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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

May 25, 2011 - 10:36 a.m.
Concord, New Hampshire

NHPUC JUN14'11 PM 1:49

RE: *DT 06-067*
FREEDOM RING COMMUNICATIONS
d/b/a BAYRING COMMUNICATIONS:
Complaint of Freedom Ring Communications
d/b/a BayRing Communications Against
Verizon-New Hampshire Re: access charges.
(Prehearing conference)

PRESENT: Chairman Thomas B. Getz, Presiding
Commissioner Clifton C. Below
Commissioner Amy L. Ignatius

Sandy Deno, Clerk

APPEARANCES: **Reptg. FairPoint Communications:**
Harry N. Malone, Esq. (Devine, Millimet...)
Patrick C. McHugh, Esq.

Reptg. BayRing Communications:
Susan S. Geiger, Esq. (Orr & Reno)

Reptg. Sprint Nextel:
Benjamin J. Aron, Esq.

Reptg. AT&T Communications:
Jay E. Gruber, Esq.

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

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

Reptg. One Communications:

Gregory M. Kennan, Esq. (Fagelbaum & Heller)
Paula Foley, Esq.

Reptg. Global Crossing:

R. Edward (Ted) Price, Esq.

Reptg. PUC Staff:

Matthew J. Fossum, Esq.
Kate Bailey, Director/Telecom Division
David Goyette, Telecom Division
Michael Ladam, Telecom Division

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P R O C E E D I N G

1
2 CHAIRMAN GETZ: Okay. Good morning,
3 everyone. We'll open the prehearing conference in Docket
4 DT 06-067. I will give a brief rendition of the
5 procedural schedule for the record, noting that the full
6 procedural schedule or history is in the order most
7 recently issued. But, on March 21, 2008, the Commission
8 issued Order 24,837, directing Verizon to cease billing
9 the carrier common line charges in certain circumstances.
10 On May 7, 2009, the New Hampshire Supreme Court reversed
11 the Commission's decision regarding FairPoint's tariff.

12 After some intervening steps in that,
13 following the Supreme Court's decision, in the Fall of
14 2009 the proceeding was suspended pending the emergence of
15 FairPoint from bankruptcy, which occurred on January 24,
16 2011. On March 10, 2011, FairPoint filed a letter
17 requesting that the Commission reactivate this proceeding
18 and set a scheduling conference. And, a procedural order
19 and supplemental order of notice was issued on May 4,
20 2011, setting the prehearing conference for today.

21 Since that time, we have received a
22 Petition to Intervene by CRC Communications. We have a
23 Motion to Certify Interlocutory Statement that was filed
24 by FairPoint yesterday. And, we also have filed this

{DT 06-067} [Prehearing conference] {05-25-11}

1 morning the supporting information required under PUC
2 1604.08 that FairPoint has now filed in compliance with
3 the May 4 order.

4 I think a couple of things. Well, one,
5 let's, before we address any of these other issues, let's
6 just make sure we get appearances on the record and go
7 around the room. And, just do appearances, and then I'll
8 address some of other procedural issues. So, Mr. Malone.

9 MR. MALONE: Thank you, Mr. Chairman.
10 I'm Harry Malone, with Devine, Millimet, representing
11 FairPoint Communications. And, with me at the table are
12 Attorney Patrick McHugh, Vice President and Assistant
13 General Counsel of FairPoint; Michael Skrivan, Vice
14 President-Regulatory for FairPoint; and Ryan Taylor,
15 Director of Regulatory-New Hampshire for FairPoint.

16 CHAIRMAN GETZ: Good morning.

17 MR. MCHUGH: Good morning.

18 MS. GEIGER: Good morning, Mr. Chairman,
19 Commissioner Below, Commissioner Ignatius. I'm Susan
20 Geiger, from the law firm of Orr & Reno, and I represent
21 BayRing Communications. And, with me this morning from
22 the Company is Mr. Darren Winslow.

23 CHAIRMAN GETZ: Good morning.

24 MR. ARON: Good morning. Benjamin Aron,

1 with Sprint Nextel and its subsidiaries.

2 CHAIRMAN GETZ: Good morning.

3 MR. GRUBER: Good morning. Jay Gruber,
4 for AT&T. I should mention that I'm a stand-in for the
5 attorney who will regularly be representing AT&T in the
6 matter, Jim Huttenhower, who was supposed to be on a
7 telephone link this morning, but we had a technical
8 problem. But Mr. Huttenhower will usually be appearing
9 for AT&T.

10 CHAIRMAN GETZ: Okay. Thank you.

11 MR. KENNAN: Thank you, Mr. Chairman.
12 Good morning. Good morning, Commissioner Below and
13 Commissioner Ignatius. Gregory Kennan, of the law firm of
14 Fagelbaum & Heller. I'm representing the New Hampshire
15 operating subsidiaries of One Communications, which, after
16 its recent merger, is in the process of changing its name
17 to EarthLink Business. And, with me is Paula Foley,
18 Regulatory Affairs Counsel for One Communications.

19 CHAIRMAN GETZ: Good morning.

20 MR. PRICE: Good morning, Mr. Chairman
21 and Commissioners. I am Ted Price, and I represent Global
22 Crossing.

23 CHAIRMAN GETZ: Good morning.

24 MR. FOSSUM: And, good morning. Matthew

1 Fossum, for the Staff of the Public Utilities Commission.
2 And, this morning with me are David Goyette, Michael
3 Ladam, and Kate Bailey from Commission Staff.

4 CHAIRMAN GETZ: Okay. Good morning.
5 With respect to the Motion to Certify Interlocutory
6 Statement to the New Hampshire Supreme Court, I guess what
7 we are inclined to do is to give the parties, rather than
8 to require a statement on the record today, and it appears
9 that there may be some parties who are not here, to give
10 the ten days for objections/responses to be filed in
11 writing, consistent with our normal rule with respect to
12 objections or responses to motions. So, that would make
13 the deadline, as I calculate it, Friday, June 3rd, for
14 responses to that motion.

15 And, the -- well, let me ask this one
16 other issue. Is there any objection to the Petition to
17 Intervene of CRC Communications?

18 MR. MALONE: No, Mr. Chairman.

19 MR. FOSSUM: No, Mr. Chairman.

20 CHAIRMAN GETZ: Hearing no objections,
21 we'll grant the Petition to Intervene. And, also, we're
22 going to give an opportunity to have the parties state
23 briefly their position on the proceeding. And, also, you
24 know, to the extent that any party wants to note their

1 position on the Motion for Interlocutory Transfer, they
2 can do that. But, since we're going to have the
3 opportunity for a response in writing, I don't think it's
4 necessary to make their arguments about what position we
5 should take on the motion, but might be useful to at least
6 get the position on the record, if you have one at this
7 point.

8 And, I'm also hopeful, and I guess, if
9 folks can address this in their statements, that we can
10 have a useful technical session, the parties try to
11 address a procedural schedule that would work, if -- in
12 the event that we do not end up certifying the question to
13 the Supreme Court.

14 So, with that, I think I've covered my
15 list of introductory procedural issues. So, let's turn to
16 Mr. Malone.

17 MR. MALONE: Thank you, Mr. Chairman.
18 This has been a long and convoluted proceeding. And, I
19 think you've covered a great deal of it so far. Just to
20 summarize our position at this point, particularly in
21 regards to the motion that we filed yesterday.

22 In the procedural order that the
23 Commission issued earlier this month, it approved, among
24 other things, the withdrawal of the tariff that we filed

1 back in September of '09. And, it reiterated the previous
2 grant of our motion for hearing on these tariff
3 provisions. But it also declared that, based on the
4 record of the proceeding below, and its finding in the
5 decision that had been reversed by the Supreme Court, the
6 parties were estopped from litigating the issue of whether
7 the CCL charge contributes to the joint and common costs
8 of providing FairPoint services. This determination is
9 prejudicial to FairPoint, since this particular issue is
10 central to FairPoint's justification for the justness and
11 the reasonableness of the CCL charge and the way it's
12 assessed. And, we feel that, by prejudging these issues
13 regarding this single rate element, it prevents FairPoint
14 from putting on its case that its rates are interrelated,
15 and that they're not designed to recover the cost of each
16 individual service, but, instead, the Company's overall
17 costs. And, in other words, the rates of some services
18 are designed to support the costs of other services. And,
19 one rate element cannot be picked out in isolation for
20 inquiry.

21 And, as such, the petition -- or, the
22 Commission's declaration raises an urging question that we
23 think needs to be addressed at the outset of this
24 proceeding before we go any further. And, for that

1 reason, we filed the Motion for Interlocutory Transfer to
2 the Supreme Court, because we have three major
3 contentions. That this finding was overturned by the
4 order of the Supreme Court and has been vacated. And,
5 that, secondly, that it was not a determinative finding of
6 the Commission, but essentially dicta. And, third, that
7 it's unsupported in the factual record.

8 And, we feel that, by addressing these
9 concerns now up front, it will materially advance and
10 clarify the proceeding, rather than having to address this
11 down the line, after we've gone through the entire
12 proceeding and gathered evidence and had hearings. And,
13 so, we're requesting that the Commission certify this to
14 the Supreme Court and stay this proceeding until we've
15 gotten an answer. Thank you.

16 CHAIRMAN GETZ: Well, I mean, the very
17 last sentence of the Supreme Court's decision says that
18 "If the tariff should be amended, it should be amended as
19 a result of regulatory process, and not by a decision of
20 this court." So, your argument is or concern is that this
21 regulatory process is not providing you due process?

22 MR. MALONE: That's a good way to
23 describe it, Mr. Chairman, yes. We feel like one of the
24 important arguments for the reasonableness of this rate is

1 the fact that it is a contribution element. And that, by
2 being precluded from arguing this, it prevents us from
3 putting forth our best arguments.

4 CHAIRMAN GETZ: And, the argument being
5 the historical argument about what was intended to be
6 required with or to be permitted under the CCL
7 historically?

8 MR. MALONE: I'm not sure that it's an
9 historic issue. I believe that it's a current issue of
10 the way that FairPoint prices its services and recovers
11 its costs across its entire product line.

12 CHAIRMAN GETZ: And, it's a contention
13 that it can't been changed prospectively?

14 MR. MALONE: That it cannot be changed?

15 CHAIRMAN GETZ: Yes.

16 MR. MALONE: That's not our position
17 that it cannot be changed prospectively. But it has to be
18 -- it cannot be done in isolation. And, it has to be done
19 in consideration of the fact that the rates are
20 interrelated, and that some of them support other rates.
21 And, that we should be given an opportunity to demonstrate
22 that that's the case, rather than have the inquiry focus
23 on one single element of our products.

24 CHAIRMAN GETZ: But do I understand

1 correctly that the illustrative tariffs looked at the CCL
2 in a way that it would not be a contribution element, but
3 that the revenue neutrality would be accomplished through
4 changes to other interconnection charges. Is that --

5 MR. MALONE: That's not completely the
6 case, Mr. Chairman. The tariff revisions were designed to
7 comply with the Commission's order *nisi*, that the CCL
8 charge could not be charged to a carrier when that carrier
9 does not use a Verizon common line and it doesn't
10 terminate to a Verizon customer. So, at that point, it's
11 -- it would be -- it would not be safe to say that that
12 rate was changed to no longer be a contribution element.
13 We maintain that it still is. But that, in order to
14 comply with the Commission, we had to find other ways to
15 make it revenue neutral.

16 CHAIRMAN GETZ: All right. Anything
17 further?

18 CMSR. IGNATIUS: Mr. Malone, this is, I
19 think, building on what Chairman Getz was asking, and it
20 may be overkill, but I'm not sure I quite am following.
21 The provisions in our recent order, and that, I'm looking
22 for the language here and not finding it yet, that state
23 that we will consider whether a revenue adjustment to this
24 or some charge is appropriate and in what amount would be

1 considered in this phase of this docket. Why is that not
2 sufficient for your purposes? Why does that not address
3 your concern that we haven't given full, in your view,
4 haven't given full consideration of these questions?
5 Isn't that what we are prepared to do by this order, to
6 look at whether it's appropriate for some revenue to be
7 collected that had previously been collected through the
8 carrier common line?

9 MR. MALONE: Excuse me.

10 (Atty. Malone conferring with Atty.
11 McHugh.)

12 MR. MALONE: Yes. Let me see if I
13 understand your question, Madam Commissioner. First of
14 all, it's our position that anything that's occurred in
15 Phase I of this proceeding regarding determinations in
16 regard to the -- about the CCL charge are essentially
17 moot. They have to be done over again as a result of the
18 reversal of the Commission's order. Having said that, we
19 believe that any determination as -- that the standard
20 that the Commission has to apply in looking at the rates
21 that FairPoint charges in its tariffs is a justness and a
22 reasonableness rate. And, the way we read the order, it
23 says to us that "we will be restricted from putting on
24 certain evidence regarding the justness and the

1 reasonableness of these rates." Especially to the effect
2 that the rate standing alone may look like it recovers
3 more than the cost of the particular service. And, we
4 need to be able to put forward the argument that it's part
5 of recovering the costs of all of our services and that
6 they're interrelated. And that, by saying that we cannot
7 re-litigate the issue whether it's a contribution element
8 is essentially saying that we're not allowed to put forth
9 the argument that our services are interrelated -- or, the
10 rates for our services are interrelated and that they
11 support each other.

12 CMSR. IGNATIUS: But isn't that
13 historic, what you were just discussing with Chairman Getz
14 a moment ago, isn't that an historic circumstance? And,
15 we're talking about going forward, and the Court has said
16 "the tariff may be changed and, if so, through a
17 regulatory process." So, why is it inappropriate here to
18 explore the language we have in the order, undertake an
19 examination of the proposed modifications to FairPoint's
20 tariff, including the propriety of increased
21 interconnection charges? Doesn't that give you what you
22 need?

23 MR. MALONE: From a --

24 CMSR. IGNATIUS: Irrespective of what it

1 was in the past. It's going forward, right?

2 MR. MALONE: Procedurally, it does.

3 But, from a substantive standpoint, if we're going to be
4 asked to justify an increase in our interconnection
5 charge, we're going to have to explain what the
6 interconnection charge is. And, the interconnection
7 charge is essentially a contribution element that helps us
8 recover the costs of our overall services. And, once
9 again, we come -- circle back to the Commission's
10 declaration that we're not allowed to argue if the CCL is
11 or was a contribution element to begin with.

12 CMSR. IGNATIUS: But I'm still not
13 following you. Whether it -- whatever it covered in prior
14 years is what it was. Going forward, why is it asking
15 something improper to have you explain what you think is
16 the appropriate amount and what it covers going forward?

17 MR. MALONE: It's not inappropriate at
18 all, Madam Commissioner. And, one of the reasons that we
19 would give, when we're discussing the appropriateness of
20 that charge, would be to say that "it is a contribution
21 element." You know, say "this charge is appropriate, and
22 the way that we charge it is appropriate, because it's not
23 merely a charge for the use of a particular element. It
24 is a contribution element that contributes to the costs of

1 other services. And, we've been expressly told in this
2 order that we're not allowed to make that argument. You
3 know, so, in arguing the appropriateness of that charge,
4 we're being told that there are certain arguments that
5 we're not allowed to make.

6 CMSR. IGNATIUS: If the language in
7 order had said "We'll undertake an examination of the
8 proposed modifications to FairPoint's tariff, including
9 the propriety of increased connection charges and possible
10 contribution elements", that would be acceptable to you?

11 MR. MALONE: That would be -- that would
12 be acceptable. We're not objecting to an inquiry into the
13 charge. All we're objecting to is any restrictions on
14 what we can argue regarding the appropriateness of that
15 charge.

16 MR. McHUGH: Mr. Chairman, if I could
17 add one clarification for Commissioner Ignatius. If you
18 look at Page 7 of your May 4 order.

19 CMSR. IGNATIUS: Yes.

20 MR. McHUGH: Order 25,219. About
21 halfway down the page it specifically says "We will not
22 re-litigate the purpose or propriety of the CCL charge."
23 And, then, it goes on to say "That conclusion was not
24 addressed or overturned by the Supreme Court". We have a

1 fundamental difference of opinion as to the correctness of
2 this statement, given that the Court reversed the
3 decision, the underlying decision. It is as if those
4 proceedings never occurred. That's the fundamental
5 difference here.

6 CMSR. IGNATIUS: But, and I --

7 MR. McHUGH: And, so, you cannot -- what
8 I was going to say is, you cannot go forward with a case
9 saying "part of it was not overturned and part was
10 overturned." It was simply reversed. And, so, we should
11 be permitted to put on whatever case we believe is
12 necessary to prove the propriety of the CCL charge, number
13 one. And, if you want to put it all into one phase,
14 because, if you go back to the original -- one of the
15 original procedural orders, it talked about that the case
16 would be conducted in phases. And, the way we are
17 interpreting what the Commission has issued in several
18 procedural orders since the Supreme Court's reversal, it's
19 as though the Commission would like to somehow implement
20 Phase I and the conclusions reached in Phase I, and simply
21 proceed to Phase II and limit what FairPoint can put forth
22 in evidence in Phase II. And, I think that half of
23 Page 7, I didn't mean to interrupt Attorney Malone, but I
24 had it all marked up, but that's really the crux of the

1 issue, I think. And, that's really the underlying premise
2 of the Motion for Interlocutory Transfer.

3 CMSR. IGNATIUS: And, I think that helps
4 to crystalize one of the issues, the extent of the Supreme
5 Court's order. I understand that it's your position that
6 it's a complete reversal of everything and we're back to
7 square one. Others, I think, have different views. And,
8 if they do, that can be filed as part of the responses,
9 or, if people want to speak to that this morning as well,
10 that's fine.

11 MR. MALONE: And, it's these differences
12 that we believe are justifying the interlocutory transfer.

13 CMSR. IGNATIUS: Thank you.

14 CHAIRMAN GETZ: All right. Thank you.

15 Ms. Geiger.

16 MS. GEIGER: Yes. Thank you, Mr.
17 Chairman. As noted in the Commission's May 4th order, the
18 Commission has indicated that the docket scope includes
19 three basic issues. The first issue is whether
20 FairPoint's proposed tariff revisions are just and
21 reasonable. The second issue is the degree to which the
22 new tariff filing is affected by the settlement agreement
23 in DT 07-011, relating to -- the docket relating to
24 FairPoint's acquisition of Verizon's New Hampshire assets.

1 And, thirdly, what statutory requirements cover the
2 filing; whether the filing is properly considered under
3 RSA 378:6, I or IV; and whether RSA 378:17-a, III applies.

4 With regard to that, the scoping in the
5 order, BayRing respectfully submits that the Commission's
6 May 4th order fails to properly note or consider that
7 FairPoint made two filings in this docket on
8 September 10th, 2009. The first filing, as FairPoint
9 indicated in its cover letter with that filing, was a
10 compliance filing, with language changes that relate to
11 when the CCL charge properly applies. And, the second
12 filing, which FairPoint's cover letter says was made in
13 conjunction with the first filing, was to increase
14 FairPoint's interconnection charge, which for years had
15 been set at zero.

16 The first filing is a compliance filing
17 that was made in accordance with the Commission's August
18 11th, 2009 order *nisi*, which became final on
19 September 10th, 2011 [2009?]. And, the reason it became
20 final on September 10th, 2011 [2009?] is that the
21 Commission never issued an order suspending the
22 effectiveness of the *nisi* order before that time.

23 It's also important to note that it's a
24 final order, because, in Paragraph 4(e) of the CLEC

1 settlement in docket 07-011, FairPoint agrees to the
2 obligations arising out of any final order issued within
3 NHPUC Docket 06-067.

4 So, the first filing changed the
5 language in FairPoint's CCL tariff. And, it was to make
6 clear that the CCL charge may only be applied when
7 FairPoint's common line is used. This tariff change is
8 not a change in rates, and therefore is governed by RSA
9 378:6, IV. The tariff pages relating to the proper
10 application for the CCL charge went into effect by their
11 own terms and by operation of law, the statute I just
12 cited, on October 10th, 2011 [2009?], because the
13 Commission never issued an order expressly amending or
14 rejecting the compliance filing, or suspending it.
15 Although the Commission issued an order on September 23rd,
16 2009 indicating that a hearing was necessary on the filing
17 that FairPoint had made, that order did not suspend the
18 tariff filing relating to the wording changes necessary to
19 comply with the Commission's August 11th, 2009 order. It
20 did find, however, that the other tariff filing proposing
21 a new interconnection charge was incomplete and was
22 insufficiently supported to be approved as just and
23 reasonable. And, notwithstanding the fact that
24 FairPoint's tariff filing revising the application of the

1 CCL charge went into effect as a matter of law, the
2 Commission's May 4th order states that, given the time
3 that has elapsed, since the Commission's September 23rd,
4 2009 order, the Commission cannot now say that a portion
5 of the tariff ought to have been in effect at some prior
6 time.

7 BayRing respectfully disagrees with that
8 conclusion and will be filing a Motion for Rehearing of
9 the order. And, the reason that this issue is very, very
10 important to BayRing and to the other CLECs is that
11 FairPoint has been billing the CLECs the CCL charge for
12 some time now. And, these are charges that the Commission
13 has indicated are improper when the CCL, the common line,
14 is not -- is not used.

15 The Commission's May 4th, 2011 order has
16 made clear that the propriety of those charges is not to
17 be re-litigated. Thus, the Commission's failure to
18 acknowledge the legal effect of tariff changes that it
19 implemented in its August 11th, 2009 order is both
20 contrary to law and tantamount to acquiescing in
21 FairPoint's failure to comply with the Commission's order.
22 FairPoint is required by RSA 365:23 to observe and obey
23 the Commission's August 11th, 2009 order, which became
24 final on September 10th, 2009, and "to do everything

1 necessary or proper in order to secure compliance with and
2 observance of the same by [its] officers, agents and
3 employees." Similar requirements are imposed by other
4 statutes, such as RSA 365:40, and financial penalties
5 under 365:41 may be imposed for noncompliance.

6 Simply put, BayRing urges the Commission
7 to confirm clearly and unambiguously that FairPoint's CCL
8 tariff language went into effect on October 10th, 2009,
9 and that FairPoint cannot bill for CCL unless the common
10 line is provided by FairPoint.

11 BayRing submits that the only issue
12 that's properly before the Commission at this time is the
13 rate filing that FairPoint made for an increase in its
14 interconnection charge. FairPoint is seeking to change
15 its interconnection charge from zero to 1.0164 cents per
16 minute. In its order issued September 23rd, 2009, the
17 Commission properly determined that this filing was
18 incomplete because it lacked the necessary supporting
19 information required by the PUC 1600 rules for rate
20 changes.

21 BayRing has not had the opportunity to
22 support the most recent information that was filed this
23 morning, because it came in just minutes before, maybe an
24 hour before the hearing started. So, we're unable to

1 state a position at this point as to whether or not the
2 interconnection charges are a just and reasonable rate.

3 The second issue noticed by the
4 Commission in its May 4th order was the effect of
5 Paragraph 9.1 of the Settlement Agreement in 07-011. And,
6 as for that paragraph, BayRing notes that the Agreement
7 has now expired and therefore does not appear to be
8 implicated by this docket, other than the fact that
9 FairPoint violated the agreement by trying to seek a rate
10 increase in the interconnection charge, which would have
11 become effective prior to the expiration date of the
12 Settlement Agreement. The Settlement Agreement expressly
13 says that FairPoint is not to raise its wholesale rates
14 before the expiration of the three year period of the
15 Settlement Agreement. And, the tariff filing that
16 FairPoint made back in 2009 looks for an effective date of
17 that interconnection charge as of October 10th, 2009. So,
18 that was not consistent with the Settlement Agreement in
19 07-011.

20 The new interconnection charge is an
21 access charge and is therefore governed by 378:17-a, III,
22 as well as 378:6, I(b). And, since the first statute that
23 I cited is a directive to the Commission to lower
24 intrastate access charges, the interconnection charge

1 increase sought by FairPoint in this docket appears to be
2 at odds with that statute.

3 And, lastly, on the issue of the proper
4 schedule for this proceeding, obviously, this schedule now
5 I think is somewhat different than what I might have
6 thought it might be before we received FairPoint's filing
7 yesterday. You know, again, FairPoint just provided us
8 with information this morning about the rate change that
9 it's seeking. And, in addition, the Motion to Certify the
10 Question to the Supreme Court implicate a whole host of
11 issues that I just haven't had time to consider. And,
12 therefore, I won't be able to state FairPoint's --
13 BayRing's position on the record with respect to that
14 filing, other than to say just briefly that I am likely to
15 disagree with the proposition that the Supreme Court
16 reversed and vacated everything that the Commission did in
17 06-067. And, that was a fully litigated docket, the
18 Commission made findings of fact. Under state law,
19 statute, and case law, the Commission's findings of fact
20 are prima facia lawful and reasonable. And, I will
21 obviously reserve the right to supplement these oral
22 remarks in a written filing that will be made in response
23 to the Motion to Certify. Thank you.

24 CHAIRMAN GETZ: Ms. Geiger, at one point

1 you said that "BayRing would be filing a motion for
2 rehearing to that order". Which order?

3 MS. GEIGER: The Commission's May 4th,
4 --

5 CHAIRMAN GETZ: To this. Okay.

6 MS. GEIGER: -- 2011 order is
7 problematic. Again, we have been seeking finality and
8 clarity back since 2009, when BayRing and other CLECs,
9 AT&T and One, made filings to the Commission asking the
10 Commission to confirm that FairPoint made two tariff
11 filings. The first one was a compliance filing that put
12 into effect the tariff pages that made clear that
13 FairPoint couldn't charge the CCL rate unless the common
14 line was being provided. And, now, we have the order May
15 4th, 2011, in which the Commission says it just -- "too
16 much time has passed and it's hard to tell when the tariff
17 went into effect." And, we respectfully disagree with
18 that. We think that it is possible to connect the dots
19 back to a point in time under the law at which FairPoint's
20 tariff pages that changed the CCL language, if you will,
21 went into effect.

22 So, we will be seeking a rehearing of
23 that portion of the order. And, again, the reason it's so
24 important to all the CLECs is that FairPoint has been

1 continuing to bill them the improper CCL charges since
2 that time.

3 CHAIRMAN GETZ: Okay. Thank you.
4 Mr. Aron.

5 MR. ARON: Thank you. I have four items
6 that I'd like to speak to you about this morning. And, I
7 should also add that I appreciate the opportunity to be
8 here this morning and present Sprint's position. The four
9 topics that I have in mind to speak to you about are the
10 relative positions of the parties going forward.
11 FairPoint's allegations regarding the need for revenue
12 neutrality supported by their curious at best arguments
13 regarding confiscation and rate of return. I want to talk
14 third about the illogic of this proposed subsidy shift.
15 And, finally, about the need for finality.

16 Regarding FairPoint's alleged need for
17 revenue neutrality, their rate of return/confiscation
18 argument, it's essential to start your review or
19 consideration of this argument with the knowledge that the
20 genesis of this entire line of jurisprudence, which goes
21 back decades, okay, the genesis of this entire line of
22 jurisprudence has at its core the concept that an agency,
23 such as this Commission, has the final say over a
24 utility's rates, that the rates must be set above the cost

1 of providing service.

2 Now, FairPoint -- FairPoint and no one
3 else in this room is contesting that as a legal
4 proposition, that that is the genesis of the line of
5 argument. However, there are any number of foundational
6 issues with the application of that doctrine to the case
7 at bar. Not the least of which is that this Commission
8 has never set FairPoint's rates in regard to costs. You
9 don't know FairPoint's costs, because they have never
10 presented them to you. This is -- for FairPoint to come
11 today and say "you are going to confiscate if you get rid
12 of our CCL charge" is actually saying "you're going to
13 confiscate, if you remove the CCL charge, because Verizon
14 had costs that, in 1990, might have supported such an
15 argument." But they don't. So, as they sit here today
16 and tell you that you're going to have a confiscation by
17 reducing the CCL, they're not supporting that with their
18 operational costs, they're not supporting that with their
19 cost of capital, depreciation, or anything else that goes
20 into a cost study. If they have a cost argument, it needs
21 to have been made when the rates were set -- were set.
22 These rates were not set with FairPoint in mind. These
23 are Verizon's rates. This is Verizon's tariff. It was
24 based on Verizon's costs.

1 So, to come before this Commission,
2 after it talked you folks into allowing them to adopt this
3 tariff without a cost basis several years ago, is
4 disingenuous. It's also legally flawed.

5 The next foundational issue with it is
6 that you haven't lowered their rate. You've asked them to
7 change the language in their tariff in order to prevent
8 them from imposing unjust and unreasonable charges.

9 That's not a rate change. Does it have a revenue impact?

10 It might. The rates weren't set with any -- with any
11 consideration of FairPoint's revenues; it's Verizon's
12 revenues. So, when they come here and say that you're
13 "setting their rate confiscatorily low"; no, you're not.
14 You're not setting the rate at all. In fact, the only
15 rate issue here before you today is the rate issue that
16 they have brought up by attempting to impose a subsidy
17 increase into this case. So, where the confiscation lies,
18 I don't know.

19 Important for the Commission to remember
20 that the fundamental purpose, or rephrasing that,
21 regulation, public utility regulation is not intended to
22 insulate public utilities. That's not a relevant or
23 legitimate purpose of public utility regulation. But
24 that's what they're seeking. They're seeking to be

1 insulated from competition. They don't want to go out and
2 have to earn their revenues. They want to continue to
3 reach into the pockets of their competitors and pull the
4 revenues out of those pockets. It's unacceptable in a
5 competitive marketplace.

6 And, finally, precluding
7 unjust/unreasonable practices is absolutely a legitimate
8 goal of a regulatory agency. The procedures to get to it,
9 admittedly, must be followed. But, at a foundation, what
10 you're proposing to do is absolutely reasonable. You are
11 trying to remove an unjust and unreasonable practice
12 that's buried inside a tariff that the Supreme Court has
13 interpreted in a way that was contrary to your own
14 interpretation. But the goal is appropriate and
15 legitimate.

16 Turning next to the illogic of
17 FairPoint's proposal in a competitive marketplace. It
18 reminds me, it strikingly reminds me of a quote from the
19 FCC, where the FCC stated that "in a competitive
20 marketplace, really, in any marketplace, a carrier will
21 always, always, a carrier will always prefer to recover
22 its costs not from its own customers, but from its
23 competitors." And, that is all, that's it, that's all
24 we're talking about today. They want to continue to

1 charge their competitors without providing services to
2 them. They were doing it through the CCL, they enjoyed
3 it, and now they want to do it through the rate. It's
4 inappropriate. It runs afoul, as Ms. Geiger had mentioned
5 a moment ago, of this Commission's pronouncements on
6 access subsidies in a competitive market. It runs afoul
7 of New Hampshire's statutory policy embedded in the New
8 Hampshire statutes. And, frankly, it runs afoul of what's
9 happening at the federal government today. The FCC is
10 considering intercarrier connection reform, it's
11 considering -- it's announced, in its broadband plan, that
12 it wants intrastate rates to mirror interstate rates. So,
13 to the extent that they're trying to put a Band-Aid on
14 their ability to continue to charge subsidies, I believe
15 it's going to be short-lived regardless of the outcome of
16 this docket, because of the efforts afoot at the federal
17 government.

18 Turning to the relative positions of the
19 parties going forward, it's important to remember that all
20 parties, but one, benefit from an expeditious resolution
21 to this matter; every carrier in this room, except for
22 FairPoint, benefits from an expeditious conclusion to this
23 matter. FairPoint benefits the longer this goes on
24 without conclusion. As of today, they have an unfounded

1 justification that they have managed to hide behind and
2 continue charging this unjust and unreasonable charge.
3 They don't want this resolved. They're not asking you to
4 certify it to the Supreme Court because there's really any
5 legitimate issue, and I will address their motion in a
6 minute, they just want this to go on forever, so that this
7 alleged justification of theirs stays in place
8 inappropriate.

9 I'll also comically point out that we're
10 now two ILECs in, three AT&T attorneys, two Sprint
11 attorneys, and the list of intervenors has grown. This
12 matter has been going on for quite a while. Aside from
13 the relative positions of the parties, the interest in
14 bringing it to closure and finality is substantial.

15 While I absolutely reserve, at your
16 discretion, reserve the right to address the motion that
17 was filed in writing within the timeline, I do have a few
18 comments that I could tender regarding that. The first is
19 that FairPoint's motion deals at its -- deals with the
20 issue of contribution. This issue was dealt with at
21 trial, in hearings before this Commission three years ago.
22 It was briefed. In AT&T's brief, on Pages 30 to 38, the
23 issue is discussed there; One Comm. discussed it at
24 Page 16; BayRing discussed it at Pages 20 to 21. There

1 can be no doubt that this Commission has heard, and heard
2 extensively, about this very issue, the issue of
3 contribution. When FairPoint said -- asked and was
4 granted leave by this Commission to join this case,
5 FairPoint said, at Page 2 of their petition to intervene,
6 "we will take the record as is." But they're turning
7 around now today, these many years later, and saying
8 "we're not only not going to take the record as is, we
9 don't want to take the record at all." Well, that seems a
10 bit absurd. If you're going to take the record as is,
11 which argued the issue thoroughly, then the record is what
12 the record is. And, if FairPoint is to be taken at their
13 word, the record needs to be -- needs to be considered by
14 this Commission.

15 And, I believe, your Honors, that that
16 is all I have. And, I do appreciate the time.

17 CHAIRMAN GETZ: Okay. Thank you.

18 Mr. Gruber.

19 MR. GRUBER: Thank you, Mr. Chairman.
20 AT&T, at the outset, I want to say AT&T agrees with and
21 adopts Ms. Geiger's presentation of BayRing's position.
22 So, I will limit my remarks to just a few points for
23 emphasis. Point one: The tariff change eliminating the
24 CCL charge when FairPoint's loop is not involved in a call

1 went into effect in October 10th, 2009. The tariff change
2 proposing an interconnection charge did not. That's
3 because the Commission's order on September 23rd, 2009
4 found that FairPoint provided insufficient support to
5 permit the Commission to determine that the proposed
6 interconnection charge was just and reasonable.

7 Now, the basis for this position is as
8 follows: FairPoint made two different tariff filings on
9 September 10th, 2009. First, FairPoint complied with the
10 Commission's Order Number 25,002. As FairPoint admits in
11 its filing made yesterday, that order became legally
12 effective on September 10th, 2009, in accordance with its
13 terms. In compliance with that order, FairPoint filed
14 tariff language eliminating the CCL charge when its loop
15 is not involved in a call.

16 Second, the second filing involved a
17 filing without prior approval or direction from the
18 Commission where FairPoint proposed, and I use that term
19 advisedly, proposed tariff language that would, if it were
20 to go into effect, permit FairPoint to apply an
21 interconnection charge. The first tariff filing was not a
22 change proposed by FairPoint and did not raise any issue
23 of just and reasonable. It was a compliance filing that
24 was -- that implemented a change the Commission had

1 already determined was just and reasonable. Therefore, no
2 process was required with respect to the first tariff
3 filing. The second tariff filing, by contrast, was a new
4 rate proposed by FairPoint, which necessarily raises the
5 question of whether such a rate is just and reasonable.
6 It is in this context, therefore, that the Commission's
7 order on September 23rd, 2009, which called for additional
8 FairPoint submissions to determine reasonableness of the
9 proposed rates, could only have been addressing the
10 interconnection charge proposal. The reasonableness of
11 the elimination of the CCL charge when FairPoint's loop is
12 not involved had already been determined. Moreover, as
13 Ms. Geiger said, nothing in the Commission's order on
14 September 23rd, 2009 states that the tariff filing
15 eliminating the CCL charge was suspended, revoked or
16 rejected.

17 And, point two: Any other
18 interpretation of the Commission's order of
19 September 23rd, 2009 would produce results inconsistent
20 with law, equity, and sound public policy. An
21 interpretation of that order that effectively forces a
22 utility customer to pay a rate that the Commission has
23 determined is unjust and unreasonable during an extended
24 delay of almost two years, a delay for which the utility

1 itself is responsible, is wrong as a matter of law and
2 equity. Moreover, well-established practice, as well as
3 law, requires that a utility proposing a rate increase
4 bears the burden of demonstrating its reasonableness. The
5 Commission must hold FairPoint to that standard.

6 If the Commission were to permit
7 FairPoint to collect the additional revenues at issue
8 during this long delay, a delay for which it is
9 responsible, it will have effectively shifted the burden
10 from FairPoint to its customers. In addition to being
11 wrong as a matter of law, such a shift in the burden is
12 bad policy. It creates perverse incentives, and we're
13 seeing them today; the longer FairPoint delays, the longer
14 it collects revenues from unjust and unreasonable rates.
15 The only interpretation of the Commission's September
16 23rd, 2009 order that produces a result that is both
17 lawful and sound policy is one that eliminates the
18 application of a CCL charge that the Commission has
19 already determined is unjust and unreasonable, and
20 suspends for further investigation an interconnection
21 charge that the Commission has already determined was
22 filed with inadequate support.

23 And, finally, point three: Going
24 forward, as Ms. Geiger says, the process that is presented

1 or is required is one that's going to be dictated by
2 FairPoint's filing with regard to the interconnection
3 charge. That's the issue that's going to be before the
4 Commission. That filing was just made today, and AT&T --
5 I'm sorry. Yes, that filing was just made today, and AT&T
6 does not yet have a view on the appropriate procedure or
7 process for that.

8 And, finally, while AT&T reserves its
9 rights to respond in full to the Motion to Certify
10 Interlocutory Transfer Statement that FairPoint filed
11 today, I will just say that the notion that a single rate
12 established decades ago, based arguably on the costs of
13 another company, has anything to do with FairPoint's
14 ability to cover its total costs today is just plain
15 silly. If FairPoint thinks its rates, taken as a whole,
16 do not permit it to recover all of its costs, it should so
17 demonstrate. It should not be able to pick and choose
18 individual rates. And, thank you very much. I appreciate
19 it.

20 CHAIRMAN GETZ: All right. I don't
21 think we have any questions for you, Mr. Gruber.
22 Mr. Kennan.

23 MR. KENNAN: Thank you, Mr. Chairman.
24 One Communications generally agrees with the remarks of

1 Ms. Geiger, Mr. Aron, and Mr. Gruber, but would like to
2 add a few amplifying remarks of our own. And, I'll try to
3 be brief, because they have been very articulate in
4 expressing positions that One Communications shares.

5 Mr. Malone started his remarks by stating that "this has
6 been a long proceeding." And, at the risk of stating the
7 obvious, as the docket number 06-067 indicates, this case
8 has been going on for five years now. More than three
9 years ago the Commission found that Verizon, and its
10 successor, FairPoint, were not permitted to impose the
11 carrier common line, or CCL, charge, which, by the way, is
12 2.4 cents per minute, when they did not make use of the
13 common line to terminate the call.

14 Further, the Commission found, as a
15 matter of fact, that part of that charge went to support
16 the cost of the common line. So, in other words, when
17 FairPoint is charging the CCL charge, when it is not
18 providing the use of the common line, it's basically
19 charging for a service it doesn't provide. The Commission
20 found that that was unjust and unreasonable, and upheld
21 that conclusion when it denied FairPoint's motions for
22 rehearing. And, nearly two years ago, in August of 2009,
23 in the order *nisi*, the Commission reiterated its
24 determination that FairPoint may not impose the CCL when

1 no common line is involved.

2 Once again, the Commission, two years
3 ago, found that FairPoint may not charge for something
4 that it doesn't provide. So, FairPoint -- I'm sorry,
5 excuse me, the Commission ordered FairPoint to amend its
6 tariff consistent with the Commission's repeated
7 determinations. And, most recently, just a few weeks ago,
8 in its May 4th order, the Commission again confirmed that
9 FairPoint may only apply the CCL charge when it provides
10 the use of the common line.

11 Today, however, FairPoint's tariff,
12 imposing the CCL, even when no common line is used,
13 remains on the books. And, FairPoint continues to bill
14 for these charges; five years after this proceeding
15 commenced, three years after the Commission's initial
16 determination that this charge was unjust and
17 unreasonable, and two years after the order *nisi*.

18 Commissioner, it's high time that
19 FairPoint comply with the Commission's directives. The
20 Commission should issue an order definitively requiring --
21 I should say, reiterating its prior determinations that
22 FairPoint must stop imposing this charge when it doesn't
23 provide a common line. It should do so tomorrow, or as
24 soon as possible, without any further passage of time and

1 any further charging of the CCL charge. No further
2 hearing on that issue is necessary or appropriate. The
3 Commission has repeatedly stated that it will not
4 re-litigate that issue. There's nothing more to be said
5 and nothing more for the Commission to hear on that issue.

6 If FairPoint wants to file a tariff for
7 new charges, that's its prerogative. And, any such filing
8 should be subject to full Commission review in accordance
9 with the Commission's normal procedures. But eliminating
10 the CCL, while that process is going on, should not be
11 held hostage to the review process.

12 Commissioners, it's been five years. We
13 urge you to require FairPoint to comply immediately with
14 your repeated directives to eliminate the CCL charge when
15 no common line is involved. Examine any proposed charge,
16 new charge, and deliberate. But, in all events, de-link
17 the two by requiring FairPoint to immediately stop
18 charging for something it doesn't provide and never has.

19 And, we respectfully reserve the rights
20 -- to reserve our rights to argue in an appropriate filing
21 about the Motion to Certify. Thank you.

22 CHAIRMAN GETZ: Okay. Thank you.
23 Mr. Price.

24 MR. PRICE: Yes. Thank you, Mr.

1 Chairman. Global Crossing is a licensed interexchange and
2 competitive local exchange carrier in New Hampshire. We
3 agree with the Commission's decision based on the
4 extensive record in Phase I of this proceeding to require
5 FairPoint to change its tariff and stop assessing a
6 carrier common line charge on traffic that does not travel
7 over FairPoint loops. That order was issued nearly two
8 years ago following the Supreme Court's decision, and yet
9 FairPoint continues wrongfully assessing a CCL charge on
10 this type of traffic. The Commission should require
11 FairPoint to cease this practice as soon as possible,
12 consistent with the Commission's prior order of 2009.

13 Global Crossing opposes FairPoint's
14 Motion for Interlocutory Transfer because the Supreme
15 Court clearly held that this was a question for the
16 Commission going forward.

17 The Commission should also reject
18 FairPoint's proposed new interconnection charge of over
19 one penny per minute on all switched access traffic.
20 There is simply no legal basis for FairPoint to assess
21 such a charge. Nor does imposing this new interconnection
22 charge make sense from a policy standpoint. The national
23 trend in intrastate switched access charges in the current
24 competitive environment is downward. But, if FairPoint is

1 allowed to assess its proposed interconnection charge,
2 competing carriers, depending on their mix of traffic at
3 any given time period, could actually end up paying more
4 to FairPoint in switched access charges than they do now.
5 This is contrary to basic economic and competitive
6 principles under which carriers operate in New Hampshire
7 and throughout the United States.

8 Global Crossing therefore urges the
9 Commission to deny the motion for interlocutory transfer,
10 move ahead with this proceeding, and require FairPoint to
11 stop its wrongful assessment of the CCL as soon as
12 possible and to refrain from imposing further costs on its
13 competitors in the form of FairPoint's proposed
14 interconnection charge. Thank you.

15 CHAIRMAN GETZ: Thank you. Mr. Fossum.

16 MR. FOSSUM: Thank you. The parties, I
17 believe, have fully stated their positions very
18 thoroughly, and Staff has nothing to add to them.

19 CHAIRMAN GETZ: Opportunity to respond,
20 Mr. Malone?

21 MR. MALONE: Yes. Thank you, Mr.
22 Chairman. I'll be brief, because we will look forward to
23 the various motions for rehearing and the responses to our
24 motion before we put together our response. But there

1 were just a few items that we wanted to flag. And, one of
2 them, the primary one that we've heard from all of the
3 parties here is -- really comes down to framing the issue,
4 which is something that all lawyers like to be in a
5 position to do. We take exception with this
6 characterization of our tariff filing as being "two
7 separate filings". That as if each individual page of
8 this filing was a separate filing, and it wasn't. And, we
9 argued in response to the Motion for Clarification that
10 followed our tariff filing that a tariff filing is a
11 integrated whole. It's, when you get your tariff filing
12 here, it is one cover letter, one tariff filing, and the
13 overall filing is to be considered as a whole. We don't
14 pick and choose individual pages out of any particular
15 filing, because sometimes the rates have been developed,
16 as we said before, on an interrelated and integrated
17 basis.

18 So, we object and disagree with any
19 attempt to say that we "made two separate filings", and
20 that the Commission should accept one and reject the
21 other, or accept one and investigate the other. Because,
22 as we stated in our response to these motions a while
23 back, and which this order has ruled on, it was one
24 integrated filing. And, also, any claims that one part of

1 that filing was incomplete as opposed to another, once
2 again we dispute.

3 There was some talk about how the
4 Settlement Agreement said that we would not increase our
5 rates, but we would also like to remind the Commission
6 that there was part of the Settlement Agreement that said
7 that the Commission would not seek to decrease our
8 wholesale rates either.

9 I'd also like to mention that, just as a
10 note, that the report of proposed charges, the supporting
11 information that the parties have been referencing, and
12 which he refiled today, has been in the record now for
13 about a year and a half. It was attached as an attachment
14 to Mr. Skrivan's testimony of September 28, 2009. So,
15 that information has been available to the Commission
16 since that time.

17 We would also like to take exception to
18 the Sprint's counsel's discussion of rates, and how the
19 Commission hasn't lowered our rate, just the application
20 of that rate. And, we'd like to remind the Commission
21 that there's a considerable body of case law that says
22 that a rate is not the dollar figure that sits on, you
23 know, the page of Section 30. A "rate" is considered to
24 be the charges, the terms, and the conditions of a

1 particular service is what, in the term of art, a "rate"
2 is. It's not the particular dollar figure that is
3 assigned. So, when we're talking about the rate for the
4 CCL, we're talking about not just the dollar charge or the
5 per minute charge, we're talking about the terms and
6 conditions and the service description that accompany it.

7 Regarding the issue of delay, we also
8 dispute that. Part -- a big part of our motion yesterday
9 is that we are seeking to avoid delay. We feel that, if
10 issues regarding what FairPoint is permitted to argue are
11 not considered early on in the proceeding, we're going to
12 have a fruitless proceeding, where we go through
13 discovery, hearings, briefing, and come up with a decision
14 that FairPoint will be compelled to appeal, simply because
15 it felt like it wasn't heard on an important issue. We
16 feel like resolving this issue now is actually to the
17 benefit of all parties and the administrative convenience
18 of the Commission, because it gets a thorny issue out of
19 the way up front.

20 Finally, regarding the burden of proof,
21 we don't believe that we're trying to shift the burden of
22 proof. We're willing to take on the burden of proof of
23 our rates. And, we're prepared and willing to demonstrate
24 that, on the whole, our rates are just and reasonable, and

1 also in the public interest on the whole.

2 Oh. One more thing, yes, on a
3 procedural. Given everything we've heard about the
4 expected motions for rehearing and the responses to the
5 motion that we'll be filing, and the considerable
6 difference here, we'd like to toss out for discussion the
7 fact that perhaps a technical session after this
8 prehearing conference would not be a really productive use
9 of time. And, perhaps we should wait until we've gone
10 through the first round of motions and had some decisions
11 on them, before we actually delve into a technical
12 session. Thank you, Mr. Chairman.

13 CHAIRMAN GETZ: Well, I was becoming
14 less and less optimistic as we went around the room about
15 what would come out of a technical session, whether there
16 was the possibility of discussing alternative routes.

17 But does anybody else have anything to
18 respond on the procedural issue and what a technical
19 session might yield? Ms. Geiger.

20 MS. GEIGER: Mr. Chairman, not
21 specifically on the procedural issue. And, I still think
22 it might be helpful, after the conclusion of the
23 prehearing conference, for the parties to get together to
24 talk a little bit. But I just wanted to respond to one of

1 the arguments Mr. Malone made about what a "rate" is or
2 isn't. And, I would merely suggest that I disagree with
3 his characterization, and would just point the Commission
4 to New Hampshire law, New Hampshire statute, RSA 378:6,
5 where rate tariffs are treated differently procedurally
6 than a tariff for services. And, we would submit that
7 what we're talking about, in the context of the CCL
8 charges, is not a change to the CCL rate, that's not being
9 changed, it's the application of the rate, it's the
10 service that's being provided and what gets charged for
11 that service. Obviously, the interconnection charge is a
12 rate, and that will be treated differently.

13 So, I just put that in the record for
14 consideration.

15 CHAIRMAN GETZ: Anything else on
16 procedural issues and a tech session and how that might
17 proceed? Mr. Aron.

18 MR. ARON: I believe it would be
19 imprudent to skip a technical session. You have all the
20 parties gathered here today. The length of the technical
21 session might be dictated by how productive it is. But,
22 to not proceed, I think, would be -- would not be a wise
23 decision.

24 I think that the timelines for response

1 to each of the motions that have been filed are known.
2 And, any schedule that would be proposed should take into
3 consideration, not taxing the parties to proceed in
4 advance of those timelines. But I see no reason why there
5 couldn't be some discussion of scheduling, taking those
6 known dates into account. And, this matter has been going
7 on for an awfully long time. I think that there is no
8 reason to walk away today without at least discussing the
9 schedule that the carriers would like to follow going
10 forward.

11 CHAIRMAN GETZ: Well, and I guess I'd
12 like to ask the parties to make their best efforts to come
13 up with some consensus on a procedural schedule. But, as
14 is often the case, when closing a prehearing conference,
15 to the extent there's not an agreement, then there can be
16 a filing of alternative proposals, and we'll make some
17 judgment about how to proceed. But would just ask that
18 the parties make a good faith effort to see if they can
19 come to some kind of consensus. But, if you can't, then
20 we'll deal with it.

21 Is there anything else that we should
22 address this morning?

23 (No verbal response)

24 CHAIRMAN GETZ: Okay. Hearing nothing,

1 then we'll close the prehearing conference. And, we'll
2 await a recommendation on how to proceed and various
3 motions that the parties may or may not file. Thank you,
4 everyone.

5 (Whereupon the prehearing conference
6 ended at 11:38 a.m. and a technical
7 session was held thereafter.)
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