issues will be
11 expanded.

12 Another point that I think is important
13 to note is that Section 224(c) actually limits the amount
14 of time that states may take to adjudicate a complaint.
15 The statute says that the state -- certified state shall
16 take 180 days to adjudicate a complaint, from the date
17 the complaint is filed to the resolution, or 360 days, if
18 the rules so provide within the state. That's a really
19 short time frame. And, just, if the 180-day time frame
20 were applied, that extends this out to September 27th by
21 which a final resolution is required. If, in fact, the
22 360-day time period is permitted, then it gets you to
23 March, but it's still a very tight time frame. So, the
24 more parties that get involved, the less likely it is that

1 we'll be able to resolve the matter within the statutory
2 time frame.

3 CHAIRMAN IGNATIUS: Mr. Katz, a
4 response?

5 MR. KATZ: Well, I appreciate being
6 elevated to the position of "incumbent", but I think this
7 might have been somewhat misstated. SegTEL is the largest
8 fiber optic competitive local exchange carrier in the
9 State of New Hampshire. And, our attachments that are
10 made to poles owned by Public Service of New Hampshire are
11 made as a CLEC, in the capacity of a CLEC. We are not a
12 co-owner of poles or an ILEC in any way, shape, or form.

13 And, since Time Warner's objection seems
14 to be on the basis that we were confused with an ILEC,
15 which I'm still going to take as a compliment, I think,
16 that I don't believe there is any other reason that Time
17 Warner would have to object to our participation. We're
18 really in the same position that they are, essentially
19 litigating the same position.

20 CHAIRMAN IGNATIUS: Do you have
21 attachments on PSNH poles?

22 MR. KATZ: Well over 15,000 of them.

23 MS. BROWNE: Commissioner, perhaps my
24 understanding was from the filing that was made by segTEL,

1 and where they state that they "own poles, ducts conduits,
2 and rights-of-way." But, if that is not the case, then we
3 would want to amend our position on that. Nevertheless,
4 the time frames are still a significant issue. I think
5 we'd like to understand a little bit more about the issues
6 that segTEL raised with respect to the April 11th order --
7 I'm sorry, the April 2011 order that the FCC issued, and
8 what additional issues beyond the specific rate that's
9 being charged by PSNH that segTEL is interested in
10 exploring. Because, again, I think we want to make sure
11 that we don't go beyond the very defined issues in the
12 Petition.

13 CHAIRMAN IGNATIUS: Thank you. And, can
14 anyone help me, are we under the -- do our rules provide
15 for a 12-month review period or are we working under the
16 180 days?

17 MR. FOSSUM: I'm sorry.

18 CHAIRMAN IGNATIUS: Mr. Fossum.

19 MR. FOSSUM: It's my understanding that
20 there's no specific time frame set out in the Commission's
21 rules. So, I believe, and I haven't spent much time
22 looking at Section 224, but it would be my understanding
23 then that the 180 day time frame applies.

24 CHAIRMAN IGNATIUS: And, do we know if

1 that's a hard date? Sometimes we have deadlines for
2 review that say "you must do it within three months,
3 unless you're not able to reach agreement" -- I mean,
4 "reach resolution, in which case you get an additional
5 number of months." Is there anything like that that
6 you're aware of?

7 MR. FOSSUM: Not that I'm aware of.
8 But, again, I have spent not a lot of time. I would
9 essentially defer to those who have spent more time
10 reviewing the federal statutes than I have to understand
11 that issue.

12 CHAIRMAN IGNATIUS: Perhaps at the end
13 of the proceeding this morning, or in the next few days,
14 if anyone can get resolution on that and just submit it in
15 a letter to the Commission, so it's in the record, would
16 be helpful. All right.

17 (Chairman and Commissioners conferring.)

18 CHAIRMAN IGNATIUS: All right. Mr.
19 Epler?

20 MR. EPLER: Yes.

21 CHAIRMAN IGNATIUS: Your Petition to
22 Intervene on behalf of Unitil?

23 MR. EPLER: Yes, madam Chairman. Thank
24 you. First, I would state that Unitil is not party to the

1 contract in dispute. But we do have attachments --
2 attachment agreements in place with numerous attachees,
3 including Comcast. And, that the -- that based on
4 information and belief, the genesis of all these pole
5 attachment agreements are from more or less a template
6 that was provided by Verizon. And, so, our pole
7 attachment agreement, while not identical to that in
8 dispute here, is very close to being identical; similar
9 payment terms and other -- and other terms and conditions.

10 And, accordingly, to the extent that the
11 Commission may be deciding issues of interpretation of
12 these attachment agreements, they will affect the rights
13 of Unitil.

14 We do have an active dispute with
15 Comcast over the very issues that -- the very matters that
16 are at issue between Time Warner and PSNH. We have a --
17 we received a letter from Comcast in July 2008 stating
18 that "Comcast will no longer offer telecommunications in
19 the State of New Hampshire. To the extent that Comcast
20 provides interconnected Voice-over Internet Protocol
21 services, VoIP has not been classified as a
22 telecommunications services, including for the assessment
23 of a pole attachment rate." So, we do have an active
24 dispute with them on this very matter.

1 Also, if you look at the relief
2 requested by Time Warner, at Pages 32 and 33 of their
3 Petition, they're very much asking for generic relief, in
4 terms of interpretation of rulings from the Commission.

5 There was mention by Time Warner's
6 counsel of the concern of many parties being involved. I
7 would suggest that, actually, the parties here are
8 well-versed in the issues, very competent, and very much
9 may be able to bring these matters to a head and assist in
10 getting this dispute resolved, particularly because
11 they're -- that I think it would assist the Commission
12 knowing all of the interests that are involved and the
13 implications of any ruling on particular terms of the
14 agreements.

15 CHAIRMAN IGNATIUS: Thank you. Is there
16 objection to Unitil's Petition to Intervene?

17 MS. BROWNE: Yes, madam Chairman. Time
18 Warner also filed an objection to Unitil's intervention
19 for many of the same reasons previously stated. And, you
20 know, one of the concerns, too, I will say is discovery,
21 and how long that might take with just two parties
22 involved. If we extend this out to numerous parties,
23 we're very concerned that we won't be able to meet the
24 time frame. We don't see the need for a lot of discovery

1 between the two primary parties, largely because,
2 depending upon how the formula -- how the Six Factor Test
3 that were in the New Hampshire Public Service Commission
4 rules, and/or the FCC formula, which was in effect during
5 the Interim Rules, that those will likely -- well, we know
6 the FCC formula does, and we would anticipate that New
7 Hampshire's application of the Six Factor Test would
8 involve publicly available data. And, therefore, Time
9 Warner does not envision the need for much discovery. But
10 we're concerned that adding additional parties will
11 further complicate those issues.

12 CHAIRMAN IGNATIUS: Any other response
13 to the Unitil Petition to Intervene?

14 (No verbal response)

15 CHAIRMAN IGNATIUS: Mr. Epler, any
16 response from you?

17 MR. EPLER: Well, the additional concern
18 that was just raised by Time Warner's counsel with respect
19 to discovery, certainly, Unitil is going to adhere to any
20 discovery schedule that's set by the Commission. And,
21 we'll work vigorously with the parties to help the case
22 management in this docket. So, we don't see that as a
23 reason to not allow our intervention.

24 CHAIRMAN IGNATIUS: But, Mr. Epler, I

1 take it your expectation is that the contracts that you
2 have with Comcast would become exhibits as part of this
3 case or not?

4 MR. EPLER: No. That's not our intent.
5 Our intent, though, is just -- is to, at least initially,
6 to monitor the proceeding. But we are concerned about any
7 rulings that may be coming from the Commission on the
8 matters at issue. And, we would want to be able to
9 participate in the litigation of those, of those matters.
10 So, to the extent that the Commission is asking for
11 briefing on particular provisions of the contract, where
12 those provisions may be identical, that I think Unitil has
13 an interest in putting its position before the Commission.
14 We would not be seeking to bring our dispute with Comcast
15 before the Commission in this docket.

16 (Chairman and Commissioners conferring.)

17 CHAIRMAN IGNATIUS: All right. Thank
18 you very much on the intervention questions. We will take
19 all of that under advisement.

20 I think the next issue we want to talk
21 about is -- oh, well, first of all, one just minor detail
22 to work out. Ms. Browne, you referenced "objections", and
23 we don't have those for some reason, but I do think
24 they're listed in the docket listing. All right, we do

1 have them. So, we'll take a look at them.

2 The next really significant issue to
3 hear people on today is the question of jurisdiction. As
4 I understand it, this dispute is, obviously, the subject
5 of this Petition filed with the Commission, also with a
6 civil suit filed by PSNH in the Merrimack County Superior
7 Court. And, according to one of the letters submitted,
8 that was removed by Time Warner to the Federal District
9 Court, is that correct?

10 MS. BROWNE: Yes.

11 CHAIRMAN IGNATIUS: Can we get a status
12 of where it stands legally, and whether the Court has made
13 any comment on what it believes the appropriate
14 jurisdiction is for this dispute?

15 MS. BROWNE: Yes. PSNH had filed a
16 motion to remand the case to the Merrimack Superior Court.
17 A district court denied that motion and has retained
18 jurisdiction over the matter. Comcast had filed a motion
19 to dismiss and/or stay the proceeding in Federal Court
20 pending the resolution here --

21 CHAIRMAN IGNATIUS: Comcast filed?

22 MS. BROWNE: I'm sorry, Time Warner,
23 right.

24 CHAIRMAN IGNATIUS: Okay.

1 MS. BROWNE: Time Warner Cable filed the
2 Motion to Dismiss the proceeding and/or stay the
3 proceeding pending resolution by this Commission of the
4 substantive issues, interpreting the New Hampshire rules
5 governing pole attachments. That PSNH's opposition to
6 those motions is still out and pending, and will be due in
7 June, I believe, end of June.

8 CHAIRMAN IGNATIUS: So, there's no
9 ruling from the Federal Court on your --

10 MS. BROWNE: Motion to Dismiss or Stay.

11 CHAIRMAN IGNATIUS: -- Motion to Dismiss
12 or Stay.

13 MR. BAUER: Madam Chairman, if I may?

14 CHAIRMAN IGNATIUS: Please.

15 MR. BAUER: My name is Charles Bauer --
16 (Court reporter interruption.)

17 CMSR. HARRINGTON: Closer to the mike.

18 MR. BAUER: Okay. My name is Charles
19 Bauer. Is that better?

20 MR. PATNAUDE: Speak up please.

21 MR. BAUER: Okay. My name is Charles
22 Bauer. I represent PSNH in the Federal Court system civil
23 litigation that deals with a debt collection, based on the
24 breach of contract that PSNH has alleged against Time

1 Warner. That matter, as counsel for Time Warner
2 indicated, that is pending before Judge Barbadoro in the
3 Federal Court system.

4 Presently, there is a deadline of June
5 7th with regard to an objection to the motion that has
6 been filed, to either stay the case or to dismiss the
7 case. We will be filing and responding to that in an
8 appropriate manner and fashion.

9 We also have -- most likely we'll be
10 filing also a motion with regard to the Federal Court
11 system, pending what this Commission does with the issue
12 of prospective application for the ratemaking issue versus
13 the breach of contract issue that we believe is before the
14 court systems, which would be the retroactive application.
15 We believe that the retroactive application of the
16 contract is a judicial matter, common law matter, it's a
17 breach of contract. And, the prospective ratemaking
18 issue, we concede that this jurisdiction, the Commission
19 has jurisdiction over that.

20 I might also add that there is a similar
21 action pending in the State Court system against one of
22 the other parties. So, there are two civil actions based
23 on debt and contract issues; one in Federal Court and one
24 in State Court; one against Time Warner and one against

1 one of the other parties. Thank you.

2 CHAIRMAN IGNATIUS: Thank you. That
3 takes us into another one of the major questions of what
4 the scope of this proceeding should be. But, before we
5 get to that, although they're pretty deeply intertwined,
6 is there any other comment anyone would like to make on
7 jurisdiction overall? Is there an argument that the New
8 Hampshire Commission has exclusive jurisdiction on the
9 rate issues or the contract dispute, and it must be here,
10 or that it's concurrent jurisdiction and you just either
11 wish it were or wish it were not here, depending on your
12 point of view? I mean, is it -- why is it not appropriate
13 to say "this is a contract dispute that should be resolved
14 through the courts, and really is not a PUC matter"?

15 MS. KNOWLTON: Chairman Ignatius, I'm
16 certainly prepared to address the jurisdictional issue.
17 And, I think, as the Commission is aware from filings the
18 Company has made, it's the Company's position that the
19 retrospective aspect of this, the debt collection matter
20 under the contract, is properly here -- excuse me, is
21 properly before the Federal Court, and should remain in
22 the court system.

23 And, I am prepared to address that now
24 or I'm not sure how you'd like to proceed.

1 CHAIRMAN IGNATIUS: I think that would
2 be fine. And, we'll give everyone an opportunity to
3 respond.

4 MS. KNOWLTON: Okay. Well, as I
5 indicated, from the Company's perspective, this is a
6 simple debt collection matter. PSNH has sued Time Warner
7 for fees that are due and owing under a 2004 contract
8 between the parties.

9 On February 6, 2004, PSNH and Time
10 Warner entered into a contract, which allows Time Warner
11 to attach to PSNH's poles. Since that time, Time Warner
12 has been occupying space on PSNH's poles. But it has not
13 paid the amounts that are due and owing under the
14 contract.

15 When PSNH determined that Time Warner
16 was using its poles to provide telecommunications
17 services, PSNH assessed Time Warner the telecommunications
18 rate under the contract. Despite the fact that Time
19 Warner continued to occupy space on the Company's poles
20 and provide those telecommunications services, Time Warner
21 failed to pay the attachment fees under the contract.

22 As of January of this year, Time Warner
23 owed PSNH approximately \$1 million under that contract.
24 In January of this year, PSNH brought that debt collection

1 action against Time Warner in Merrimack County Superior
2 Court. And, as you've heard, that's been removed to the
3 Federal Court. PSNH brought the action in Superior Court
4 based on Section 15.5 of the contract, which is the
5 "Choice of Law" provision. Which states as follows: "All
6 actions under this Agreement shall be brought in a court
7 of competent subject-matter jurisdiction of the county of
8 the capital of such State or Commonwealth or a regulatory
9 agency with subject-matter jurisdiction, and both parties
10 agree to accept and submit to the personal jurisdiction of
11 such court or regulatory agency." Time Warner removed
12 that case to the U.S. District Court in New Hampshire,
13 and, as you've heard, that's where it's pending.

14 Time Warner is here today to ask the
15 Commission to ignore that "Choice of Law" provision, and
16 to step in and intercede and to take the debt collection
17 matter away from the Federal Court. The Commission should
18 abstain from doing so, and allow the Federal Court to
19 decide the matter.

20 The contract is clear that PSNH had the
21 right to bring the debt collection matter in Superior
22 Court. PSNH was the first to file a legal action under
23 the contract. As the first to file, the Company has the
24 right to select the forum consistent with the contractual

1 provisions in which to bring its debt collection action.
2 Section 15.5 of the contract is unequivocal, that a court
3 of competent subject-matter jurisdiction was a permissible
4 choice under the contract; and that is what PSNH chose.

5 Time Warner is here asking that the
6 Commission take the matter away from the Federal Court,
7 because it disputes the attachment fees charged under the
8 contract. However, Time Warner does not make this request
9 with clean hands. The contract contains very specific
10 provisions which govern how attachment fees should be
11 disputed, and Time Warner did not follow those provisions.

12 Section 3.1.3 of the contract states
13 that any "changes in the amount of Attachment Fees and
14 Charges...shall become effective on the date specified by
15 the Licensor", which here is PSNH, provided that the
16 Licensor give "60 days notice" to the Licensee, which is
17 Time Warner, of the change.

18 The contract further states that "the
19 changes shall be presumed acceptable unless at least 30
20 days prior to the end of the 60 day notice period [the]
21 Licensee advises Licensor in writing that the changes are
22 unacceptable and, in addition, submits the issue to the
23 regulatory body asserting jurisdiction over this Agreement
24 for [a] decision." Time Warner never did that. They

1 never submitted a dispute over those changes within 30
2 days of those new fees taking effect. They were required
3 to do that by the contract six years ago, and they never
4 did. They come six years too late to the Commission in
5 asking it to step in today.

6 The contract also provides that, if Time
7 Warner fails to pay an amount disputed under the contract,
8 it must deposit the amounts in an interest-bearing escrow
9 account until the dispute is resolved. Time Warner has
10 also not done that.

11 At the time Time Warner received notice
12 from PSNH of a change to the fees under the contract, with
13 which Time Warner now says it does not agree, Time Warner
14 certainly could have terminated the agreement or disputed
15 the change in writing, and then submitted the issue again
16 to the applicable regulatory agency. But it chose to do
17 neither. And, thus, the change in the rate was presumed
18 acceptable.

19 Having itself ignored the terms of the
20 contract, Time Warner now asks the Commission to ignore
21 the "Choice of Law" provision; the Commission should not
22 do so.

23 Those are essentially the arguments that
24 I have. As we've indicated in filings with the

1 Commission, that the Company does not, if the Commission
2 is going to undertake a prospective review of, you know,
3 what rates should be for pole attachments, certainly the
4 Company agrees that that matter should be here. But this
5 dispute about what's due and owing under the contract
6 belongs in the court system.

7 CHAIRMAN IGNATIUS: Thank you. Ms.
8 Browne, a response?

9 MS. BROWNE: Yes. I'd like to address
10 this in sort of three points. Section 224 of the federal
11 law governed when the parties entered into this contract
12 in 2004. At no time had pole attachments, during the time
13 period in question, been unregulated. During the entire
14 time period, pole attachment rates were regulated; either
15 at the FCC or here at the Commission, when the Commission
16 assumed jurisdiction.

17 So, when the parties entered into the
18 Agreement, it was well known among the parties that the
19 federal law governed and limited the amount that could be
20 charged in those agreements. The federal law that
21 governed also allowed for attaching entities to enter into
22 an agreement, and then subsequently file a complaint at
23 the FCC to challenge those provisions. And that,
24 therefore, because this is such a highly regulated area,

1 there was no expectation or reasonable expectation on the
2 part of PSNH that it could charge rates -- any rates that
3 it chose. And, if that's the contract at issue, which is
4 actually one of three contracts between the parties, but
5 the particular contract at issue that PSNH cites does not
6 have a bifurcated rate structure.

7 In late 2005, Time Warner Cable began
8 offering VoIP services to portions of the State of New
9 Hampshire. In 2006, PSNH issued an invoice, which had two
10 rate -- two rate structures on it. It had a rate
11 governing cable and internet service and a rate governing
12 communications service. It never notified Time Warner
13 Cable, pursuant to the terms of the contract, that there
14 would be a new rate or a rate increase.

15 It's Time Warner's position that,
16 because it was never notified not -- and the rates
17 increased annually over the next six-year term, Time
18 Warner never paid the second bifurcated rate. Objected to
19 having to pay a bifurcated rate, and did not receive
20 correspondence back from PSNH in response to its
21 objections.

22 So, the fact -- the contract issues are
23 not nearly as clean and simple as PSNH would have you
24 believe. In fact, the fact that these are highly

1 regulated areas really substantially undermine their
2 position, that they had an expectation that they could be
3 able to unilaterally set the rates and charge Time Warner
4 for a different rate for the VoIP service.

5 The statute, RSA 37:34-a [374:34-a?] provides this Commission with express authority to hear
6 and resolve complaints concerning rates, charges, terms,
7 conditions, voluntary agreements, or any denial of access
8 relative to pole attachments.
9

10 The rules that were adopted by this
11 Commission in December 2009 specifically provide for the
12 Commission to adjudicate disputes arising under existing
13 agreements. Section 1304.03 states that "A party to a
14 pole attachment agreement...may petition the
15 Commission...for resolution of a dispute arising under
16 such agreement or order." 1304.05 states that "Upon
17 receipt of a petition pursuant to this part, the
18 Commission shall conduct an adjudicative proceeding
19 pursuant to Puc 203 to consider and rule on the petition".
20 And, Section 1304.07 states that "the Commission [may]
21 order a refund" where it determines that a rate has been
22 set at too high.

23 In fact, it is in the public interest
24 for this Commission to state how the parameters of its

1 rules apply. This is a case of first impression under the
2 pole attachment rules that were adopted in December 2009.
3 It necessarily involved consideration of historic facts.
4 That does not make it retroactive ratemaking.

5 The Supreme Court of the United States
6 has stated that "In a case in which an administrative
7 agency could not reasonably --

8 (Court reporter interruption.)

9 MS. BROWNE: The Supreme Court of the
10 United States has stated that "In a case in which an
11 administrative agency cannot reasonably foresee problems
12 which must be solved, despite absence of a relevant
13 general rule, it may do so."

14 Every case of first impression has a
15 retroactive effect, whether the new principle is announced
16 by a court or by an administrative agency. But, according
17 to the United States Supreme Court, that does make the
18 decision retroactive ratemaking.

19 The fact that Time Warner objected and
20 paid at a lower rate the entire time period -- during the
21 entire time period, significantly undermines PSNH's
22 statement earlier that they "presumed that this rate was
23 acceptable." That cannot be the case. They did not pay
24 the telecom surcharge and objected to the telecom

1 surcharge.

2 "Time Warner does not approach this with
3 unclean hands." PSNH unilaterally changed the rate
4 structure under the contract, decided that, in its mind,
5 the FCC's telecom formula applied to VoIP, and, therefore,
6 it should be permitted to assess that rate. In fact, this
7 issue has been pending before the FCC for a number of
8 years. There is a petition currently pending at the FCC
9 filed by Ameren, another pole-owning utility, asked --
10 that it asked the FCC to apply its historic telecom
11 formula to VoIP; the FCC never did that. The telecom
12 formula is no longer in effect. There is a new modified
13 formula that the FCC adopted that has brought the rates
14 more in line with the rates produced using the FCC's cable
15 formula. The FCC's goal, which was implemented through
16 its rulemaking in April of 2011, was to have rates that
17 were essentially the same for all attaching entities.
18 They recognized that the formula that they had adopted for
19 telecom had produced far too many disputes, and was
20 creating unreasonable signals in the marketplace, and
21 decided that they should have something closer to a single
22 rate formula. They were precluded by statute from
23 adopting the exact same formula, but they were able to
24 reach that result for the most part.

1 There is no state -- there are 21
2 certified states in the country. Not one state has
3 adopted the FCC's historic telecom formula. In fact, 20
4 of those 21 states have a single formula for pole
5 attachments.

6 We believe it is this Commission's duty
7 under the statute, state statute, and under its own rules,
8 to decide what the rate should be, not only during --
9 under the new standards, but also under the Interim Rules.
10 The Commission adopted Interim Rules that certified to the
11 FCC that it would have Interim Rules in place for two
12 years. And, in doing so, it said that the rules would be
13 -- the rules that would be in effect would be the cable
14 rate formula and the FCC's telecom rate formula during
15 that time period. At no time during that time period had
16 New Hampshire decided that the telecom rate formula would
17 apply to commingled services, VoIP services.

18 The most relevant legal authority on the
19 matter was the FCC's decision, which was subsequently
20 upheld by the United States Supreme Court, in Gulf Power,
21 that the cable rate formula would apply to commingled
22 services, to cable and Internet services. The FCC --
23 neither the FCC nor the courts have determined that the
24 FCC's telecom formula should apply just because voice

1 applications are added to the commingled Internet and
2 cable service.

3 MS. KNOWLTON: Commissioner Ignatius,
4 may I respond?

5 CHAIRMAN IGNATIUS: I'm not sure we're
6 done yet. Are you finished, Ms. Browne?

7 MS. BROWNE: Yes, madam Chairman. I
8 believe that's all for now. Thank you.

9 CHAIRMAN IGNATIUS: All right. Thank
10 you. A brief response, focus on the law. I really don't
11 want to get into the facts between the two parties, some
12 jurisdiction, us or someone, is going to hear all of that.
13 But, if it's specific on the law, yes, please.

14 MS. KNOWLTON: Well, just briefly. The
15 point that I wanted to make is that the pole attachment
16 law here in New Hampshire recognizes and gives effect to
17 voluntary agreements between parties, and that's what
18 we're talking about here is a voluntary agreement that the
19 parties entered into that has very specific terms. And,
20 nowhere in that statute does it state that the Commission
21 has exclusive jurisdiction as a grant, I agree it's a
22 grant of authority to the Commission, but it's not an
23 exclusive grant.

24 CHAIRMAN IGNATIUS: Thank you. Other

1 parties or would-be intervenors who want to comment on the
2 jurisdictional questions and which tribunal is most
3 appropriate?

4 (No verbal response)

5 CHAIRMAN IGNATIUS: All right. We're
6 also curious whether the state legislation recently
7 considered and voted on by both parties, though, not
8 signed into law by the Governor, Senate Bill 48, has any
9 impact on the Commission's jurisdiction here? Is there
10 any comment anyone would like to make on that? Mr. Katz.

11 MR. KATZ: SegTEL's understanding is
12 that the state legislation alters retail obligations, but
13 does not affect wholesale input obligations. And, that
14 pole attachments are a wholesale input, and those
15 obligations would be uneffected.

16 CHAIRMAN IGNATIUS: Mr. Fossum.

17 MR. FOSSUM: I believe that's in line
18 with Staff's understanding of the legislation as well.

19 MS. BROWNE: May I --

20 CHAIRMAN IGNATIUS: I'm sorry.

21 MS. BROWNE: Sorry. Madam Chairman?

22 CHAIRMAN IGNATIUS: Yes.

23 MS. BROWNE: I agree with that
24 interpretation. I would just say that, to the extent that

1 this Commission's decision regulating interconnected VoIP
2 services for certain purposes similarly I believe was
3 limited to, in its effect, to retail, as opposed to the
4 wholesale issues.

5 CHAIRMAN IGNATIUS: All right. There's
6 been a lot of discussion this morning and in the letters
7 filed about both retro -- changing to the current rates
8 and changing what the current rates are, and any
9 prospective change. And, I guess we would be curious to
10 know what the parties' view is as to the ability to
11 bifurcate those issues, and how much you see they are
12 intertwined or whether you can really treat them as two
13 separate matters. Maybe all at the Commission, maybe not,
14 but that to deal only with the prospective rates in one
15 proceeding, and deal with the contract dispute going back
16 to 2004 in another proceeding. Does anyone have a comment
17 on that?

18 MS. KNOWLTON: The Company's view is
19 that they can be bifurcated, and that it's a
20 straightforward bifurcation. The case that's pending in
21 court right now clearly defines the Company's claims, and
22 that can be determined as to amounts that are due under
23 the contract. You know, I think, as to what rates should
24 be on a going-forward basis, there's no reason, you know,

1 why that couldn't be determined, you know, independent of
2 that debt collection matter.

3 CHAIRMAN IGNATIUS: Do you see those
4 things having to be sequential or could they be running on
5 a parallel basis?

6 MS. KNOWLTON: I think they could be
7 running on a parallel basis.

8 CHAIRMAN IGNATIUS: Ms. Browne, any
9 response to that?

10 MS. BROWNE: Yes. It's Time Warner's
11 position that it's really the responsibility of the
12 Commission, having certified to the FCC that it intended
13 to regulate the rates, terms and conditions, and having
14 adopted Interim Rules, that it should provide guidance to
15 these parties on the legal issue of what rate should
16 apply. That it's not something for the court to simply
17 look at a contract. These are highly regulated contracts.
18 Since 1978, Congress has determined that pole -- those who
19 own poles have access to -- sorry -- have the ability to
20 prevent access to an essential facility. That these are
21 -- but that attaching entities absolutely need access to
22 the poles and conduits that are existing in order to
23 deliver their services to customers. And, therefore, this
24 particular agreement is not like any run-of-the-mill

1 contract that you would find in a Superior Court
2 proceeding, where it's simply a matter of whether the
3 parties unilaterally decide what the rate should be, and
4 then assess those rates on the attaching entity. In fact,
5 this is something that we need guidance from you all to
6 tell us whether -- what the rate should have been that was
7 in effect during the Interim Rules.

8 CHAIRMAN IGNATIUS: But that inquiry,
9 could that be done separately from the prospective rate
10 issues?

11 MS. BROWNE: I think that they can be
12 certainly analyzed separately. But I guess the question
13 is whether it could be done within the statutory time
14 period, given that they are both raised in the Petition in
15 separate proceedings. But maybe I'm not familiar enough
16 with the options that you have here at the Commission, in
17 terms of setting them out in different forums.

18 CHAIRMAN IGNATIUS: Well, I think this
19 is, as you say, this is a case of first impression, and so
20 we're exploring all of this at the same time that you are.

21 MS. BROWNE: But, I mean, yes,
22 theoretically, I think it's fine, absolutely, if it stays
23 here, for the Commission to consider them separately.

24 CHAIRMAN IGNATIUS: And, if it were one

1 -- one piece of it in the courts, and the dispute over the
2 2004 and subsequent contracts in the court system, and the
3 issue of prospective ratemaking at the Commission, is that
4 workable in your mind?

5 MS. BROWNE: I think the concern, again,
6 that we have is that there -- that the real issue is
7 whether the regulated entity, PSNH, was permitted to
8 charge a rate that it says it was allowed to charge under
9 the regulations. And, we don't think that the court is in
10 the best position to make that decision.

11 CHAIRMAN IGNATIUS: Why not?

12 MS. BROWNE: Because the regulations
13 were entrusted to the Commission for interpretation. And,
14 this is a matter of state policy, and determining whether
15 -- whether the utility should be permitted to assess a
16 surcharge on the rates that were previously determined to
17 be applicable for cable and Internet services.

18 The other issue that I would raise is
19 that we are not entirely sure the rates that were charged
20 were consistent with the FCC formulas. And, therefore, it
21 may be necessary to apply the actual formulas and to
22 consider regulatory rate issues within the proceeding.
23 And, we're not entirely sure a court is the right entity
24 to perform that function, to assess the particular rate

1 under the formula.

2 MS. KNOWLTON: Commissioner Ignatius?

3 CHAIRMAN IGNATIUS: Yes.

4 MS. KNOWLTON: I have one brief comment,
5 if I may.

6 CHAIRMAN IGNATIUS: Please.

7 MS. KNOWLTON: The contract is very
8 clear that there is a process to be followed at a
9 regulatory agency, if the licensee felt that the rate that
10 was being applied was not the correct rate. The contract
11 is perfectly clear on its face on this. And, Time Warner
12 never availed itself of the assistance of a regulatory
13 body, whether it was the FCC or the PUC, depending on what
14 time frame we're talking about. It's too late. And, so,
15 what the court is doing is going to be looking at the
16 plain terms of the contract and applying those terms of
17 the contract, which is a voluntary agreement that the
18 parties entered into.

19 MS. BROWNE: And, I would just like to
20 remind that the rules actually provide for the Commission
21 to consider challenges under voluntary agreements.

22 CHAIRMAN IGNATIUS: Thank you.

23 Commissioner Scott.

24 CMSR. SCOTT: Yes. In the court itself

1 right now, is Time Warner arguing, I assume, that this
2 issue should be properly before the PUC, is that correct?

3 MS. BROWNE: Yes. And, that issue has
4 been briefed by Time Warner, and we're just awaiting a
5 response by PSNH.

6 CMSR. SCOTT: Thank you.

7 CHAIRMAN IGNATIUS: All right. Anything
8 further on the jurisdictional questions that anyone would
9 like to raise?

10 (No verbal response)

11 CHAIRMAN IGNATIUS: I appreciate your
12 comments this morning. Just a few housekeeping matters.
13 We have an affidavit of publication received, thank you,
14 on the Order of Notice. And, I don't recall anything of
15 confidentiality being sought regarding any of the
16 documents, is that correct? Nothing that anyone is
17 seeking protective treatment over at this point?

18 MS. BROWNE: That's correct.

19 CHAIRMAN IGNATIUS: All right. What's
20 the docket number in the federal court, so that, if we
21 wanted to take a look at the briefs that were filed?

22 MR. SCOTT: If I may, your Honor?

23 CHAIRMAN IGNATIUS: Please.

24 MR. SCOTT: Robert Scott. And, I would

1 put on the record, since we have the reporter, that I
2 don't believe there's any relationship between myself and
3 Commissioner Scott. Questions of nepotism sometimes come
4 up.

5 CHAIRMAN IGNATIUS: I hadn't thought
6 about that.

7 MR. SCOTT: The docket number in the
8 District of New Hampshire Federal Court is Civil Number
9 12-CV-00098-PB.

10 CHAIRMAN IGNATIUS: What was the final,
11 "PV"?

12 MR. SCOTT: "PB", for the judge's last
13 name.

14 CHAIRMAN IGNATIUS: Oh, "PB". Yes. All
15 right. And, do we know the -- well, I don't know if we
16 still need to look at the Merrimack County issues, but I
17 know we have the original pleading that was received
18 there. But, if you do know the docket number of that, we
19 might as well.

20 MS. BROWNE: I have the Case Number,
21 2172012, C, as in "Charlie", V, as in "Victor", 00080.

22 CMSR. HARRINGTON: Could you just repeat
23 that please?

24 MS. BROWNE: Absolutely.

1 2172012CV00080.

2 CHAIRMAN IGNATIUS: Sounds like you just
3 read us your Visa card number. So, hope that's not the
4 case. All right. Anything further that people want to
5 address to us, then we should talk about what else to
6 attend to today after we leave?

7 (No verbal response)

8 CHAIRMAN IGNATIUS: All right. I think
9 that, you know, the normal course is that we move then
10 into a technical session and a development of a procedural
11 schedule. This is -- this is an unusual matter, because,
12 depending on some of the rulings, certainly on
13 interventions on the jurisdictional questions, the steps
14 that would follow from today would be quite different from
15 one another.

16 But people have traveled to be here, and
17 it's useful to get as much work done as possible with
18 everyone here. So, I guess I leave to you to think about
19 what -- if there's any discovery, any discussions that
20 could be done in a technical session right now that would
21 be valuable, I would encourage you to do it. At times,
22 we've had cases where people develop two different
23 schedules, one for a broader scope, one for a narrower
24 scope, and while awaiting a ruling from the Commission.

1 And, I don't know if that would be appropriate in this
2 case or not. It sounds like, under the rules, there's --
3 or, under the FCC standards, there's a pretty short time
4 frame no matter what you're undertaking. And, so, maybe
5 the schedule is the same whether it's a broader or narrow
6 question. And, I hate, because of that schedule, to lose
7 any more time.

8 So, if -- I guess I would encourage
9 people, even though there isn't yet a ruling on the
10 jurisdictional questions and intervention, encourage
11 people to see if it's possible to develop a schedule, that
12 makes certain assumptions, and there might be a couple of
13 different -- different paths, depending on assumptions. I
14 can't predict that, but that's -- we sometimes see that.

15 The other question that we've wondered
16 about is, given the significant legal issues, whether to
17 seek briefing on the jurisdictional questions? And, if it
18 weren't for the time frame here, that's worrisome, I think
19 that would make sense. But, because the clock is ticking,
20 and has been, I guess, since the original Petition was
21 filed, if that's correct, we've lost a bit of time in
22 reviewing that, having two different orders of notice.
23 And, so, I hesitate to use up yet another couple of weeks
24 with briefing. So, unless anyone's really opposed to

1 that, I would -- I would suggest we not do any further
2 jurisdictional submissions.

3 (Chairman and Commissioners conferring.)

4 CMSR. SCOTT: I had one question for Ms.
5 Browne.

6 MS. BROWNE: Yes.

7 CMSR. SCOTT: I was curious if you could
8 elaborate a little bit on the -- what your understanding
9 of the impact would be, we've talked about timing, if this
10 September date wasn't met, what the impact to your company
11 -- to Time Warner, rather?

12 MS. BROWNE: It's our understanding that
13 the provision -- that, if the timeframes are not met, it
14 does subject the order to challenges that it was issued
15 without authority. That would not -- we also think it's
16 important to keep this proceeding on a tight time frame.
17 Certainly, to the extent that there is a rule that you can
18 rely on that shows that there's a 360-day time frame, Time
19 Warner is not opposed to that. But certainly does want to
20 -- wouldn't want to forfeit its rights, it's a protected
21 entity under the statute to have resolution within a
22 reasonably prompt time, amount of time.

23 CMSR. SCOTT: Thank you.

24 MS. KNOWLTON: Commissioners, the

1 Company is not adverse to sitting down with parties to the
2 docket to try to come up with proposed schedules. I think
3 it's, you know, very difficult to do, since we don't know
4 what the schedules would be for. But, be that as it may,
5 you know, we'll give it the college try. But, certainly,
6 we can't begin -- we can't have dates where discovery
7 begins in a proceeding here, because we don't know whether
8 we're going to have a proceeding here. So, you know,
9 we'll participate in that effort to come up with proposed
10 schedules, all subject to the caveat that, you know, we
11 first need to hear from the Commission about whether we're
12 here or we're not, or, if we're here, what are we here
13 for.

14 CHAIRMAN IGNATIUS: That's a good point.
15 We sometimes have ordered -- excuse me, have proposed
16 schedules that don't give a hard date, they work on blocks
17 of time. So, it would be "two weeks after the Commission
18 order", you know, "two weeks after that", so that you fill
19 in the dates later, rather than trying to guess at those
20 today. Commissioner Harrington.

21 CMSR. HARRINGTON: Yes. Just, and
22 anybody can answer this, you know, to make sure I
23 understand this correctly. There's a filing deadline in
24 the Federal Court of June 7th. And, then, what happens?

1 What do you expect happens after that?

2 MR. BAUER: I would think, on behalf of
3 the Company, filing date of June 7th, I suspect that Time
4 Warner would file a rely to that objection, which would be
5 about another 14 days or 17 days thereafter, would put us
6 to the end of June. There might be an opportunity then to
7 respond to that reply. And, then, the Court would have
8 the issue before it. And, your guess is as good as ours
9 in terms of when the judge would rule on that motion, in
10 some fashion. And, of course, there are -- I guess there
11 are appellate issues that may be involved in that ruling.

12 MR. SCOTT: Madam Chair?

13 CHAIRMAN IGNATIUS: Yes.

14 MR. SCOTT: Just as a thought on the
15 jurisdictional issues. That Time Warner -- Time Warner's
16 Motion to Dismiss does speak to the PSC's exclusive
17 jurisdiction and, alternatively, the primary jurisdiction.
18 That's going to be responded to by PSNH on June 7th.
19 Those two papers would, you know, serve to at least inform
20 the Commission, if not the formal submissions in this
21 docket. And, we can provide them.

22 CHAIRMAN IGNATIUS: That might make
23 sense. I mean, I think, if we're all going to go look
24 them up, we might as well do it in a more organized

1 fashion. If you could -- if both parties would like to
2 file with the Commission and copies to the entities here
3 today the jurisdictional briefing in that case, that would
4 be helpful. And, I think they will be filed in this
5 docket, formally filed in the docket, that doesn't mean
6 they're exhibits in the case, we don't need to make them
7 formal exhibits, but they will be readily available. So,
8 I appreciate that.

9 CMSR. HARRINGTON: And just, so,
10 following up on those, that schedule, it looks like
11 there's at least a good chance that the Federal Court
12 won't rule by the September deadline. When was the
13 deadline in September?

14 MS. BROWNE: September 27th.

15 CMSR. HARRINGTON: September 27th. So,
16 we may not have the Federal Court ruling by that time, in
17 fact, we probably won't. Does that seem reasonable?

18 MR. ANDERSON: The court will be able to
19 rule on the motion at any time starting late June forward.
20 So, that's --

21 (Court reporter interruption.)

22 MR. ANDERSON: While it's possible, I
23 would expect a decision by mid summer to late summer.

24 CHAIRMAN IGNATIUS: All right. If

1 there's nothing further -- I'm sorry. Ms. Browne, yes.

2 MS. BROWNE: Sure. Just my
3 understanding from the filings was that PSNH did not
4 object to the Commission's consideration of the
5 application of the current rules and setting of the rate
6 prospectively. So, at a minimum, we should be here for
7 those purposes, is that right? So, I would imagine that
8 we can work out a schedule, because we anticipate that, at
9 a minimum, certain issues will be here. And, a lot of the
10 same issues -- so, during the time period in question, the
11 FCC's rules were in effect for some time period, but then,
12 subsequent to that, the Commission's Six Factor Test was
13 in effect. And, so, that is the same test that we would
14 be looking at for prospective issues. So, I would imagine
15 that many of the same issues would apply to both time
16 periods, it's the same set of factors.

17 CHAIRMAN IGNATIUS: All right. Then, we
18 will close this portion of the proceeding this morning,
19 take all of these matters under advisement, and appreciate
20 any efforts you have this morning in moving toward with
21 any proposed schedules, or even definition of scope that
22 people could agree upon. And, if there is anything that
23 people can agree upon, or even alternate proposals, ask
24 the Staff to file that with the Commission. And, also, to

1 remind you, if there's any -- just to double check if
2 there is any clarity on our rules, and whether or not
3 we're under the 360 or the 180-day provision. It sounds
4 like we're under the 180. But, just to be certain what
5 that is, we'd appreciate that. Thank you. We'll take it
6 under advisement.

7 **(Whereupon the prehearing conference**
8 **ended at 11:12 a.m., and a technical**
9 **session was held thereafter.)**

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