

STATE OF VERMONT  
PUBLIC SERVICE BOARD

IN RE: PETITION OF THE CLEC ASSOCIATION OF  
NORTHERN NEW ENGLAND TO AMEND BOARD RULE  
3.706(D) (1) REGARDING THE RENTAL CALCULATION  
FOR POLE ATTACHMENTS

August 26, 2016  
9:30 a.m.

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112 State Street  
Montpelier, Vermont

Workshop held before the Vermont Public  
Service Board, at the Susan M. Hudson Conference Room,  
People's United Bank Building, 112 State Street,  
Montpelier, Vermont, on August 26, 2016, beginning at 9:30  
a.m.

P R E S E N T

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P R E S E N T

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2 Alan Mandl, Esquire, CANNE  
Larry Lackey, Sovernet  
3 Pamela Hollick, Level 3 Communications  
James Gibbons, Burlington Electric  
4 Cheryl Willette, WEC  
Paul Phillips, Esquire, FairPoint and five RLECs  
5 Greg Sichak, First Light  
Brian Sweeney, BED  
6 James White, Comcast  
Beth Fastiggi, FairPoint  
7 Gerald Tarrant, Esquire, Comcast  
Katherine Martin, Esq.  
8 Scott Anderson, GMP  
Bill Humphrey, Lyndonville Electric  
9 John Stevenson, FairPoint  
Carolyn Anderson, GMP  
10 Jim Porter, Esquire, DPS  
Dan Burke, Esquire, DPS  
11 Corey Chase, DPS  
Jay Ireland, Comcast  
12 Andy Montroll, Esquire, EC Fiber and ValleyNet  
Carole Monroe, ValleyNet  
13 Irv Thomae, EC Fiber  
Charles Storrow, AT&T  
14 Katie Orost, BED  
Cliff Duncan, Duncan Cablevision  
15 Stephen Whitaker, Design Access Network  
Amanda Simard, VPPSA  
16 Vickie Brown, VEC

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1 MR. GERHARD: Okay folks. I think we  
2 have everybody who we are going to get today, so why  
3 don't we get started.

4 My name is John Gerhard. I'm a staff  
5 attorney with the Board. And with me today is George  
6 Young. He is our policy director, and he will be  
7 working with me on this workshop.

8 Our workshop today is regarding  
9 petition of the CLEC Association of Northern New  
10 England to amend Board Rule 3.706(D)(1), regarding  
11 the rental calculation for pole attachments. If we  
12 could, I would just like to have everybody kind of go  
13 around the room and introduce yourself and let us  
14 know with which organization you're here today.

15 Why don't we start with the Department.

16 MR. BURKE: I'm Dan Burke on behalf of  
17 the Department of Public Service. With me today are  
18 Corey Chase and James Porter.

19 MR. GIBBONS: James Gibbons, Director  
20 of Policy and Planning for Burlington Electric  
21 Department. With me today is Brian Sweeney from our  
22 engineering group.

23 MR. SICHAK: Greg Sichak, Assistant  
24 Controller, Senior Compliance Analyst, First Light  
25 Fiber. Member of CANNE.

1 MR. LACKEY: Larry Lackey, Sovernet.  
2 V.P. of Admin and Regulatory. Also a member of  
3 CANNE.

4 MR. MANDL: Alan Mandl representing  
5 CANNE.

6 MS. HOLLICK: Pamela Hollick. I'm the  
7 Associate General Counsel for Level 3 Communications.

8 MR. TARRANT: Gerry Tarrant. I'm  
9 representing Comcast, and with me is Jim White who is  
10 Senior Director of Regulatory Affairs in the  
11 northeast for Comcast. And Jay Ireland is on the  
12 line.

13 MR. PHILLIPS: I'm Paul Phillips. I'm  
14 with the law firm of Primmer here in Montpelier. We  
15 are here on behalf of the two FairPoint ILECs,  
16 telephone Operating Company of Vermont, LLC and  
17 FairPoint Vermont, Inc. as well as five RLEC  
18 petitioners who are all listed on our letter;  
19 Franklin Telephone, Ludlow, Northfield, Perkinsville,  
20 Topsham and Waitsfield. That's actually six.

21 I'm joined by Katherine Martin from our  
22 office. We also have Beth Fastiggi who is the  
23 FairPoint State President and John Stevenson who is  
24 the Director of --

25 MR. STEVENSON: License Administration.

1 MR. PHILLIPS: License Administration  
2 for FairPoint.

3 MS. OROST: Katie Orost, Vermont  
4 Electric. O-R-O-S-T.

5 MS. BROWN: Vickie Brown also from  
6 Vermont Electric Co-op.

7 MR. ANDERSON: Scott Anderson, Green  
8 Mountain Power.

9 MS. ANDERSON: Carolyn Anderson, Green  
10 Mountain Power.

11 MR. HUMPHREY: Bill Humphrey,  
12 Operations Manager, Lyndonville Electric.

13 MS. SIMARD: Amanda Simard for VPPSA.

14 MS. WILLETTE: Cheryl Willette,  
15 Washington Electric.

16 MR. STORROW: Charles Storrow, KSE  
17 Partners, appearing on behalf of AT&T.

18 MS. MONROE: Carole Monroe, ValleyNet.

19 MR. THOMAE: Irv Thomae, chair, EC  
20 Fiber.

21 MR. MONTROLL: Andy Montroll with  
22 Montroll & Backus on behalf of EC Fiber and  
23 ValleyNet.

24 MR. GERHARD: Okay.

25 MR. WHITAKER: Stephen Whitaker, Design

1 Access Network.

2 MR. GERHARD: Fantastic. If I could  
3 ask, I had placed some sign-in sheets somewhere and  
4 they are kind of meandering around. If you haven't  
5 signed them, if you could, I would appreciate it.  
6 And if they could just work their way up to the front  
7 so I can collect them a little bit later, I will use  
8 that to make sure that we have an up-to-date E-mail  
9 list, and I'll make sure that folks who are not on  
10 the service list I'll cross check and make sure. So  
11 if you could just print legibly you would make my  
12 life much easier. Thank you.

13 What I'm hoping to accomplish today is  
14 kind of three things. First I would like to hear  
15 from the participants. I would like to hear what  
16 people think the issues are that we need to address  
17 in this proceeding. I would also like to see if we  
18 can identify what we think the appropriate scope of  
19 this proceeding should be. And then finally, what  
20 kind of process do we think we need to use going  
21 forward to most effectively get to where we want to  
22 be.

23 George, did you have anything you  
24 wanted to add?

25 MR. YOUNG: No. I think that's -- I

1 would say that's a good framework. I will say we  
2 have read everybody's written comments so there is no  
3 need to spend a lot of time reiterating what's  
4 already been written.

5 MR. GERHARD: I agree. So I think why  
6 don't we start with the Department, and I'm just  
7 going to ask you if you could give us an idea of what  
8 you think some of the key issues you would like us to  
9 resolve in this proceeding are. You guys can fight  
10 amongst yourselves as to who has to do that.

11 MR. BURKE: I think we are here mostly  
12 at this point to listen to the various pole owners  
13 and the attachees and how they would like to see the  
14 proceeding go forward. I think it's fair to say that  
15 we believe the rule should be amended, at least the  
16 two-foot one-foot rate, the Board should look at that  
17 and how to proceed going forward.

18 But we have not finalized a position at  
19 the Department on how we want that to look. And we  
20 do anticipate having an opportunity to file comments  
21 after we have heard from all of the affected  
22 entities.

23 MR. GERHARD: Okay.

24 MR. BURKE: And I will say as for  
25 scope, we know several companies, especially the

1 electric utilities, have asked the Board to expand  
2 the scope of the proceeding beyond that one narrow  
3 aspect of the rule. And I think we are open to  
4 listening to that. But we don't want this to get so  
5 broad that it gets a little unruly. But that being  
6 said, we are open to listening to how they want to  
7 expand the scope and what the idea behind that would  
8 be.

9 Mr. Porter would like me to bring up  
10 the fact that there is a pending docket on regulation  
11 of VoIP service, and we believe that if that docket  
12 is finally resolved, that might touch some of the  
13 issues that led to the opening of this rulemaking.

14 MR. GERHARD: I'm assuming you're  
15 talking about -- I think it's 7316.

16 MR. BURKE: Yes. That's correct.

17 MR. GERHARD: 16.

18 MR. YOUNG: 1-6.

19 MR. GERHARD: Burlington?

20 MR. GIBBONS: I don't think there is a  
21 lot to add that would not be redundant with our filed  
22 comments. We certainly would like to potentially add  
23 to those. We think we are caught a little bit short  
24 on this one in terms of timing. So --

25 MR. GERHARD: Mr. Lackey.



1 MR. LACKEY: I'll defer to Mr. Mandl.

2 MR. MANDL: Thank you. As far as  
3 scope, CANNE favors sticking with the proposed  
4 amendment. There have been comments filed last week  
5 that seek to expand the scope. They fall into two  
6 main categories. One involves aspects of the rate  
7 formula, and the other involves aspects of the rules  
8 that don't concern the rate formula.

9 It's our view that both of those  
10 categories of issues are not related to the  
11 rulemaking. The proposed change does not involve the  
12 rate formula itself. The rate formula has some self-  
13 adjusting features. A common issue that's been  
14 disputed has been the amount of usable space. What's  
15 in the rule is a presumption that can be rebutted by  
16 a pole owner. The same goes for investments and  
17 appurtenances. From having been around when the  
18 initial rates were set under this rule, there really  
19 were -- there really was a lot of agreement in terms  
20 of how the rule operates, what inputs go into the  
21 formula. While there were disputes, they were  
22 readily identifiable, and I think manageable by the  
23 Board through the adjudicatory process if rates are  
24 revised.

25 So we don't feel that the other aspects

1 of the formula need to be reviewed at this stage,  
2 especially in light of what was done previously.

3 There are a number of other issues that  
4 are raised that simply are -- involve terms and  
5 conditions, in the field behavior that don't seem  
6 related to the subject matter of the proposed rule.  
7 So we would favor a narrow scope.

8 MR. YOUNG: Mr. Mandl, just to be clear  
9 your proposal is basically to move everybody to  
10 one-foot rate; correct?

11 MR. MANDL: That's correct.

12 MR. YOUNG: And that's because you're  
13 looking for competitive neutrality.

14 MR. MANDL: It would accomplish that in  
15 our view. I think in our comments we also took note  
16 that in some cases the -- there were ILECs that had  
17 agreements that were tied to the CLEC rate. I think  
18 that was true in the Green Mountain Power or  
19 Waitsfield case where the Board looked to the rate  
20 that the CLECs were paying and found that to be  
21 reasonable for those ILECs. If the rule were to  
22 change so there is a unitary one-foot rate, we assume  
23 that that would happen for those ILECs as well.  
24 ILECs that have two-foot rates today would likely  
25 benefit from a one-foot rate so that there would be,

1 you know, additional competitive neutrality.

2 MR. YOUNG: Right. But is it CANNE's  
3 position that the two-foot rate is -- that the Board  
4 set years ago is wrong? I mean that the rate  
5 elements are wrong? I'm just trying to make sure I  
6 understand. And I will tell you exactly where I'm  
7 going with this, which is if you want to unify the  
8 rate, you can unify at the one-foot rate and you can  
9 unify at the two-foot rate. If you unify at the  
10 two-foot rate, there is no consequence to the  
11 pole-owning utilities in terms of their revenue  
12 situation which is what all the comments said. If  
13 you consolidate at the one-foot rate, you have a  
14 revenue loss from the utilities, and -- which is the  
15 gist of their comments. So what I'm trying to  
16 understand is are you looking for a lower rate, or do  
17 you want a unified rate?

18 MR. MANDL: Well I think the two are  
19 compatible. I mean the logic behind the rate formula  
20 is to derive a fully-allocated cost-based rate.  
21 That's the rate that we are looking for. We are not  
22 looking for something that's double that in light of  
23 a policy consideration that may no longer apply given  
24 the changes in the landscape.

25 And there is a practical matter. It's

1 our understanding that some pole owners are charging  
2 the cable industry one foot, there are others that  
3 are charging at a two-foot rate but not being paid.  
4 You're aware of the special contract that covers a  
5 lot of the pole attachments, you know, between  
6 Comcast, Charter and FairPoint. That's different  
7 from what Green Mountain Power is charging, and some  
8 of the uncertainty -- or that situation is partly due  
9 to the structure of the rule and also the, you know,  
10 the ongoing dispute about VoIP. Having the one-foot  
11 rate going forward it solves that problem, and  
12 whatever arguments exist today over the one-foot or  
13 two-foot rate applicability to cable operators, can  
14 be handled through, you know, the normal adjudicatory  
15 process or through a settlement as FairPoint has  
16 done. But it doesn't stand in the way of coming up  
17 with a single cost-based rate.

18 MR. GERHARD: Anything else, Mr. Mandl,  
19 or are you finished?

20 MR. MANDL: I'm reminded that like  
21 other attachers, CLECs use one foot of usable space  
22 which is --

23 MR. LACKEY: ILECs should pay the  
24 one-foot rate.

25 MS. HOLLICK: Pamela Hollick with Level

1 3 Communications. I echo the comments of the CANNE  
2 petitioners here in terms of the rulemaking. I think  
3 you wanted to accomplish three things, the issues to  
4 address, and we certainly agree with CANNE that it  
5 should be a very narrow scope of the proceeding that  
6 is only dealing with the presumption of the space.

7 As CANNE mentioned, when the Board set  
8 that, you looked at -- the principles you were trying  
9 to accomplish were cost causation and competitive  
10 neutrality. And that's the things that other states  
11 have looked at as they have set the rates as well.

12 The attachers are using only one foot  
13 of space. That's all we need. If we are using more  
14 than in our make-ready work in our applications we  
15 will note that, and the costs will be adjusted  
16 accordingly. So the scope of the proceeding should  
17 be very narrow just to address that one issue and  
18 bring Vermont's pole attachment rates into  
19 competitive neutrality as the other states have done  
20 as well, which will incent additional broadband  
21 deployment as we continue to expand our facilities.

22 The process again, if we are only  
23 addressing that one issue, it should be very narrow.  
24 We should be able to solicit comments and move  
25 forward very quickly.

1           The other issues that have been raised  
2 by the electric companies and the other pole owners  
3 relate to operational-type issues that can be  
4 addressed in their subsequent tariff filings and our  
5 contracts for pole attachments. So again keeping it  
6 very narrow, to achieve the objective of updating the  
7 rule, given the significant changes that have  
8 happened in the industry is what Level 3 supports.

9           MR. GERHARD: You mentioned comments.  
10 Any thought on how many rounds you would like to see?

11           MS. HOLLICK: Well we have already had  
12 significant comments. I would think we could move  
13 pretty quickly forward with perhaps -- the rule  
14 requires -- if the rule requires public hearing  
15 moving forward with a public hearing, and then move  
16 forward with that.

17           MR. GERHARD: Okay. And CANNE may have  
18 thoughts on process as well.

19           MR. MANDL: Since the topic of  
20 scheduling has come up, we have a starting point  
21 schedule that we would be happy to circulate, you  
22 know, to help that discussion, you know, when that  
23 issue comes up.

24           MR. GERHARD: Okay.

25           MR. IRELAND: This is Jay Ireland. I

1 don't want to cut anybody else off there, but I  
2 wanted to say a couple of words about the question  
3 about what -- whether it should be the one-foot or  
4 the two-foot rate, is this an appropriate time to  
5 step in?

6 MR. GERHARD: Yes, Mr. Ireland. Go  
7 ahead.

8 MR. IRELAND: Okay. Thank you. So the  
9 question, and let me also reiterate that Comcast and  
10 Charter both, of course, supportive of a very focused  
11 rule making here that simply adjusts the presumption  
12 of occupied space for everyone to one foot, which  
13 would be consistent really, you know, with the rest  
14 of the country. The -- you know, the question  
15 whether it should be unified as a two-foot versus the  
16 one-foot, you know, really as I said, number one, if  
17 it were to be unified at something higher than the  
18 one-foot rate, and the two-foot rate in particular,  
19 it would essentially put Vermont really out of step  
20 with, you know, not only all its neighboring states  
21 but virtually the rest of the country, all the FCC  
22 states. And the reason why all of those  
23 jurisdictions have kind of uniformly gone to this  
24 one-foot rate and have -- and the FCC recently  
25 adjusting their telecom rules to move the telecom

1 rate to an equivalent rate to the one-foot rate is  
2 because of the recognition over the years, you know,  
3 after lots of study and comments and rule makings,  
4 you know, at the FCC and elsewhere that having a  
5 uniform low rate is what's expressed in the National  
6 Broadband Plan of the FCC back in 2010 is a -- is a  
7 very powerful mechanism and road map to trying to  
8 incent broadband investment, deployment and  
9 competition that comes with that.

10 So I think it would be, you know, one  
11 of the things in the 2001 policy statement that the  
12 -- that actually kind of motivated some of the  
13 results was looking at how Vermont's rates compared  
14 to other states in the country. And after looking at  
15 it as a separate cable formula rate at one foot, in  
16 order to try to bring some alignment to that,  
17 basically a two-foot rate would essentially double  
18 across the board the rates in Vermont compared to the  
19 rest of the country, all those very, you know,  
20 critical policies that people are trying to follow to  
21 promote broadband which is something that I know is  
22 very important in Vermont as well.

23 So I think it would be a mistake to be  
24 moving in that direction under the notion of  
25 uniformity when it's been well recognized now for a



1 number of years that really one of the low in uniform  
2 and the low point which has been approved by the  
3 Supreme Court of the United States as fully  
4 compensatory, and you know, covering, you know, not  
5 subsidizing or cutting short the pole owners in any  
6 way is the one-foot rate under the FCC formula the  
7 way that the cable formula is currently calculated in  
8 Vermont.

9 MR. GERHARD: Anything to add, Mr.  
10 Tarrant?

11 MR. TARRANT: Yeah. I'm not going to  
12 -- I'm not going to dispute anything that Jay just  
13 said, but I guess we -- Comcast itself wants to keep  
14 this narrow, and we think that the schedule is  
15 probably the most important -- most important issue  
16 here. And given the fact that there has been  
17 substantial comments made, we think this is really  
18 ready to get the schedule rolling. There is no  
19 reason why the filing by the Board can't be made with  
20 ICAR soon so that ultimately the filing with the  
21 Secretary of State can follow under the statutory  
22 scheme. And we can start moving ahead.

23 And if there is another hearing, public  
24 comments, public hearings and things like that, that  
25 can follow.

1 MR. GERHARD: Mr. Phillips?

2 MR. PHILLIPS: Paul Phillips on behalf  
3 of the ILEC pole owners. So we did file our  
4 comments. I was struck by the adjectives that the  
5 supporters of the rule change used in their comments.  
6 They called the current rule current rate formula  
7 irrational, artificial, arbitrary, harmful, and as we  
8 reflected in our comments, none of those adjectives  
9 really apply to the process that the Board used 15  
10 years ago to reach the rate formulas they reached.  
11 And simply, you know, attacking those formulas with  
12 adjectives doesn't really refute the policy choices  
13 that the Board made.

14 I happen to have been involved in most,  
15 if not all, of the cases involving litigation under  
16 this pole rule in the last 15 years. I was counsel  
17 for Waitsfield in the Waitsfield GMP case. I was  
18 counsel for Shoreham in the Shoreham CVPS case. And  
19 I was counsel for FairPoint in the recent Docket 8470  
20 case. And what I take away from those cases is that  
21 the rule is working fine. The rule provides for a  
22 complaint mechanism, which we have used. The rule  
23 calls for a choice that a pole owner can make between  
24 filing a tariff versus filing a contract.

25 In the 8470 case when the tariff

1 clearly could not be workable or the dispute could  
2 not be resolved, we went to a special contract which  
3 the rule allowed and the Board approved. And so the  
4 notion that the rule is broken and needs to be fixed  
5 I think is an erroneous one. I think what's  
6 happened, and I don't mean to cast aspersions on the  
7 Board, is that the Board has not resolved the VoIP  
8 case in nine years. And it does not look likely to  
9 resolve that case for a number of more years.

10 And while the pole owners and the  
11 attaching entities are waiting for that ruling, we  
12 see these little brush fires pop up which in our  
13 judgment the rule is more than able to resolve. And  
14 so just as with the 8470 case, now we see this  
15 petition for rulemaking, all of this expresses  
16 frustration with the -- with the impatience that we  
17 have waiting for this VoIP order.

18 But these are -- these are symptoms,  
19 these aren't the cure. So the rulemaking in our  
20 judgment is premature and unnecessary. We would very  
21 much like to see a VoIP ruling so that we can get a  
22 comprehensive view of what the Board's view of this  
23 matter is. And especially a narrow cast rulemaking  
24 such as this one, and I've not heard anybody talk  
25 about the expedited process. But the notion of doing

1 a narrow rulemaking on a hasty schedule we think is  
2 just -- it's misguided and ill advised.

3 MR. YOUNG: Let me ask you the same  
4 question I asked Mr. Mandl. Basically looking at it  
5 I realize you've used the whole issue of VoIP.  
6 Assuming VoIP came out the way your client had asked  
7 the Board to rule, you would basically end up with a  
8 unified rate at the two-foot rate; correct?

9 MR. PHILLIPS: I think -- well our  
10 position is that VoIP should be classified as  
11 telecommunications. So if the telecom rate is two  
12 foot, then yes, it would be a two-foot rate.

13 MR. YOUNG: The outcome that you've  
14 desired in that litigation would produce basically  
15 everybody at the two-foot rate.

16 MR. PHILLIPS: Except for cable-only  
17 attachers.

18 MR. YOUNG: Except for cable-only.  
19 Fair enough. So when I hear you're saying, gee, we  
20 really need VoIP to resolve all these issues, I don't  
21 hear a problem with the idea of unified rate; is that  
22 correct? In concept.

23 MR. PHILLIPS: Well unified rate. I  
24 mean I'm not arguing for a unified rate. I'm arguing  
25 for the rate that we have which is not a unified

1 rate. I don't consider classifying VoIP as  
2 telecommunications to be unifying the rate. I  
3 consider that to be resolving a regulatory dispute.  
4 And the fact that VoIP would move up in the rate, if  
5 that's the Board's choice, doesn't unify the rate.  
6 It simply shifts VoIP into the higher rate.

7 MR. YOUNG: And virtually all cable  
8 attachments in the state. Almost all.

9 MR. PHILLIPS: Almost all. Right.

10 MR. YOUNG: Almost all. So basically  
11 almost every attacher is suddenly at the two-foot  
12 rate. You end up with effectively a unified rate.  
13 Am I missing something?

14 MR. PHILLIPS: No. I mean you're not  
15 missing something.

16 MR. YOUNG: I just, you know --

17 MR. PHILLIPS: I'm talking at the  
18 margins and you're talking at the middle, so that's  
19 fine.

20 MR. YOUNG: Mr. Porter?

21 MR. PORTER: If I could sort of answer  
22 that question from our perspective. I agree with  
23 what Mr. Phillips said about the VoIP Docket. But I  
24 think also presumably with that, you would also have  
25 a determination in that proceeding as to how to deal

1 with the issue where you have had a company providing  
2 a service since certain date, what is the effective  
3 date of when that rate would have been in place.

4 I think from a policy perspective which  
5 is a problem, which is one of the reasons there is so  
6 much angst about this, and it's -- Mr. Phillips  
7 refers to them as the brush fires that are coming up,  
8 but also I think from a policy perspective I'm not  
9 sure we want to have a two-foot rate in Vermont,  
10 would we be the only state in the country that does  
11 that? I mean from that perspective we would like for  
12 it to be as easy in both in perception and reality  
13 for new broadband providers to be able to use our  
14 poles.

15 And so -- and I have to defer to Mr.  
16 Chase on this issue. But the two-foot rate I'm not  
17 sure if that's from a policy perspective where we  
18 would like to come out on this.

19 MR. YOUNG: Right. I think the  
20 questions I was trying to highlight with Mr. Phillips  
21 is basically I understand the desire for 7316 to be  
22 resolved. And but the fact is the outcome that many  
23 people have asked, excluding Comcast, have asked the  
24 Board to reach in that case would effectively  
25 basically solidify a two-foot rate for the vast

1 majority of pole attachments in the state. And  
2 whereas the CANNE's petition is basically move to the  
3 one-foot rate.

4 So I was trying to hone in on isn't  
5 that the real issue that we are trying to resolve in  
6 this case. What should the rate be, not whether it's  
7 one foot or two foot.

8 MR. PORTER: I think it is or isn't.  
9 Also depending upon what the Board determined in the  
10 VoIP, would a provider say who started offering  
11 telephone service in 2007, be subject to the two-foot  
12 rate from 2007, or would it be from the time that the  
13 Board issued? And I think that's a -- that has  
14 certainly been an impediment to the Department in  
15 moving forward with the rate that we think would be  
16 more beneficial to other potential attachees.

17 MR. YOUNG: Which by the way for the  
18 context of this docket wouldn't that be irrelevant  
19 because the rulemaking would only be prospective?

20 MR. PORTER: For this, absolutely.

21 MR. YOUNG: Yes. I realize that that  
22 raises that in a different way. I think --

23 MR. PHILLIPS: Well I mean I think what  
24 strikes me about it is that we have sort of a  
25 Hobson's choice between, you know, a lengthy VoIP

1 proceeding that's gone on for almost a decade, and an  
2 expedited, narrow cast rulemaking that petitioners  
3 want to have done, you know, in six months. And it  
4 seems to me that neither of those is the right  
5 regulatory choice, that there are larger issues at  
6 stake, and that the Board should not act in haste. I  
7 mean they shouldn't act with undue delay either. But  
8 they shouldn't act in haste. That's where the  
9 frustration comes in.

10 MR. TARRANT: I don't know why six  
11 months for rulemaking is undue haste. It seems to me  
12 that if we are focused on this, there is every reason  
13 to believe you can look at this one issue, this  
14 rulemaking, in at least six months. You can do it  
15 quicker than that if you wanted to. Six months is  
16 relatively easy to do under the statutory scheme.  
17 You know, the difference between what everyone else  
18 did was we all responded to the listing the issues.

19 This has turned into an oral argument,  
20 and it seems to me that the Board has a rule here,  
21 it's opened the rulemaking, and we should proceed.  
22 And the issues really are how do we expand or limit  
23 the scope.

24 MR. WHITE: Keep it down.

25 MR. TARRANT: And how do we meet the



1 statutory scheme as the Administrative Procedures Act  
2 sets out.

3 Now I don't know if you need a one-foot  
4 or a two-foot, but I do know what the FCC has done,  
5 and I know what the other states in the region have  
6 done, and I know the policy provisions and policies  
7 that undermined or that support the consolidation of  
8 a solid unified rate. And I think that's what we  
9 have to focus on.

10 Does it make sense in this state also.  
11 And we are going to say it does. And I think we will  
12 present good policy reasons for doing that. And I  
13 think that's what the Board should focus on, the  
14 policy.

15 MS. HOLLICK: I echo -- Level 3. I  
16 echo those same comments and concerns. This is not  
17 an adjudicatory proceeding where we have testimony  
18 and evidence and factual disputes to be resolved.  
19 This is a rulemaking. And what we are talking about  
20 is a presumption that's been established and whether  
21 that has policy implications, so maintaining the rule  
22 as it is with the formula and modifying the  
23 presumption.

24 Presumptions can be rebutted as CANNE  
25 mentioned. They come in, they can -- they can file a

1 tariff. They can rebut the presumption, and then we  
2 have a tariff dispute where that becomes the  
3 adjudicatory proceeding.

4 So I encourage the Board to move  
5 forward and set a schedule for the rulemaking that  
6 promptly resolves this issue, that puts Vermont out  
7 of step with the rest of the country in terms of the  
8 pole attachments presumptions that go into the  
9 formula.

10 MR. GERHARD: I want to see if we can  
11 touch base with the rest of the folks who are around  
12 the back, because I want to make sure everyone gets a  
13 chance to chime in. Of course I forget where we left  
14 off and so -- Vickie, I think we might be back to  
15 you.

16 MR. WHITE: Excuse me, I have  
17 laryngitis. Jim White from Comcast. So if everyone  
18 remembers the phase one order in the VoIP case, it's  
19 actually a two-phase process. The first phase is  
20 classification of interconnected VoIP. That's  
21 pending. The second one is there would then be a  
22 phase two to determine the extent to which, if any,  
23 the Board would exercise or apply its regulations to  
24 VoIP. So the VoIP case doesn't end it.

25 Second thing is with regard to the

1 disputes over whether cable owes the one or two-foot  
2 rate now. Comcast actually raised this issue in 2014  
3 when it filed its rulemaking petition with the Board.  
4 The Board declined to address that saying that's  
5 really a request for a declaratory ruling on the  
6 issue of retroactivity. So we would argue that  
7 that's not germane for this rulemaking. That can be  
8 addressed separately, you know, as part of a  
9 declaratory ruling. That's exactly what the Board  
10 said.

11 The other thing is that if the VoIP  
12 case were to go into phase two, you now have the  
13 issue of which of the Board's telecom rules apply to  
14 VoIP, if any. Would there be a third category. One  
15 of the biggest issues that would be there would be  
16 this old -- would you apply the two-foot rate, the  
17 one-foot rate, something else? By doing this now we  
18 would resolve without a phase two and without having  
19 to wait for the VoIP case, one of the biggest issues  
20 that the Board would confront then. Phase two then  
21 -- the only issue remaining in phase two if VoIP were  
22 classified as telecom, would be issues like service  
23 quality. Perhaps then the Board and Department could  
24 look at changing the service quality rules for all  
25 ILECs and CLECs and make them more -- move them away

1 from where they are now and make them more kind of  
2 competitively based.

3 So I actually think by doing this  
4 rulemaking now will actually move things forward  
5 much, much faster.

6 MS. BROWN: Vickie Brown for Vermont  
7 Electric Co-op. We obviously are concerned about the  
8 revenue erosion that will result if this unilateral  
9 change is made to just one aspect of the rule. As I  
10 recall, the last rulemaking utilities argued that we  
11 were being under compensated, and this will just  
12 exacerbate that problem. I don't understand all the  
13 policy reasons, the competitive concerns, and so on,  
14 but from a pole-owning utility's perspective that's a  
15 concern.

16 We also have some other issues that we  
17 wouldn't mind having the Board address if they are  
18 going to open up the rulemaking. We have  
19 difficulties dealing with some of our attachers  
20 because we don't know who they are in some cases.  
21 There is not a lot of teeth to enforce the  
22 requirement that they move attachments when poles are  
23 replaced or changed. And so the Board's going to  
24 open a rule.

25 We would like an opportunity to address

1 some of those ancillary issues as well as the one-  
2 foot two-foot space allocation.

3 MS. ANDERSON: Carolyn Anderson, Green  
4 Mountain Power. We, I think, expressed in our  
5 comments our views on this rulemaking, and while we  
6 are not opposed to having uniform rate, what's  
7 important is to land on what the formula and the  
8 appropriate variables in that formula will be. And  
9 if we do that, and we do that well, then we can avoid  
10 sort of the ongoing litigation that's been embedded  
11 in the existing rule.

12 We also share VEC's concerns about  
13 revenue erosion which is why we don't feel that you  
14 can just simply open up one aspect of the rule and  
15 change the rate. I would just add the revenue  
16 erosion is really for our customers, that our  
17 customers are not subsidizing costs that should be  
18 appropriately borne by attachers.

19 MR. GERHARD: Okay. Hold on. We are  
20 kind of working our way around. I'll make my way  
21 over to the left in just one minute. Any other  
22 thoughts or comments in the back?

23 MR. WHITAKER: Yeah. Steve Whitaker,  
24 Design Access Network. I never thought I would find  
25 myself agreeing with FairPoint's counsel, but I would

1 argue based on some of the arguments made by pole  
2 owners here in the back, for a broad look at this. I  
3 think we need to come from the point of view of the  
4 goals in our -- in 202(C). And relate to  
5 competition, open access, broadband to all locations  
6 -- in this 100 megabit symmetric broadband to every  
7 location in the state by 2024. I think if you remain  
8 guided by those statutory goals, you're going to  
9 realize there is a need to either expand this or --  
10 this docket, this investigation, or follow it with  
11 another more comprehensive investigation in short  
12 order.

13 Some of the issues that I would like to  
14 see addressed would be a statewide data base, the  
15 NGIS of the exact locations of every pole, as well as  
16 the tenants that are on that pole, as well as the  
17 depreciation status of that pole. Logic would argue  
18 as more tenants got on the poles the rates would go  
19 down. But I understand some of the pole-owning  
20 utilities are cost shifting the cost of even finding  
21 them -- the pole to the competitive entrant. In this  
22 case the municipal communications union district.

23 It should be the obligation of the pole  
24 owner to know where its pole is and people be able to  
25 plan for attachments and/or open access fiber

1 segments between poles based on a unified data set.  
2 That really should be the Department or the Board's  
3 basic governing tool from which you would make  
4 decisions. And that can be explored in this docket  
5 or a follow-on docket, but it needs to be done.  
6 Because you're not going to be able to adequately  
7 address all the issues you're hearing today until you  
8 have that. I'll follow on with more detail later.  
9 Thank you.

10 MR. GERHARD: Okay. Thank you. I'm  
11 going to see if we can get to some folks we haven't  
12 heard from before, and then I'll circle back. Yes,  
13 sir.

14 MR. THOMAE: I'm speaking as Chair of  
15 the EC Fiber, and that name is short for the East  
16 Central Vermont Telecommunications District. We are  
17 a municipal union district with 24 members under the  
18 legislation passed a year ago which is now Chapter 82  
19 of Title 30.

20 To us this is an issue of competitive  
21 equity. I hear with bemusement counsel for the ILECs  
22 asserting that the rule has worked, why not let it  
23 stand. This sounds to me like the argument from  
24 Fiddler on the Roof, tradition, tradition. And  
25 parenthetically I want to apologize for all members

1 of the legal profession that I'm a layperson with  
2 respect to the law, and I as a retired engineer think  
3 in common sense.

4 The rationale originally for the two-  
5 foot rule was the supposition that two feet might be  
6 needed for hypothetical future technology.  
7 Technology has evolved. You have heard that all of  
8 the attaching entities are content with one foot of  
9 actual space. That is in fact what we receive even  
10 though we pay for two feet.

11 This -- the rule says that if the  
12 attaching entity is providing telephone service, then  
13 it's got to pay for two feet. That's a cushy deal.  
14 Pardon me for the blunt term, but that's a great deal  
15 for the ILECs, it's a good deal for the electric  
16 utilities, but it is also a deal that slows and  
17 impedes the expansion of broadband to rural Vermont  
18 which is losing population because of its inability  
19 to compete on a level playing field with the economy  
20 of the rest of the nation and of this region.

21 Pole rental fees are now our second  
22 largest operational expense, and we are growing. I'm  
23 not here to plead EC Fiber's case in particular. I  
24 am here to say that if the Board and the Department  
25 are sincerely committed to keeping Vermont abreast of



1 the 21st century economy, it is time to reexamine a  
2 rule that has no reality base any more.

3 I understand the argument about  
4 revenue. I can sympathize with it to a certain  
5 degree. But really what the subtext there is that  
6 broadband customers ought to subsidize the cost of  
7 electric service. Shouldn't the cost of electric  
8 service be directly related to the provision of  
9 electric service? Why should attaching entities  
10 because they happen to provide telephone service in  
11 addition to their primary commission, why should they  
12 pay for two feet though they get only one foot?

13 I would argue for rapid resolution of  
14 this question. I agree that a broader issue -- that  
15 broader examination is appropriate. And I want to  
16 gently disagree with the assertion that the electric  
17 companies have shifted a cost, an additional cost on  
18 to municipal utility districts. We have always borne  
19 the cost of identifying the location of every pole.  
20 And we appreciate the fact that the state's largest  
21 electric utility is now implementing software that  
22 will relieve us from that problem. So we are not  
23 unhappy about that. Thank you.

24 MR. GERHARD: Yes. If you could just  
25 let us know who you are please.

1 MR. DUNCAN: I'm Cliff Duncan from  
2 Duncan Cable, a small independent operator. Like the  
3 gentleman just spoke, I'm a layperson. I'm the guy  
4 on the poles and in the field and work a great deal  
5 with my plant hands on.

6 I was very much active and  
7 participated in many -- almost every aspect of Rule  
8 3700, the original pole rule. Also 5743 I think is  
9 the Docket Number that followed that, which sort of  
10 revamped and sort of updated and clarified some  
11 things in Rule 3700.

12 It took nine years to argue that the  
13 pole-owning utilities' definition of usable space  
14 being under eight feet was completely out of line  
15 with reality. And I shudder to think of a nine-year  
16 policy dispute here between pole-owning utilities and  
17 subordinate users. I think that's right where we are  
18 headed if we try to broaden this particular  
19 conversation as we are.

20 We are an independent cable company  
21 offering traditional cable service for 44 years, and  
22 for 16 years have offered broadband service. We do  
23 not offer telephony. The pole rate is one reason why  
24 we don't. The other reason, quite frankly, is I  
25 don't think there is much money left in the game

1 because there is so many players.

2 I hear everybody's concerns here, and  
3 I'm sorry to jump all over the map here, but when we  
4 talk about the pole-owning utilities seeing an  
5 erosion of rates, and having been one of the original  
6 participants in Rule 3.700, all of the costs that  
7 were borne in the rate formula were predicated by one  
8 subordinate user by and large. That has dramatically  
9 changed.

10 Rule 3.700 in and of itself actually  
11 was bad policy. And the consequence of that bad  
12 policy resulted in the lack of broadband in a lot of  
13 places in Vermont that it otherwise would have been.  
14 My company as an example didn't even build in places  
15 because the pole rate was 12 to \$13 per pole per  
16 year. We couldn't afford to pay the pole rates that  
17 it would take to build plant to reach those very  
18 rural markets in southern Vermont. So that was bad  
19 policy. Ultimately that was changed. And now we  
20 have grown. Now we have significant portion, if not  
21 the vast majority, of our area covered.

22 And that's good news. That's good news  
23 for consumers, that should be all about consumers. I  
24 think this argument that whether it be my company as  
25 an entity, or a pole-owning utility as an entity, the

1           tug of war that we will have between those two  
2           distinct participants is important. But what  
3           ultimately usurps everyone is policy that creates an  
4           opportunity for the public to be best served. I  
5           believe that Rule 3.700 and 5743 and subsequent  
6           revisions beyond that, clearly give everyone  
7           knowledge about when you have to move your  
8           attachments, we can't argue that here.

9                         There is clear language that says you  
10           have to move your attachments within a certain time  
11           frame with notice to do so. Location of poles. I'm  
12           not sure what anybody is talking about where these  
13           poles are. I've never had an instance in 44 years  
14           where they couldn't find the pole in my plant. I  
15           could go on, but I won't. I think there is a lot of  
16           relevance to what's being said here today, but I  
17           think the expedited need to deal with this two-foot  
18           rule, which is another case of policy being usurped  
19           by technology. We have grown to a totally different  
20           understanding from where we were in the '70s and '80s  
21           when 3700 was crafted, and we once again are faced  
22           with reality.

23                         The reality of it is there is now the  
24           ability to carry telephony which was never thought of  
25           in Rule 3.700 days, creation of which, would be

1 provided by cable television service. That wasn't on  
2 the radar. But if they thought if it was, like this  
3 gentleman just said, an additional foot of space  
4 would probably be needed, because our particular  
5 platform probably couldn't carry telephony, and we  
6 have come to realize that it's probably better at it  
7 than a lot of twisted pair plant.

8 So in closing, I would just say that I  
9 think you as a Board can surgically do what you need  
10 to do to resolve the cases before you without  
11 throwing the baby and the bath water out the window  
12 all at the same time, as a rule, and say we are going  
13 to open this whole thing up. I think the merits  
14 stand on the arguments about the two-foot rule being  
15 unrealistic, and it's up to the Board to decide  
16 whether the pole-owning utilities are right or  
17 whether the subordinate users are right and  
18 ultimately who wins, and that ultimately needs to be,  
19 in my view, the consumer, and hopefully policy based  
20 on reality, and based on fairness will prevail.  
21 Thank you.

22 MR. GERHARD: Thank you. Mr. Mandl,  
23 you had a question or another statement you wanted to  
24 make?

25 MR. MANDL: Oh just wanted to respond

1 very briefly to a comment on revenue erosion. We  
2 presume that during the rulemaking the Board will  
3 look into that type of issue. As a practical matter  
4 it did so in the 2000-2001 rulemaking, and found that  
5 even looking at high-level numbers such as pole  
6 attachment revenue as a percentage of total utility  
7 revenue, that the pole utility -- pole attachment  
8 revenue was relatively de minimis as part of the  
9 larger picture. But that's a factual issue that the  
10 Board may wish to address during the rulemaking.

11 MR. GERHARD: Okay.

12 MR. PHILLIPS: I want to respond to  
13 some of the comments as well. It seems as though  
14 this two-foot presumption is being interpreted as a  
15 presumption that these attachments occupy or should  
16 occupy or could occupy two feet of space. The Board  
17 in 2001 was clear that the presumption of occupied  
18 space was not a reflection of actual reality.

19 The reason that the Board assigned a  
20 two-foot rate to the CLECs was because the Board  
21 found after a great deal of evidence gathering that  
22 the ILECs were paying a third to a half of the pole  
23 costs. And so to give any semblance of revenue  
24 neutrality the CLECs would have to pay more if they  
25 were offering equivalent services in order to bring

1 their rental charges anywhere near the cost of what  
2 the ILECs were paying. And the costs to the ILEC  
3 pole owners have not changed over the course of 15  
4 years.

5 That's not dependent upon technology.  
6 That's simply the cost of poles. And it's a hard  
7 cost. So I understand the frustration with the two-  
8 foot presumption, but the rule which has been in  
9 place for 15 years creates a mechanism around that  
10 which is that at any point an attaching entity can  
11 request a survey of the poles to determine what their  
12 actual occupied space is. And then they can go back  
13 to the pole owner and say here's what the result of  
14 your survey is, and we should pay this rate which is  
15 one foot or whatever it might be.

16 But I'm not aware of any attaching  
17 entity that has done that. And so rather than  
18 utilize a provision of the rule that's been on the  
19 books for 15 years, you're being asked to amend the  
20 presumptions and the formulas, and that seems to me  
21 to be avoiding a remedy that's existed for many, many  
22 years in favor of a remedy that's going to create,  
23 you know, revenue issues for the pole owners.

24 So it troubles me that we are operating  
25 from a position of really erroneous understanding of

1 what the rule is and what the rule does. And now we  
2 are being asked to change it based on that error.

3 MR. YOUNG: So that raises a question  
4 for me. You said -- and I saw it in the 3.700  
5 comment document that Mr. Mandl very helpfully  
6 provided to us, that the Board found that the  
7 incumbent local exchange carriers were paying about a  
8 third of the pole costs.

9 My question for you is I'm looking at a  
10 15-year-old document saying how did they get that  
11 number? Do you have any idea -- I mean was that one  
12 third of the pole cost for the poles they don't own?  
13 Or did that include the poles they did own, for which  
14 by the way they are earning a depreciation expense  
15 and a return on their investment. I have no idea.  
16 Because I read that and I said I don't even know what  
17 this means. Do you have any -- can you -- because it  
18 could mean a bunch of things.

19 MR. PHILLIPS: Sure, it could. And  
20 George, I'm not going to presume to speak for the  
21 Board on that. If you don't know, then I think it  
22 does raise a question. But my understanding, and I'm  
23 going back -- I mean I sat with Cliff Duncan in those  
24 hearings as well, that was a long time ago. But I do  
25 know in the Shoreham CVPS case that -- I'm sorry, it



1 was the Waitsfield GMP case, the reason that  
2 Waitsfield wanted to terminate its pole agreements  
3 with GMP was that they were paying on average 31  
4 dollars a pole to attach to those poles under a 1956  
5 agreement. And their view was that when the Board  
6 Rule 3.700 got amended in 2001 there was a policy  
7 decision by the Board that there should be some  
8 greater equity, some greater access to those poles.  
9 And \$31.12 a pole was really onerous for Waitsfield.

10 And so they said we want to terminate  
11 this contract, and we want to go in under the GMP  
12 tariff. I think they are the only ILEC that does  
13 that by the way. And so the only available rate that  
14 the Board could settle on at that point was the CLEC  
15 rate. But the other ILECs who have not done that,  
16 are paying, you know, vastly more than the equivalent  
17 of a two-foot rate to be attached to those poles.  
18 And so -- I mean when you read that policy statement,  
19 that was the economics that the Board was looking at.  
20 And that has not changed for the ILECs.

21 MR. GERHARD: Yes.

22 MR. MONTROLL: I think part of the  
23 question is should we be relying on what happened 15  
24 years ago and trying to figure out what happened 15  
25 years ago. Or should we recognize that a lot has

1 changed in the last 15 years. And there is debate  
2 over whether it should be one foot, two foot, you  
3 know, on all these different issues.

4 So the question really is should the  
5 Board look at that. Or should it just say, no, we  
6 are going to rely on what happened 15 years ago, be  
7 what it is, we may not understand exactly how we got  
8 there, you know, over the years. But we will just  
9 stick with that.

10 I think the better perspective and the  
11 better approach is all these issues can be fleshed  
12 out and can be looked at in much greater detail  
13 through the rulemaking process. You know, is the  
14 rule appropriate. Is it not appropriate. We don't  
15 have to base it on 15-year-old policy that we think  
16 we might try and sweat out what it was. We base it  
17 on today's policy in looking towards the future. So  
18 to try to be stuck in policy that was set for  
19 whatever reason 15 years ago, after technology and  
20 everything has changed so much, let's look forward.  
21 Let's not look backwards. Let's look forward and see  
22 what's the appropriate rule. Especially when Vermont  
23 is so out of step with all the other states on this.  
24 Let's look forward, and see what's the right thing  
25 for us in Vermont now. Not why we came to some

1 decision 15 years ago.

2 MR. YOUNG: Just to follow up on that.  
3 If you do that, don't you also then have to look at  
4 how the rate was set? Because basically if you  
5 simply collapse into the one-foot rate, you're taking  
6 part of the old policy without looking at the whole  
7 old policy as opposed to -- I mean taking what you  
8 said, let's just relook and redo this and move.  
9 Don't you also then have to look at what the rate  
10 should be? I mean if you unify the one-foot rate  
11 what should it be?

12 MR. MONTROLL: You may need to look at  
13 that. But I think it's again looking forward as  
14 opposed to looking backwards to see what's the  
15 appropriate place for us to be today and for our near  
16 future as opposed to what should we have done many  
17 years ago.

18 MR. GIBBONS: James Gibbons. That's  
19 really kind of how I see it. I'm not going to claim  
20 to be an expert on this particular topic. This isn't  
21 about -- in my mind about one foot and two foot.  
22 It's about the charge for use for infrastructure.  
23 That's why BED's comments were much like you're  
24 asking. Which is, okay, we are going look at this,  
25 but we need to look at everything that affects the

1 charge for infrastructure, not one piece of the  
2 formula.

3 MR. IRELAND: This is Jay Ireland. I  
4 would like to make a couple of comments on this.

5 You know I've heard a couple of points.  
6 One is it's kind of consistent with that last comment  
7 which is, you know, we need to reopen the formula.  
8 And you know, the point I would like to make is that  
9 that would be an enormous mistake for Vermont.  
10 Basically, you know, there is a tremendous history in  
11 the development of the FCC's formula rate which, you  
12 know, goes back several decades and has been approved  
13 by every court and agency that essentially has  
14 reviewed it, including the U.S. Supreme Court.

15 And so inherent in that rate and that  
16 formula which is, by the way, based on a one-foot  
17 concept, is that all of the elements that go into the  
18 cost of owning and operating the pole are built into  
19 the formula, and that's, you know, why it's a fully  
20 allocated rate. The FCC set their formula at the  
21 high end, the highest end of the permissible range  
22 that the Congress allowed which is -- the low end was  
23 incremental cost, the high end was fully-allocated  
24 cable rate. And they set it at the high end.

25 So inherent in that formula is

1 capturing all of the things that people are worried  
2 about here which is what are those annual costs of  
3 the pole and then how do we allocate them. That's  
4 all done. That formula is -- there are scores of  
5 cases going back decades at the FCC and states that  
6 follow it, that interpreted virtually every aspect,  
7 every account, taken it apart and, you know, wrung it  
8 out and basically ended up with a very stable  
9 situation on the formula itself. And that explains  
10 why there is very little rate litigation at the FCC  
11 now, you know, after that process under, you know,  
12 was undertaken.

13 To go back and start tweaking the  
14 Vermont rule to try to change those elements would  
15 essentially, you know, pull Vermont out of that whole  
16 ecosystem and throw it essentially into chaos. The  
17 only issue now that comes up is this one-foot  
18 two-foot rate as far as my experience over the last  
19 10 years or so in Vermont. And at the FCC the only  
20 issue really over the last 10 or 15 years that came  
21 up on the rate side was the divergence of the cable  
22 rate and the old FCC telecom rate which the FCC has  
23 now fixed to bring the telecom rate down to  
24 essentially the one-foot cable rate.

25 So you know, and that ability to rely

1 on that incredibly well vetted, you know,  
2 economically sound and judicially-approved formula is  
3 just essential, and is what the other states and, you  
4 know, all 30 FCC states basically operate under. And  
5 for Vermont to back away from that would be a huge  
6 mistake.

7 All we ask here is to fix this one  
8 problem. The economics of the formula are sound.  
9 This one aspect of it is just kind of, you know, I've  
10 used that adjective, really is irrational, because  
11 it's out of step with the rest of the country. It's  
12 out of step with what the actual CLEC is using in  
13 terms of space. And the end result of one foot is  
14 fully compensatory and abides by all economic  
15 principles that, you know, have been well developed.

16 I would like to make one other point  
17 which is, you know, that the concern that there is  
18 this divergence of rates between ILECs and perhaps  
19 CLECs and the two-foot rate was trying to correct for  
20 that. That was a view back then. That's been talked  
21 about at the FCC as well, they recently in the last  
22 rulemaking brought the ILECs into the fold in terms  
23 of being able to argue for regulated rates. It did  
24 not used to be the case. But in the course of that  
25 there has been a lot of discussion about the fact

1 that the reason that the ILECs -- where they have  
2 some kind of a joint ownership arrangement and  
3 contract with the electric companies, is that there  
4 are a whole bundle of rights that the ILECs and the  
5 electric companies have that are far, far, far  
6 superior to the rights that a mere licensee in the  
7 form of, you know, cable and CLEC and other attachers  
8 have. Who basically have to apply, they have to  
9 wait, they have to pay maybe application fees, they  
10 have to, you know, wait for make-ready. You know,  
11 it's very common on the joint ownership side for none  
12 of those things to apply. There is a right to a  
13 certain pre-existing amount of space. You know, the  
14 application of make-ready process really I don't  
15 think at least in most cases across the country is  
16 not really there. You know, there is no waiting  
17 around. There is not extra, you know, a number of  
18 fees that are charged.

19 So really, you know, you're kind of  
20 comparing apples to oranges when you try to say that  
21 the CLECs should pay something, you know, closer to  
22 what the ILECs pay, because the rights that are  
23 inherent in the agreements are completely different.  
24 Thank you.

25 MR. GERHARD: Thank you. Does anyone

1 have anything else in terms of issues, scope or  
2 process that they need to address right now? Or does  
3 everyone feel like they have had an opportunity to  
4 get their views out?

5 MR. MANDL: With some reluctance, I may  
6 have misunderstood what Mr. Phillips was saying about  
7 the ability of the attacher to challenge the amount  
8 of usable space occupied. As I read the rule the  
9 pole owner can conduct a survey of what space is  
10 actually occupied by attacher. That's clear.  
11 Otherwise, for CLECs it's -- it can be no less than a  
12 two-foot rate. There is no opportunity for a CLEC  
13 attacher to say, no, I shouldn't pay the two-foot  
14 rate. I'm only occupying one foot of space. That's  
15 not an option under the rule. If I misunderstood  
16 what you were saying --

17 MR. PHILLIPS: Mr. Mandl, you are right  
18 about that. I stand corrected on that point. Thank  
19 you.

20 MR. MANDL: Excellent.

21 MR. GERHARD: Okay. Well I think what  
22 I'm going to suggest we do is I would like to take  
23 some time to think about what I heard today. And  
24 then in the very near future issue some type of  
25 memorandum or some type of communication to the group



1 setting out what I propose for the next steps in the  
2 process. And hopefully that can come out in the next  
3 week or two. I'll keep my fingers crossed on that.

4 If anyone else -- or it's my thought  
5 that we have done about all we can do today in this  
6 workshop. If anyone has any strong opinions about  
7 needing to move this any further, I'll hear them now.  
8 Otherwise we will adjourn for the day. Okay.

9 MR. YOUNG: A couple quick  
10 observations. This is a rulemaking. This is not a  
11 contested case, ex-parte rules don't apply. If  
12 somebody has issues, you can raise them. If anybody  
13 has any further written comments you really think  
14 you, you know, need to raise, feel free to file them.  
15 There is no obligation to file them. We are not  
16 looking for more paper at the present time. We may  
17 be at some junction.

18 MR. GIBBONS: Sorry. Just  
19 administrative question on that same line without my  
20 attorney here. Did you receive Burlington Electric's  
21 comments on this?

22 MR. YOUNG: Yes.

23 MR. GIBBONS: I could not verify that  
24 they have been sent in.

25 MR. MANDL: We sent in a proposed

1 schedule. It may not be the time to get into it, but  
2 I would be happy to distribute it if it would be  
3 helpful.

4 MR. GERHARD: Yeah, if you want to  
5 distribute a proposed schedule, that would be fine.  
6 I have been trying to post the documents that come in  
7 to our Web site that we have set up for this  
8 rulemaking. I've fallen behind. But I am going to  
9 go back up to my office and start posting them  
10 immediately. If you happen to not see your comments  
11 or your filings up there, please let me know, because  
12 that means I just missed them.

13 As soon as I get them, I will get them  
14 up.

15 MR. WHITAKER: Just an administrative  
16 question. So the filing up to you and then being on  
17 the Web site functions in lieu of a full service list  
18 obligation; is that right?

19 MR. YOUNG: This is not a -- there is  
20 no service list established. If we decide to  
21 establish something, we will say something in the  
22 next --

23 MR. WHITAKER: All right.

24 MR. YOUNG: -- in the next iteration.

25 MS. HOLLICK: Can we agree that we

1 would serve each other via E-mail? You've generated  
2 the E-mail list from everybody in attendance here.  
3 Can we agree if somebody files subsequent comments  
4 that we at least serve one another via E-mail list?  
5 Could you post it or --

6 MR. GERHARD: Sure. Does anybody  
7 object to proceeding that way?

8 MR. YOUNG: Yeah. The Clerk.

9 MR. PHILLIPS: That's fine.

10 MR. YOUNG: I'm actually dead serious.  
11 Things are not considered filed with the Clerk's  
12 office until they come in in paper. You can agree  
13 among the parties.

14 MS. HOLLICK: Right. To distribute.

15 MR. YOUNG: You don't have the  
16 authority to override the Clerk.

17 MR. GERHARD: I would never presume  
18 that.

19 MR. BURKE: We are on the cusp of  
20 electronic filing; are we not?

21 MR. YOUNG: That has the authority to  
22 override the Clerk. Until that happens -- I have  
23 been here a long time, and I know where you don't go.

24 MR. GERHARD: We will say a paper copy  
25 to the Clerk and electronic copies to the rest of the

1 group. I have a tentative list, E-mail list that I  
2 posted on to the Web site early on. I will update it  
3 with what I have here. So keep an eye peeled for  
4 that.

5 I tried to put in parenthesis after I  
6 put documents up what date that they have gone up so  
7 you know if they are current or not. Yes.

8 MR. THOMAE: This is a process rather  
9 than procedure question.

10 MR. GERHARD: Okay.

11 MR. THOMAE: The Board's page -- web  
12 page that lists current proceedings by category does  
13 not mention this issue at all. Under  
14 telecommunications the only thing listed is the  
15 ongoing matter about FairPoint's service quality.

16 MR. GERHARD: Okay.

17 MR. THOMAE: We only became aware of  
18 this because another party here informed us about it.  
19 And I would just like to suggest that there might be  
20 -- who knows, there may have been other entities  
21 across the state who still don't know that this  
22 proceeding was going to happen today. And I don't  
23 think that that is fully consistent with public  
24 awareness of how our government works.

25 MR. YOUNG: The Board is in the process

1 of substantially redesigning its Web site. I don't  
2 think anyone here would -- at the Board would  
3 disagree that there are things that aren't up there  
4 that probably should be up there.

5 The state is transitioning the systems  
6 that are being used, and we are having to do a total  
7 redesign, and things are probably not getting updated  
8 as fast as people would like because we are in this  
9 two different -- trying to do an -- adapt to the new  
10 requirements while maintaining the old requirements.

11 And so your point is well taken. It is  
12 actually referenced on our Web site you have to go  
13 into rules as opposed to under telecommunications  
14 proceedings. And you can find all the materials  
15 posted under the PSB rules section.

16 MR. THOMAE: We were given a link by  
17 our informant as it were. But you wouldn't know.  
18 The casual observer would find it -- would not easily  
19 find his or her way to this.

20 MR. YOUNG: And this is not the only  
21 proceeding that would fall into that being  
22 characterized that way.

23 MR. THOMAE: That's why we hadn't  
24 submitted written comments. We didn't become aware  
25 of it --

1           MR. WHITAKER:  If this were to become a  
2 broader investigation, I imagine that all pole-owning  
3 utilities and attaching CPG holders would be notified  
4 of the investigation?  I think if it were to be a  
5 broader investigation that would be a necessity is  
6 what I'm suggesting.

7           MR. TARRANT:  But part of the schedule  
8 if I can -- you know, by filing with ILEC and working  
9 with them to disseminate and have public information,  
10 and then a couple weeks later filing with the  
11 Secretary of State's office so that they can put it  
12 out on public notice, I think answers a lot of these  
13 questions, and it doesn't have to necessarily address  
14 the length of the schedule, but it gets the schedule  
15 going so that the public does -- is more aware.

16          MR. YOUNG:  Well actually in part it  
17 does address it because, as you know, there is a  
18 deadline for completion of rulemaking once you  
19 actually issue a proposed rule.  So starting through  
20 the process with ICAR actually does sort of create an  
21 end date which is not -- not in and of itself a bad  
22 idea.  It's just I think we need to decide -- the  
23 Board needs to decide is it prepared to go with, you  
24 know, sort of a narrowly focused, or is there an open  
25 question about whether if all the rates went to --

1 and I will say I don't have an answer to this. But  
2 it came up in the comments. If one went to a single  
3 unified one-foot rate, is that going to fairly  
4 compensate the pole owners.

5 And I haven't seen anything in any of  
6 the comments, and I went back through the old comment  
7 documents, and there is no data that tells me the  
8 answer to that question. And does that mean that's  
9 where the Board is going to come down? I can't tell  
10 you that that's it. But that's a question that has  
11 been squarely raised by the comments here today. And  
12 even when you go one foot or two foot, you know,  
13 right now based upon what we have in front of us, I  
14 have no idea how those numbers -- how that formula  
15 was come up with and how anything was derived.

16 MS. HOLLICK: I have a question though.  
17 So the formula actually has a carrying cost ratio in  
18 there, and that carrying cost ratio is the allowable  
19 revenue for each dollar of net pole investment taking  
20 into account annual maintenance expense,  
21 depreciation, admin, taxes and return on net  
22 investment. So that's the piece where the pole owner  
23 as part of the formula, not the assumption, as part  
24 of the formula earns the return on the investment for  
25 the space for the pole.

1                   MR. YOUNG:  And I agree with you.  And  
2                   I understand, you know, how that's done.  It's just  
3                   this hasn't been looked at in 15 years.  Nobody here  
4                   really knows what the consequences are, and we are  
5                   working through that.

6                   MR. GERHARD:  Okay.  Well thank you  
7                   very much folks.

8                   (Whereupon, the proceeding was  
9                   adjourned at 10:46 a.m.)

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I, Kim U. Sears, do hereby certify that I recorded by stenographic means the Workshop re: Rule 3.706 at the Susan M. Hudson Hearing Room, People's United Bank Building, 112 State Street, Montpelier, Vermont, on August 26, 2016, beginning at 9:30 a.m.

I further certify that the foregoing testimony was taken by me stenographically and thereafter reduced to typewriting and the foregoing 56 pages are a transcript of the stenograph notes taken by me of the evidence and the proceedings to the best of my ability.

I further certify that I am not related to any of the parties thereto or their counsel, and I am in no way interested in the outcome of said cause.

Dated at Williston, Vermont, this 1st day of September, 2016.

A rectangular box containing a handwritten signature in cursive that reads "Kim U. Sears". The signature is written in dark ink on a light-colored background.

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31:19, 46:4 31 41:3 329 1:22 3700 [3] - 34:8, 34:11, 36:21</p> <p style="text-align: center;"><u>          </u> <b>4</b> <u>          </u></p> <p>44 [2] - 34:21, 36:13</p> <p style="text-align: center;"><u>          </u> <b>5</b> <u>          </u></p> <p>56 57:10 5743 [2] - 34:8, 36:5</p> <p style="text-align: center;"><u>          </u> <b>7</b> <u>          </u></p> <p>70s 36:20 7316 [2] - 8:15, 22:21</p> <p style="text-align: center;"><u>          </u> <b>8</b> <u>          </u></p> <p>802 1:23 80s 36:20 82 31:18 8470 [3] - 18:19, 18:25, 19:14 863-6067 1:23</p> <p style="text-align: center;"><u>          </u> <b>9</b> <u>          </u></p> <p>9:30 [3] - 1:7, 1:12, 57:7</p> <p style="text-align: center;"><u>          </u> <b>A</b> <u>          </u></p> <p>a.m [4] - 1:7, 1:12, 56:9, 57:7 abides 46:14 ability [4] - 36:24, 45:25, 48:7, 57:12 able [6] - 13:24, 19:13, 22:13, 30:24, 31:6, 46:23 abreast 32:25 absolutely 23:20 access [6] - 2:15, 6:1, 29:24, 30:5, 30:25, 41:8 accomplish [4] - 6:13, 10:14, 13:3, 13:9 accordingly 13:16</p>	<p>account [2] - 45:7, 55:20 achieve 14:6 across [3] - 16:18, 47:15, 52:21 act [4] - 24:6, 24:7, 24:8, 25:1 active 34:6 actual [4] - 32:9, 38:18, 39:12, 46:12 adapt 53:9 add [5] - 6:24, 8:21, 8:22, 17:9, 29:15 addition 33:11 additional [4] - 11:1, 13:20, 33:17, 37:3 address [11] - 6:16, 13:4, 13:17, 27:4, 28:17, 28:25, 31:7, 38:10, 48:2, 54:13, 54:17 addressed [3] - 14:4, 27:8, 30:14 addressing 13:23 adequately 31:6 adjective 46:10 adjectives [3] - 18:4, 18:8, 18:12 adjourn 49:8 adjourned 56:9 adjudicatory [4] - 9:23, 12:14, 25:17, 26:3 adjusted 13:15 adjusting [2] - 9:13, 15:25 adjusts 15:11 admin [2] - 4:2, 55:21 Administration [2] - 4:25, 5:1 administrative [3] - 25:1, 49:19, 50:15 advised 20:2 Affairs 4:10 affected 7:21 affects 43:25 afford 35:16 agency 44:13 agree [8] - 7:5, 13:4, 21:22, 33:14, 50:25, 51:3, 51:12, 56:1 agreeing 29:25 agreement [2] -</p>	<p>9:19, 41:5 agreements [3] - 10:17, 41:2, 47:23 ahead [2] - 15:7, 17:22 Alan [2] - 2:2, 4:4 alignment 16:16 allocate 45:3 allocated 44:20 allocation 29:2 allowable 55:18 allowed [2] - 19:3, 44:22 already [2] - 7:4, 14:11 Amanda [2] - 2:15, 5:13 amend [3] - 1:3, 3:10, 39:19 amended [2] - 7:15, 41:6 amendment 9:4 among 51:13 amongst 7:10 amount [3] - 9:14, 47:13, 48:7 Analyst 3:24 ancillary 29:1 and/or 30:25 Anderson [8] - 2:8, 2:9, 5:7, 5:7, 5:9, 5:9, 29:3, 29:3 Andy [2] - 2:12, 5:21 angst 22:6 annual [2] - 45:2, 55:20 answers 54:12 anticipate 7:20 apart 45:7 apologize 31:25 appearing 5:17 apples 47:20 applicability 12:13 application [2] - 47:9, 47:14 applications 13:14 apply [8] - 11:23, 18:9, 26:23, 27:13, 27:16, 47:8, 47:12, 49:11 appreciate [2] - 6:5, 33:20 approach 42:11 appropriate [8] -</p>	<p>6:18, 15:4, 29:8, 33:15, 42:14, 42:14, 42:22, 43:15 appropriately 29:18 approved [3] - 17:2, 19:3, 44:12 appurtenances 9:17 arbitrary 18:7 aren't [2] - 19:19, 53:3 argue [7] - 27:6, 30:1, 30:17, 33:13, 34:12, 36:8, 46:23 argued 28:10 arguing [2] - 20:24, 20:24 argument [4] - 24:19, 31:23, 33:3, 35:24 arguments [3] - 12:12, 30:1, 37:14 arrangement 47:2 artificial 18:7 asking 43:24 aspect [6] - 8:3, 28:9, 29:14, 34:7, 45:6, 46:9 aspects [3] - 9:6, 9:7, 9:25 aspersions 19:6 asserting 31:22 assertion 33:16 assigned 38:19 Assistant 3:23 Associate 4:7 Association [2] - 1:3, 3:9 assume 10:22 assuming [2] - 8:14, 20:6 assumption 55:23 AT&amp;T [2] - 2:13, 5:17 attach 41:4 attached 41:17 attachees [2] - 7:13, 23:16 attacher [4] - 21:11, 48:7, 48:10, 48:13 attachers [6] - 12:21, 13:12, 20:17, 28:19,</p>	<p>29:18, 47:7 attaching [7] - 19:11, 32:8, 32:12, 33:9, 39:10, 39:16, 54:3 attachment [3] - 13:18, 38:6, 38:7 attachments [12] - 1:4, 3:11, 12:5, 14:5, 21:8, 23:1, 26:8, 28:22, 30:25, 36:8, 36:10, 38:15 attacking 18:11 attendance 51:2 attorney [3] - 1:15, 3:5, 49:20 August [3] - 1:6, 1:12, 57:7 authority [2] - 51:16, 51:21 available 41:13 average 41:3 avoid 29:9 avoiding 39:21 awareness 52:24</p> <p style="text-align: center;"><u>          </u> <b>B</b> <u>          </u></p> <p>baby 37:11 Backus 5:22 backwards [2] - 42:21, 43:14 bad [4] - 35:11, 35:11, 35:18, 54:21 Bank [2] - 1:11, 57:6 base [5] - 26:11, 30:14, 33:2, 42:15, 42:16 basic 31:3 basically [14] - 10:9, 16:17, 20:4, 20:7, 20:14, 21:10, 22:21, 22:25, 23:2, 43:4, 44:10, 45:8, 46:4, 47:8 bath 37:11 became 52:17 become [2] - 53:24, 54:1 becomes 26:2 BED [2] - 2:5, 2:14 BED's 43:23 beginning [2] - 1:12, 57:7</p>
---	---	--	---	---	--

<p> <b>behalf [5]</b> - 3:16, 4:15, 5:17, 5:22, 18:2  <b>behavior</b> 10:5  <b>behind [3]</b> - 8:7, 11:19, 50:8  <b>bemusement</b> 31:21  <b>beneficial</b> 23:16  <b>benefit</b> 10:25  <b>best [2]</b> - 36:4, 57:12  <b>Beth [2]</b> - 2:6, 4:22  <b>better [3]</b> - 37:6, 42:10, 42:11  <b>beyond [2]</b> - 8:2, 36:6  <b>biggest [2]</b> - 27:15, 27:19  <b>Bill [2]</b> - 2:8, 5:11  <b>bit [2]</b> - 6:7, 8:23  <b>blunt</b> 32:14  <b>board [52]</b> - 1:1, 1:3, 1:11, 3:5, 3:10, 7:16, 8:1, 9:23, 10:19, 11:3, 13:7, 16:18, 17:19, 18:9, 18:13, 19:3, 19:7, 19:7, 20:7, 22:24, 23:9, 23:13, 24:6, 24:20, 25:13, 26:4, 26:23, 27:3, 27:4, 27:9, 27:20, 27:23, 28:17, 32:24, 37:9, 37:15, 38:2, 38:10, 38:16, 38:19, 38:20, 40:6, 40:21, 41:5, 41:7, 41:14, 41:19, 42:5, 52:25, 53:2, 54:23, 55:9  <b>Board's [6]</b> - 19:22, 21:5, 27:13, 28:23, 31:2, 52:11  <b>books</b> 39:19  <b>borne [3]</b> - 29:18, 33:18, 35:7  <b>BOX</b> 1:22  <b>Brian [2]</b> - 2:5, 3:21  <b>briefly</b> 38:1  <b>bring [5]</b> - 8:9, 13:18, 16:16, 38:25, 45:23  <b>broad [2]</b> - 8:5, </p>	<p> 30:2  <b>broadband [11]</b> - 13:20, 16:6, 16:8, 16:21, 22:13, 30:5, 30:6, 32:17, 33:6, 34:22, 35:12  <b>broaden</b> 34:18  <b>broader [4]</b> - 33:14, 33:15, 54:2, 54:5  <b>broken</b> 19:4  <b>brought</b> 46:22  <b>Brown [5]</b> - 2:16, 5:5, 5:5, 28:6, 28:6  <b>brush [2]</b> - 19:12, 22:7  <b>build [2]</b> - 35:14, 35:17  <b>Building [2]</b> - 1:11, 57:6  <b>built</b> 44:18  <b>bunch</b> 40:18  <b>bundle</b> 47:4  <b>Burke [7]</b> - 2:10, 3:16, 3:16, 7:11, 7:24, 8:16, 51:19  <b>Burlington [5]</b> - 1:23, 2:3, 3:20, 8:19, 49:20 </p> <hr/> <p style="text-align: center;"><b>C</b></p> <hr/> <p> <b>cable [14]</b> - 12:2, 12:13, 16:15, 17:7, 21:7, 27:1, 34:2, 34:20, 34:21, 37:1, 44:24, 45:21, 45:24, 47:7  <b>cable-only [2]</b> - 20:16, 20:18  <b>Cablevision</b> 2:14  <b>calculated</b> 17:7  <b>calculation [2]</b> - 1:4, 3:11  <b>can't [3]</b> - 17:19, 36:8, 55:9  <b>CANNE [10]</b> - 2:2, 3:25, 4:3, 4:5, 9:3, 13:1, 13:4, 13:7, 14:17, 25:24  <b>CANNE's [2]</b> - 11:2, 23:2  <b>CAPITOL</b> 1:22  <b>capturing</b> 45:1  <b>Carole [2]</b> - 2:12, 5:18 </p>	<p> <b>Carolyn [3]</b> - 2:9, 5:9, 29:3  <b>carriers</b> 40:7  <b>carry [2]</b> - 36:24, 37:5  <b>carrying [2]</b> - 55:17, 55:18  <b>case [21]</b> - 10:19, 18:17, 18:18, 18:20, 18:25, 19:8, 19:9, 19:14, 22:24, 23:6, 26:18, 26:24, 27:12, 27:19, 30:22, 32:23, 36:18, 40:25, 41:1, 46:24, 49:11  <b>cases [7]</b> - 10:16, 18:15, 18:20, 28:20, 37:10, 45:5, 47:15  <b>cast [3]</b> - 19:6, 19:23, 24:2  <b>casual</b> 53:18  <b>categories [2]</b> - 9:6, 9:10  <b>category [2]</b> - 27:14, 52:12  <b>caught</b> 8:23  <b>causation</b> 13:9  <b>cause</b> 57:15  <b>Central</b> 31:16  <b>century</b> 33:1  <b>certain [4]</b> - 22:2, 33:4, 36:10, 47:13  <b>certainly [3]</b> - 8:22, 13:4, 23:14  <b>certify [3]</b> - 57:3, 57:8, 57:13  <b>chair [2]</b> - 5:19, 31:14  <b>challenge</b> 48:7  <b>chance</b> 26:13  <b>change [7]</b> - 9:11, 10:22, 18:5, 28:9, 29:15, 40:2, 45:14  <b>changed [7]</b> - 28:23, 35:9, 35:19, 39:3, 41:20, 42:1, 42:20  <b>changes [2]</b> - 11:24, 14:7  <b>changing</b> 27:24  <b>chaos</b> 45:16  <b>Chapter</b> 31:18  <b>characterized</b> </p>	<p> 53:22  <b>charge [2]</b> - 43:22, 44:1  <b>charged</b> 47:18  <b>charges</b> 39:1  <b>charging [3]</b> - 12:1, 12:3, 12:7  <b>Charles [2]</b> - 2:13, 5:16  <b>Charter [2]</b> - 12:6, 15:10  <b>Chase [3]</b> - 2:11, 3:18, 22:16  <b>check</b> 6:10  <b>Cheryl [2]</b> - 2:4, 5:14  <b>chime</b> 26:13  <b>choice [4]</b> - 18:23, 21:5, 23:25, 24:5  <b>choices</b> 18:12  <b>circle</b> 31:12  <b>circulate</b> 14:21  <b>claim</b> 43:19  <b>clarified</b> 34:10  <b>classification</b> 26:20  <b>classified [2]</b> - 20:10, 27:22  <b>classifying</b> 21:1  <b>clear [4]</b> - 10:8, 36:9, 38:17, 48:10  <b>clearly [2]</b> - 19:1, 36:6  <b>CLEC [7]</b> - 1:3, 3:9, 10:17, 41:14, 46:12, 47:7, 48:12  <b>CLECs [8]</b> - 10:20, 12:21, 27:25, 38:20, 38:24, 46:19, 47:21, 48:11  <b>Clerk [4]</b> - 51:8, 51:16, 51:22, 51:25  <b>Clerk's</b> 51:11  <b>client</b> 20:6  <b>Cliff [3]</b> - 2:14, 34:1, 40:23  <b>closer</b> 47:21  <b>closing</b> 37:8  <b>Co-op [2]</b> - 5:6, 28:7  <b>collapse</b> 43:5  <b>collect</b> 6:7  <b>Comcast [11]</b> - 2:6, 2:7, 2:11, 4:9, 4:11, 12:6, 15:9, 17:13, </p>	<p> 22:23, 26:17, 27:2  <b>comes [4]</b> - 14:23, 16:9, 24:9, 45:17  <b>coming [2]</b> - 12:16, 22:7  <b>comment [4]</b> - 38:1, 40:5, 44:6, 55:6  <b>comments [31]</b> - 7:2, 7:20, 8:22, 9:4, 10:15, 11:12, 11:15, 13:1, 13:24, 14:9, 14:12, 16:3, 17:17, 17:24, 18:4, 18:5, 18:8, 25:16, 29:5, 29:22, 38:13, 43:23, 44:4, 49:13, 49:21, 50:10, 51:3, 53:24, 55:2, 55:6, 55:11  <b>commission</b> 33:11  <b>committed</b> 32:25  <b>common [3]</b> - 9:13, 32:3, 47:11  <b>communication</b> 48:25  <b>communications [4]</b> - 2:3, 4:7, 13:1, 30:22  <b>companies [5]</b> - 7:25, 14:2, 33:17, 47:3, 47:5  <b>company [5]</b> - 4:16, 22:1, 34:20, 35:14, 35:24  <b>compared [2]</b> - 16:13, 16:18  <b>comparing</b> 47:20  <b>compatible</b> 11:19  <b>compensate</b> 55:4  <b>compensated</b> 28:11  <b>compensatory [2]</b> - 17:4, 46:14  <b>compete</b> 32:19  <b>competition [2]</b> - 16:9, 30:5  <b>competitive [7]</b> - 10:13, 11:1, 13:9, 13:19, 28:13, 30:21, 31:20  <b>competitively</b> 28:2  <b>complaint</b> 18:22  <b>completely [2]</b> - </p>	<p> 34:14, 47:23  <b>completion</b> 54:18  <b>Compliance</b> 3:24  <b>comprehensive [2]</b> - 19:22, 30:11  <b>concept [2]</b> - 20:22, 44:17  <b>concern [3]</b> - 9:8, 28:15, 46:17  <b>concerned</b> 28:7  <b>concerns [4]</b> - 25:16, 28:13, 29:12, 35:2  <b>conditions</b> 10:5  <b>conduct</b> 48:9  <b>Conference</b> 1:11  <b>confront</b> 27:20  <b>Congress</b> 44:22  <b>consequence [2]</b> - 11:10, 35:11  <b>consequences</b> 56:4  <b>consider [2]</b> - 21:1, 21:3  <b>consideration</b> 11:23  <b>considered</b> 51:11  <b>consistent [3]</b> - 15:13, 44:6, 52:23  <b>consolidate</b> 11:13  <b>consolidation</b> 25:7  <b>consumer</b> 37:19  <b>consumers [2]</b> - 35:23, 35:23  <b>content</b> 32:8  <b>contested</b> 49:11  <b>context</b> 23:18  <b>continue</b> 13:21  <b>contract [5]</b> - 12:4, 18:24, 19:2, 41:11, 47:3  <b>contracts</b> 14:5  <b>Controller</b> 3:24  <b>conversation</b> 34:19  <b>copies</b> 51:25  <b>Corey [2]</b> - 2:11, 3:18  <b>correct [6]</b> - 8:16, 10:10, 10:11, 20:8, 20:22, 46:19  <b>corrected</b> 48:18  <b>cost [16]</b> - 13:9, 30:20, 30:20, 33:6, 33:7, 33:17, 33:17, 33:19, </p>
--	---	--	--	---	--

<p>39:1, 39:6, 39:7, 40:12, 44:18, 44:23, 55:17, 55:18 <b>cost-based [2]</b> - 11:20, 12:17 <b>costs [7]</b> - 13:15, 29:17, 35:6, 38:23, 39:2, 40:8, 45:2 <b>couldn't [3]</b> - 35:16, 36:14, 37:5 <b>counsel [8]</b> - 1:17, 4:7, 18:16, 18:18, 18:19, 29:25, 31:21, 57:14 <b>couple [5]</b> - 15:2, 44:4, 44:5, 49:9, 54:10 <b>course [4]</b> - 15:10, 26:13, 39:3, 46:24 <b>court [4]</b> - 1:22, 17:3, 44:13, 44:14 <b>covered</b> 35:21 <b>covering</b> 17:4 <b>covers</b> 12:4 <b>CPG</b> 54:3 <b>crafted</b> 36:21 <b>create [2]</b> - 39:22, 54:20 <b>creates [2]</b> - 36:3, 39:9 <b>creation</b> 36:25 <b>critical</b> 16:20 <b>cross</b> 6:10 <b>crossed</b> 49:3 <b>cure</b> 19:19 <b>current [4]</b> - 18:6, 18:6, 52:7, 52:12 <b>currently</b> 17:7 <b>cushy</b> 32:13 <b>cusp</b> 51:19 <b>customers [3]</b> - 29:16, 29:17, 33:6 <b>cut</b> 15:1 <b>cutting</b> 17:5 <b>CVPS [2]</b> - 18:18, 40:25</p> <hr/> <p style="text-align: center;"><b>D</b></p> <hr/> <p><b>Dan [2]</b> - 2:10, 3:16 <b>data [3]</b> - 30:14, 31:1, 55:7 <b>date [4]</b> - 22:2,</p>	<p>22:3, 52:6, 54:21 <b>Dated</b> 57:16 <b>de</b> 38:8 <b>dead</b> 51:10 <b>deadline</b> 54:18 <b>deal [8]</b> - 21:25, 32:13, 32:14, 32:15, 32:16, 34:4, 36:17, 38:21 <b>dealing [2]</b> - 13:6, 28:19 <b>debate</b> 42:1 <b>decade</b> 24:1 <b>decades [2]</b> - 44:12, 45:5 <b>decide [4]</b> - 37:15, 50:20, 54:22, 54:23 <b>decision [2]</b> - 41:7, 43:1 <b>decisions</b> 31:4 <b>declaratory [2]</b> - 27:5, 27:9 <b>declined</b> 27:4 <b>defer [2]</b> - 9:1, 22:15 <b>definition</b> 34:13 <b>degree</b> 33:5 <b>delay</b> 24:7 <b>Department [9]</b> - 3:15, 3:17, 3:21, 7:6, 7:19, 23:14, 27:23, 31:2, 32:24 <b>dependent</b> 39:5 <b>depending</b> 23:9 <b>deployment [2]</b> - 13:21, 16:8 <b>depreciation [3]</b> - 30:17, 40:14, 55:21 <b>Deputy</b> 1:16 <b>derive</b> 11:20 <b>derived</b> 55:15 <b>Design [3]</b> - 2:15, 5:25, 29:24 <b>desire</b> 22:21 <b>desired</b> 20:14 <b>detail [2]</b> - 31:8, 42:12 <b>determination</b> 21:25 <b>determine [2]</b> - 26:22, 39:11 <b>determined</b> 23:9 <b>developed</b> 46:15 <b>development</b> 44:11 <b>difference</b> 24:17</p>	<p><b>difficulties</b> 28:19 <b>direction</b> 16:24 <b>directly</b> 33:8 <b>director [4]</b> - 3:6, 3:19, 4:10, 4:24 <b>disagree [2]</b> - 33:16, 53:3 <b>discussion [2]</b> - 14:22, 46:25 <b>dispute [6]</b> - 12:10, 17:12, 19:1, 21:3, 26:2, 34:16 <b>disputed</b> 9:14 <b>disputes [3]</b> - 9:21, 25:18, 27:1 <b>disseminate</b> 54:9 <b>distinct</b> 36:2 <b>distribute [3]</b> - 50:2, 50:5, 51:14 <b>district [3]</b> - 30:22, 31:16, 31:17 <b>districts</b> 33:18 <b>divergence [2]</b> - 45:21, 46:18 <b>docket [9]</b> - 8:10, 8:11, 18:19, 21:23, 23:18, 30:10, 31:4, 31:5, 34:9 <b>document [2]</b> - 40:5, 40:10 <b>documents [3]</b> - 50:6, 52:6, 55:7 <b>dollar</b> 55:19 <b>dollars</b> 41:4 <b>double [2]</b> - 11:22, 16:17 <b>DPS [3]</b> - 2:10, 2:10, 2:11 <b>dramatically</b> 35:8 <b>due</b> 12:8 <b>Duncan [6]</b> - 2:14, 2:14, 34:1, 34:1, 34:2, 40:23</p> <hr/> <p style="text-align: center;"><b>E</b></p> <hr/> <p><b>E-mail [5]</b> - 6:8, 51:1, 51:2, 51:4, 52:1 <b>earning</b> 40:14 <b>earns</b> 55:24 <b>easier</b> 6:12 <b>easily</b> 53:18 <b>East</b> 31:15 <b>easy [2]</b> - 22:12, 24:16 <b>EC [6]</b> - 2:12, 2:13, 5:19, 5:22,</p>	<p>31:15, 32:23 <b>echo [3]</b> - 13:1, 25:15, 25:16 <b>economic</b> 46:14 <b>economically</b> 46:2 <b>economics [2]</b> - 41:19, 46:8 <b>economy [2]</b> - 32:19, 33:1 <b>ecosystem</b> 45:16 <b>effective</b> 22:2 <b>effectively [3]</b> - 6:21, 21:12, 22:24 <b>eight</b> 34:14 <b>either [2]</b> - 24:7, 30:9 <b>electric [18]</b> - 2:3, 2:8, 3:20, 5:4, 5:6, 5:12, 5:15, 8:1, 14:2, 28:7, 32:15, 33:7, 33:7, 33:9, 33:16, 33:21, 47:3, 47:5 <b>Electric's</b> 49:20 <b>electronic [2]</b> - 51:20, 51:25 <b>elements [3]</b> - 11:5, 44:17, 45:14 <b>elsewhere</b> 16:4 <b>EMAIL</b> 1:24 <b>embedded</b> 29:10 <b>encourage</b> 26:4 <b>ended</b> 45:8 <b>enforce</b> 28:21 <b>engineer</b> 32:2 <b>engineering</b> 3:22 <b>England [2]</b> - 1:3, 3:10 <b>enormous</b> 44:9 <b>entities [5]</b> - 7:22, 19:11, 32:8, 33:9, 52:20 <b>entity [5]</b> - 32:12, 35:25, 35:25, 39:10, 39:17 <b>entrant</b> 30:21 <b>equity [2]</b> - 31:21, 41:8 <b>equivalent [3]</b> - 16:1, 38:25, 41:16 <b>erosion [5]</b> - 28:8, 29:13, 29:16, 35:5, 38:1 <b>erroneous [2]</b> - 19:5, 39:25 <b>error</b> 40:2</p>	<p><b>especially [4]</b> - 7:25, 10:2, 19:23, 42:22 <b>Esq</b> 2:7 <b>Esquire [6]</b> - 2:2, 2:4, 2:7, 2:10, 2:10, 2:12 <b>essential</b> 46:3 <b>essentially [6]</b> - 15:19, 16:17, 44:13, 45:15, 45:16, 45:24 <b>establish</b> 50:21 <b>established [2]</b> - 25:20, 50:20 <b>everybody [5]</b> - 3:2, 3:12, 10:9, 20:15, 51:2 <b>everybody's [2]</b> - 7:2, 35:2 <b>everyone [7]</b> - 15:12, 24:17, 26:12, 26:17, 36:3, 36:6, 48:3 <b>everything [2]</b> - 42:20, 43:25 <b>evidence [3]</b> - 25:18, 38:21, 57:12 <b>evolved</b> 32:7 <b>ex-parte</b> 49:11 <b>exacerbate</b> 28:12 <b>exact</b> 30:15 <b>exactly [3]</b> - 11:6, 27:9, 42:7 <b>examination</b> 33:15 <b>example</b> 35:14 <b>Excellent</b> 48:20 <b>Except [2]</b> - 20:16, 20:18 <b>exchange</b> 40:7 <b>excluding</b> 22:23 <b>Excuse</b> 26:16 <b>exercise</b> 26:23 <b>exist</b> 12:12 <b>existed</b> 39:21 <b>existing</b> 29:11 <b>expand [6]</b> - 8:1, 8:7, 9:5, 13:21, 24:22, 30:9 <b>expansion</b> 32:17 <b>expedited [3]</b> - 19:25, 24:2, 36:17 <b>expense [3]</b> - 32:22, 40:14, 55:20 <b>experience</b> 45:18 <b>expert</b> 43:20</p>	<p><b>explains</b> 45:9 <b>explored</b> 31:4 <b>expressed [2]</b> - 16:5, 29:4 <b>expresses</b> 19:15 <b>extent</b> 26:22 <b>extra</b> 47:17 <b>eye</b> 52:3</p> <hr/> <p style="text-align: center;"><b>F</b></p> <hr/> <p><b>faced</b> 36:21 <b>facilities</b> 13:21 <b>factual [2]</b> - 25:18, 38:9 <b>fair [2]</b> - 7:14, 20:19 <b>fairly</b> 55:3 <b>fairness</b> 37:20 <b>FairPoint [10]</b> - 2:4, 2:6, 2:9, 4:15, 4:17, 4:23, 5:2, 12:6, 12:15, 18:19 <b>FairPoint's [2]</b> - 29:25, 52:15 <b>fall [2]</b> - 9:5, 53:21 <b>fallen</b> 50:8 <b>Fantastic</b> 6:2 <b>fast</b> 53:8 <b>faster</b> 28:5 <b>Fastiggi [2]</b> - 2:6, 4:22 <b>favor [2]</b> - 10:7, 39:22 <b>favors</b> 9:3 <b>FCC [14]</b> - 15:21, 15:24, 16:4, 16:6, 17:6, 25:4, 44:20, 45:5, 45:10, 45:19, 45:22, 45:22, 46:4, 46:21 <b>FCC's</b> 44:11 <b>features</b> 9:13 <b>feel [4]</b> - 9:25, 29:13, 48:3, 49:14 <b>fees [3]</b> - 32:21, 47:9, 47:18 <b>fiber [7]</b> - 2:12, 2:13, 3:25, 5:20, 5:22, 30:25, 31:15 <b>Fiber's</b> 32:23 <b>Fiddler</b> 31:24 <b>field [3]</b> - 10:5, 32:19, 34:4 <b>fight</b> 7:9 <b>figure</b> 41:24</p>
---	--	--	--	--	--

<p><b>file</b> [5] - 7:20, 18:3, 25:25, 49:14, 49:15</p> <p><b>filed</b> [4] - 8:21, 9:4, 27:3, 51:11</p> <p><b>files</b> 51:3</p> <p><b>filing</b> [8] - 17:19, 17:20, 18:24, 18:24, 50:16, 51:20, 54:8, 54:10</p> <p><b>filings</b> [2] - 14:4, 50:11</p> <p><b>finalized</b> 7:18</p> <p><b>finally</b> [2] - 6:19, 8:12</p> <p><b>finding</b> 30:20</p> <p><b>fine</b> [4] - 18:21, 21:19, 50:5, 51:9</p> <p><b>fingers</b> 49:3</p> <p><b>finished</b> 12:19</p> <p><b>fires</b> [2] - 19:12, 22:7</p> <p><b>firm</b> 4:14</p> <p><b>five</b> [2] - 2:4, 4:17</p> <p><b>fix</b> 46:7</p> <p><b>fixed</b> [2] - 19:4, 45:23</p> <p><b>fleshed</b> 42:11</p> <p><b>focus</b> [2] - 25:9, 25:13</p> <p><b>focused</b> [3] - 15:10, 24:12, 54:24</p> <p><b>fold</b> 46:22</p> <p><b>folks</b> [5] - 3:1, 6:9, 26:11, 31:11, 56:7</p> <p><b>follow</b> [7] - 16:20, 17:21, 17:25, 30:10, 31:8, 43:2, 45:6</p> <p><b>follow-on</b> 31:5</p> <p><b>followed</b> 34:9</p> <p><b>foot</b> [23] - 12:2, 12:21, 13:12, 15:12, 16:15, 20:12, 23:7, 23:7, 29:2, 32:5, 32:8, 33:12, 37:3, 39:8, 39:15, 42:2, 42:2, 43:21, 43:21, 46:13, 48:14, 55:12, 55:12</p> <p><b>foregoing</b> [2] - 57:8, 57:10</p> <p><b>forget</b> 26:13</p> <p><b>formula</b> [31] - 9:7, 9:8, 9:12, 9:12, 9:21, 10:1, 11:19,</p>	<p>16:15, 17:6, 17:7, 18:6, 25:22, 26:9, 29:7, 29:8, 35:7, 44:2, 44:7, 44:11, 44:16, 44:19, 44:20, 44:25, 45:4, 45:9, 46:2, 46:8, 55:14, 55:17, 55:23, 55:24</p> <p><b>formulas</b> [3] - 18:10, 18:11, 39:20</p> <p><b>forward</b> [15] - 6:21, 7:14, 7:17, 12:11, 13:25, 14:13, 14:15, 14:16, 23:15, 26:5, 28:4, 42:20, 42:21, 42:24, 43:13</p> <p><b>frame</b> 36:11</p> <p><b>framework</b> 7:1</p> <p><b>Franklin</b> 4:19</p> <p><b>frankly</b> 34:24</p> <p><b>free</b> 49:14</p> <p><b>front</b> [2] - 6:6, 55:13</p> <p><b>frustration</b> [3] - 19:16, 24:9, 39:7</p> <p><b>full</b> 50:17</p> <p><b>fully</b> [4] - 17:3, 44:19, 46:14, 52:23</p> <p><b>fully-allocated</b> [2] - 11:20, 44:23</p> <p><b>functions</b> 50:17</p> <p><b>future</b> [4] - 32:6, 42:17, 43:16, 48:24</p> <hr/> <p style="text-align: center;"><b>G</b></p> <hr/> <p><b>game</b> 34:25</p> <p><b>gathering</b> 38:21</p> <p><b>gee</b> 20:19</p> <p><b>General</b> [2] - 1:16, 4:7</p> <p><b>generated</b> 51:1</p> <p><b>gentleman</b> [2] - 34:3, 37:3</p> <p><b>gently</b> 33:16</p> <p><b>George</b> [4] - 1:16, 3:5, 6:23, 40:20</p> <p><b>Gerald</b> 2:7</p> <p><b>Gerhard</b> [34] - 1:15, 3:1, 3:4, 5:24, 6:2, 7:5, 7:23, 8:14, 8:17, 8:19, 8:25, 12:18,</p>	<p>14:9, 14:17, 14:24, 15:6, 17:9, 18:1, 26:10, 29:19, 31:10, 33:24, 37:22, 38:11, 41:21, 47:25, 48:21, 50:4, 51:6, 51:17, 51:24, 52:10, 52:16, 56:6</p> <p><b>germane</b> 27:7</p> <p><b>Gerry</b> 4:8</p> <p><b>gets</b> [3] - 8:5, 26:12, 54:14</p> <p><b>Gibbons</b> [8] - 2:3, 3:19, 3:19, 8:20, 43:18, 43:18, 49:18, 49:23</p> <p><b>gist</b> 11:15</p> <p><b>given</b> [4] - 11:23, 14:7, 17:16, 53:16</p> <p><b>GMP</b> [6] - 2:8, 2:9, 18:17, 41:1, 41:3, 41:11</p> <p><b>goals</b> [2] - 30:4, 30:8</p> <p><b>goes</b> [2] - 9:16, 44:12</p> <p><b>gone</b> [3] - 15:23, 24:1, 52:6</p> <p><b>governing</b> 31:3</p> <p><b>government</b> 52:24</p> <p><b>greater</b> [3] - 41:8, 41:8, 42:12</p> <p><b>Green</b> [5] - 5:7, 5:9, 10:18, 12:7, 29:3</p> <p><b>Greg</b> [2] - 2:5, 3:23</p> <p><b>group</b> [3] - 3:22, 48:25, 52:1</p> <p><b>growing</b> 32:22</p> <p><b>grown</b> [2] - 35:20, 36:19</p> <p><b>guess</b> 17:13</p> <p><b>guided</b> 30:8</p> <p><b>guys</b> 7:9</p> <hr/> <p style="text-align: center;"><b>H</b></p> <hr/> <p><b>hadn't</b> 53:23</p> <p><b>half</b> 38:22</p> <p><b>handled</b> 12:14</p> <p><b>hands</b> 34:5</p> <p><b>happen</b> [5] - 10:23, 18:14, 33:10, 50:10, 52:22</p>	<p><b>happened</b> [5] - 14:8, 19:6, 41:23, 41:24, 42:6</p> <p><b>happens</b> 51:22</p> <p><b>happy</b> [2] - 14:21, 50:2</p> <p><b>harmful</b> 18:7</p> <p><b>hasn't</b> 56:3</p> <p><b>haste</b> [3] - 24:6, 24:8, 24:11</p> <p><b>hasty</b> 20:1</p> <p><b>haven't</b> [3] - 6:4, 31:11, 55:5</p> <p><b>having</b> [9] - 7:20, 9:17, 12:10, 16:4, 27:18, 28:17, 29:6, 35:5, 53:6</p> <p><b>headed</b> 34:18</p> <p><b>hear</b> [7] - 6:14, 6:15, 20:19, 20:21, 31:21, 35:2, 49:7</p> <p><b>heard</b> [6] - 7:21, 19:24, 31:12, 32:7, 44:5, 48:23</p> <p><b>hearing</b> [6] - 1:15, 14:14, 14:15, 17:23, 31:7, 57:5</p> <p><b>hearings</b> [2] - 17:24, 40:24</p> <p><b>held</b> 1:10</p> <p><b>helpful</b> 50:3</p> <p><b>helpfully</b> 40:5</p> <p><b>here's</b> 39:13</p> <p><b>hereby</b> 57:3</p> <p><b>high-level</b> 38:5</p> <p><b>higher</b> [2] - 15:17, 21:6</p> <p><b>highest</b> 44:21</p> <p><b>highlight</b> 22:20</p> <p><b>history</b> 44:10</p> <p><b>Hobson's</b> 23:25</p> <p><b>Hold</b> 29:19</p> <p><b>holders</b> 54:3</p> <p><b>Hollick</b> [10] - 2:3, 4:6, 4:6, 12:25, 12:25, 14:11, 25:15, 50:25, 51:14, 55:16</p> <p><b>hone</b> 23:4</p> <p><b>hopefully</b> [2] - 37:19, 49:2</p> <p><b>hoping</b> 6:13</p> <p><b>Hudson</b> [2] - 1:11, 57:5</p> <p><b>huge</b> 46:5</p> <p><b>Humphrey</b> [3] - 2:8, 5:11, 5:11</p> <p><b>hypothetical</b> 32:6</p>	<p style="text-align: center;"><b>I</b></p> <hr/> <p><b>ICAR</b> [2] - 17:20, 54:20</p> <p><b>idea</b> [7] - 7:7, 8:7, 20:21, 40:11, 40:15, 54:22, 55:14</p> <p><b>identifiable</b> 9:22</p> <p><b>identify</b> 6:18</p> <p><b>identifying</b> 33:19</p> <p><b>ILEC</b> [4] - 18:3, 39:2, 41:12, 54:8</p> <p><b>ILECs</b> [18] - 4:15, 10:16, 10:21, 10:23, 10:24, 12:23, 27:25, 31:21, 32:15, 38:22, 39:2, 41:15, 41:20, 46:18, 46:22, 47:1, 47:4, 47:22</p> <p><b>ill</b> 20:2</p> <p><b>imagine</b> 54:2</p> <p><b>immediately</b> 50:10</p> <p><b>impatience</b> 19:16</p> <p><b>impedes</b> 32:17</p> <p><b>impediment</b> 23:14</p> <p><b>implementing</b> 33:21</p> <p><b>implications</b> 25:21</p> <p><b>inability</b> 32:18</p> <p><b>incent</b> [2] - 13:20, 16:8</p> <p><b>include</b> 40:13</p> <p><b>including</b> 44:14</p> <p><b>incredibly</b> 46:1</p> <p><b>incremental</b> 44:23</p> <p><b>incumbent</b> 40:7</p> <p><b>independent</b> [2] - 34:2, 34:20</p> <p><b>industry</b> [2] - 12:2, 14:8</p> <p><b>info@capitolcour</b> 1:24</p> <p><b>informant</b> 53:17</p> <p><b>information</b> 54:9</p> <p><b>informed</b> 52:18</p> <p><b>infrastructure</b> [2] - 43:22, 44:1</p> <p><b>inherent</b> [3] - 44:15, 44:25, 47:23</p> <p><b>initial</b> 9:18</p> <p><b>inputs</b> 9:20</p>	<p><b>instance</b> 36:13</p> <p><b>interconnected</b> 26:20</p> <p><b>interested</b> 57:15</p> <p><b>interpreted</b> [2] - 38:14, 45:6</p> <p><b>introduce</b> 3:13</p> <p><b>investigation</b> [5] - 30:10, 30:11, 54:2, 54:4, 54:5</p> <p><b>investment</b> [5] - 16:8, 40:15, 55:19, 55:22, 55:24</p> <p><b>investments</b> 9:16</p> <p><b>involve</b> [2] - 9:11, 10:4</p> <p><b>involved</b> 18:14</p> <p><b>involves</b> [2] - 9:6, 9:7</p> <p><b>involving</b> 18:15</p> <p><b>Ireland</b> [8] - 2:11, 4:11, 14:25, 14:25, 15:6, 15:8, 44:3, 44:3</p> <p><b>irrational</b> [2] - 18:7, 46:10</p> <p><b>irrelevant</b> 23:18</p> <p><b>Irv</b> [2] - 2:13, 5:19</p> <p><b>isn't</b> [3] - 23:4, 23:8, 43:20</p> <p><b>issue</b> [24] - 9:13, 13:17, 13:23, 14:23, 17:15, 20:5, 22:1, 22:16, 23:5, 24:13, 26:6, 27:2, 27:6, 27:13, 27:21, 31:20, 33:14, 38:3, 38:9, 45:17, 45:20, 48:24, 52:13, 54:19</p> <p><b>issued</b> 23:13</p> <p><b>issues</b> [24] - 6:16, 7:8, 8:13, 9:10, 10:3, 13:3, 14:1, 14:3, 20:20, 24:5, 24:18, 24:22, 27:15, 27:19, 27:22, 28:16, 29:1, 30:13, 31:7, 39:23, 42:3, 42:11, 48:1, 49:12</p> <p><b>iteration</b> 50:24</p> <p><b>itself</b> [5] - 9:12, 17:13, 35:10, 45:9, 54:21</p>
---	---	--	---	--	---

<p style="text-align: center;"><b>J</b></p> <p><b>James [5]</b> - 2:3, 2:6, 3:18, 3:19, 43:18</p> <p><b>Jay [5]</b> - 2:11, 4:11, 14:25, 17:12, 44:3</p> <p><b>Jim [3]</b> - 2:10, 4:9, 26:17</p> <p><b>John [4]</b> - 1:15, 2:9, 3:4, 4:23</p> <p><b>joined</b> 4:21</p> <p><b>joint [2]</b> - 47:2, 47:11</p> <p><b>judgment [2]</b> - 19:13, 19:20</p> <p><b>judicially-appro</b> 46:2</p> <p><b>jump</b> 35:3</p> <p><b>junction</b> 49:17</p> <p><b>jurisdictions</b> 15:23</p>	<p><b>least [4]</b> - 7:15, 24:14, 47:15, 51:4</p> <p><b>led</b> 8:13</p> <p><b>legal</b> 32:1</p> <p><b>legibly</b> 6:11</p> <p><b>legislation</b> 31:18</p> <p><b>length</b> 54:14</p> <p><b>lengthy</b> 23:25</p> <p><b>less</b> 48:11</p> <p><b>let's [5]</b> - 42:20, 42:21, 42:21, 42:24, 43:8</p> <p><b>letter</b> 4:18</p> <p><b>level [6]</b> - 2:3, 4:7, 12:25, 14:8, 25:15, 32:19</p> <p><b>License [2]</b> - 4:25, 5:1</p> <p><b>licensee</b> 47:6</p> <p><b>lieu</b> 50:17</p> <p><b>likely [2]</b> - 10:24, 19:8</p> <p><b>limit</b> 24:22</p> <p><b>link</b> 53:16</p> <p><b>listed [2]</b> - 4:18, 52:14</p> <p><b>listen</b> 7:12</p> <p><b>listening [2]</b> - 8:4, 8:6</p> <p><b>listing</b> 24:18</p> <p><b>lists</b> 52:12</p> <p><b>litigation [4]</b> - 18:15, 20:14, 29:10, 45:10</p> <p><b>LLC</b> 4:16</p> <p><b>local</b> 40:7</p> <p><b>location [3]</b> - 30:7, 33:19, 36:11</p> <p><b>locations [2]</b> - 30:5, 30:15</p> <p><b>logic [2]</b> - 11:19, 30:17</p> <p><b>longer</b> 11:23</p> <p><b>looking [15]</b> - 10:13, 11:16, 11:21, 11:22, 16:13, 16:14, 20:4, 38:5, 40:9, 41:19, 42:17, 43:6, 43:13, 43:14, 49:16</p> <p><b>losing</b> 32:18</p> <p><b>loss</b> 11:14</p> <p><b>lots</b> 16:3</p> <p><b>low [4]</b> - 16:5, 17:1, 17:2, 44:22</p> <p><b>lower</b> 11:16</p> <p><b>Ludlow</b> 4:19</p> <p><b>Lyndonville [2]</b> -</p>	<p>2:8, 5:12</p> <p style="text-align: center;"><b>M</b></p> <p><b>main</b> 9:6</p> <p><b>maintaining [2]</b> - 25:21, 53:10</p> <p><b>maintenance</b> 55:20</p> <p><b>majority [2]</b> - 23:1, 35:21</p> <p><b>make-ready [3]</b> - 13:14, 47:10, 47:14</p> <p><b>making</b> 15:11</p> <p><b>makings</b> 16:3</p> <p><b>manageable</b> 9:22</p> <p><b>Manager</b> 5:12</p> <p><b>Mandl [20]</b> - 2:2, 4:4, 4:4, 9:1, 9:2, 10:8, 10:11, 10:14, 11:18, 12:18, 12:20, 14:19, 20:4, 37:22, 37:25, 40:5, 48:5, 48:17, 48:20, 49:25</p> <p><b>map [2]</b> - 16:7, 35:3</p> <p><b>margins</b> 21:18</p> <p><b>markets</b> 35:18</p> <p><b>Martin [2]</b> - 2:7, 4:21</p> <p><b>materials</b> 53:14</p> <p><b>matter [5]</b> - 10:6, 11:25, 19:23, 38:3, 52:15</p> <p><b>maybe</b> 47:9</p> <p><b>meandering</b> 6:4</p> <p><b>means [3]</b> - 40:17, 50:12, 57:4</p> <p><b>mechanism [3]</b> - 16:7, 18:22, 39:9</p> <p><b>meet</b> 24:25</p> <p><b>megabit</b> 30:6</p> <p><b>member [2]</b> - 3:25, 4:2</p> <p><b>members [2]</b> - 31:17, 31:25</p> <p><b>memorandum</b> 48:25</p> <p><b>mention</b> 52:13</p> <p><b>mentioned [3]</b> - 13:7, 14:9, 25:25</p> <p><b>mere</b> 47:6</p> <p><b>merits</b> 37:13</p> <p><b>middle</b> 21:18</p> <p><b>mind [2]</b> - 28:17, 43:21</p> <p><b>minimis</b> 38:8</p>	<p><b>minute</b> 29:21</p> <p><b>misguided</b> 20:2</p> <p><b>missed</b> 50:12</p> <p><b>missing [2]</b> - 21:13, 21:15</p> <p><b>mistake [3]</b> - 16:23, 44:9, 46:6</p> <p><b>misunderstood [2]</b> - 48:6, 48:15</p> <p><b>modifying</b> 25:22</p> <p><b>money</b> 34:25</p> <p><b>Monroe [3]</b> - 2:12, 5:18, 5:18</p> <p><b>months [4]</b> - 24:3, 24:11, 24:14, 24:15</p> <p><b>Montpelier [4]</b> - 1:8, 1:12, 4:14, 57:6</p> <p><b>Montroll [6]</b> - 2:12, 5:21, 5:21, 5:22, 41:22, 43:12</p> <p><b>mostly</b> 7:11</p> <p><b>motivated</b> 16:12</p> <p><b>Mountain [5]</b> - 5:8, 5:10, 10:18, 12:7, 29:4</p> <p><b>move [15]</b> - 10:9, 13:24, 14:12, 14:15, 15:25, 21:4, 23:2, 26:4, 27:25, 28:4, 28:22, 36:7, 36:10, 43:8, 49:7</p> <p><b>moving [4]</b> - 14:15, 16:24, 17:22, 23:15</p> <p><b>mutual [3]</b> - 30:22, 31:17, 33:18</p> <p><b>myself</b> 29:25</p>	<p><b>neighboring</b> 15:20</p> <p><b>neither</b> 24:4</p> <p><b>net [2]</b> - 55:19, 55:21</p> <p><b>Network [3]</b> - 2:15, 6:1, 29:24</p> <p><b>neutrality [5]</b> - 10:13, 11:1, 13:10, 13:19, 38:24</p> <p><b>news [2]</b> - 35:22, 35:22</p> <p><b>NGIS</b> 30:15</p> <p><b>nine [2]</b> - 19:8, 34:12</p> <p><b>nine-year</b> 34:15</p> <p><b>Nobody</b> 56:3</p> <p><b>none [2]</b> - 18:8, 47:11</p> <p><b>normal</b> 12:14</p> <p><b>northeast</b> 4:11</p> <p><b>Northern [2]</b> - 1:3, 3:9</p> <p><b>Northfield</b> 4:19</p> <p><b>note [2]</b> - 10:15, 13:15</p> <p><b>notes</b> 57:11</p> <p><b>notice [2]</b> - 36:11, 54:12</p> <p><b>notified</b> 54:3</p> <p><b>notion [3]</b> - 16:24, 19:4, 19:25</p> <p><b>numbers [2]</b> - 38:5, 55:14</p>	<p>38:25</p> <p><b>office [4]</b> - 4:22, 50:9, 51:12, 54:11</p> <p><b>OFFICER</b> 1:15</p> <p><b>one-foot [24]</b> - 7:16, 10:10, 10:22, 10:25, 11:8, 11:13, 12:10, 12:12, 12:24, 15:3, 15:16, 15:18, 15:24, 16:1, 17:6, 23:3, 25:3, 27:17, 43:5, 43:10, 44:16, 45:17, 45:24, 55:3</p> <p><b>onerous</b> 41:9</p> <p><b>ongoing [3]</b> - 12:10, 29:10, 52:15</p> <p><b>open [9]</b> - 8:3, 8:6, 28:18, 28:24, 29:14, 30:5, 30:25, 37:13, 54:24</p> <p><b>opened</b> 24:21</p> <p><b>opening</b> 8:13</p> <p><b>operate</b> 46:4</p> <p><b>operates</b> 9:20</p> <p><b>operating [3]</b> - 4:16, 39:24, 44:18</p> <p><b>operational</b> 32:22</p> <p><b>operational-type</b> 14:3</p> <p><b>Operations</b> 5:12</p> <p><b>operator</b> 34:2</p> <p><b>operators</b> 12:13</p> <p><b>opinions</b> 49:6</p> <p><b>opportunity [5]</b> - 7:20, 28:25, 36:4, 48:3, 48:12</p> <p><b>opposed [5]</b> - 29:6, 43:7, 43:14, 43:16, 53:13</p> <p><b>option</b> 48:15</p> <p><b>oral</b> 24:19</p> <p><b>oranges</b> 47:20</p> <p><b>order [5]</b> - 16:16, 19:17, 26:18, 30:12, 38:25</p> <p><b>organization</b> 3:14</p> <p><b>original [2]</b> - 34:8, 35:5</p> <p><b>originally</b> 32:4</p> <p><b>Orost [3]</b> - 2:14, 5:3, 5:3</p> <p><b>others</b> 12:2</p> <p><b>otherwise [3]</b> -</p>
<p style="text-align: center;"><b>K</b></p> <p><b>Katherine [2]</b> - 2:7, 4:21</p> <p><b>Katie [2]</b> - 2:14, 5:3</p> <p><b>keeping [2]</b> - 14:5, 32:25</p> <p><b>key</b> 7:8</p> <p><b>Kim</b> 57:3</p> <p><b>knowledge</b> 36:7</p> <p><b>knows [2]</b> - 52:20, 56:4</p> <p><b>KSE</b> 5:16</p>	<p><b>listen</b> 7:12</p> <p><b>listening [2]</b> - 8:4, 8:6</p> <p><b>listing</b> 24:18</p> <p><b>lists</b> 52:12</p> <p><b>litigation [4]</b> - 18:15, 20:14, 29:10, 45:10</p> <p><b>LLC</b> 4:16</p> <p><b>local</b> 40:7</p> <p><b>location [3]</b> - 30:7, 33:19, 36:11</p> <p><b>locations [2]</b> - 30:5, 30:15</p> <p><b>logic [2]</b> - 11:19, 30:17</p> <p><b>longer</b> 11:23</p> <p><b>looking [15]</b> - 10:13, 11:16, 11:21, 11:22, 16:13, 16:14, 20:4, 38:5, 40:9, 41:19, 42:17, 43:6, 43:13, 43:14, 49:16</p> <p><b>losing</b> 32:18</p> <p><b>loss</b> 11:14</p> <p><b>lots</b> 16:3</p> <p><b>low [4]</b> - 16:5, 17:1, 17:2, 44:22</p> <p><b>lower</b> 11:16</p> <p><b>Ludlow</b> 4:19</p> <p><b>Lyndonville [2]</b> -</p>	<p>2:8, 5:12</p> <p style="text-align: center;"><b>M</b></p> <p><b>main</b> 9:6</p> <p><b>maintaining [2]</b> - 25:21, 53:10</p> <p><b>maintenance</b> 55:20</p> <p><b>majority [2]</b> - 23:1, 35:21</p> <p><b>make-ready [3]</b> - 13:14, 47:10, 47:14</p> <p><b>making</b> 15:11</p> <p><b>makings</b> 16:3</p> <p><b>manageable</b> 9:22</p> <p><b>Manager</b> 5:12</p> <p><b>Mandl [20]</b> - 2:2, 4:4, 4:4, 9:1, 9:2, 10:8, 10:11, 10:14, 11:18, 12:18, 12:20, 14:19, 20:4, 37:22, 37:25, 40:5, 48:5, 48:17, 48:20, 49:25</p> <p><b>map [2]</b> - 16:7, 35:3</p> <p><b>margins</b> 21:18</p> <p><b>markets</b> 35:18</p> <p><b>Martin [2]</b> - 2:7, 4:21</p> <p><b>materials</b> 53:14</p> <p><b>matter [5]</b> - 10:6, 11:25, 19:23, 38:3, 52:15</p> <p><b>maybe</b> 47:9</p> <p><b>meandering</b> 6:4</p> <p><b>means [3]</b> - 40:17, 50:12, 57:4</p> <p><b>mechanism [3]</b> - 16:7, 18:22, 39:9</p> <p><b>meet</b> 24:25</p> <p><b>megabit</b> 30:6</p> <p><b>member [2]</b> - 3:25, 4:2</p> <p><b>members [2]</b> - 31:17, 31:25</p> <p><b>memorandum</b> 48:25</p> <p><b>mention</b> 52:13</p> <p><b>mentioned [3]</b> - 13:7, 14:9, 25:25</p> <p><b>mere</b> 47:6</p> <p><b>merits</b> 37:13</p> <p><b>middle</b> 21:18</p> <p><b>mind [2]</b> - 28:17, 43:21</p> <p><b>minimis</b> 38:8</p>	<p><b>minute</b> 29:21</p> <p><b>misguided</b> 20:2</p> <p><b>missed</b> 50:12</p> <p><b>missing [2]</b> - 21:13, 21:15</p> <p><b>mistake [3]</b> - 16:23, 44:9, 46:6</p> <p><b>misunderstood [2]</b> - 48:6, 48:15</p> <p><b>modifying</b> 25:22</p> <p><b>money</b> 34:25</p> <p><b>Monroe [3]</b> - 2:12, 5:18, 5:18</p> <p><b>months [4]</b> - 24:3, 24:11, 24:14, 24:15</p> <p><b>Montpelier [4]</b> - 1:8, 1:12, 4:14, 57:6</p> <p><b>Montroll [6]</b> - 2:12, 5:21, 5:21, 5:22, 41:22, 43:12</p> <p><b>mostly</b> 7:11</p> <p><b>motivated</b> 16:12</p> <p><b>Mountain [5]</b> - 5:8, 5:10, 10:18, 12:7, 29:4</p> <p><b>move [15]</b> - 10:9, 13:24, 14:12, 14:15, 15:25, 21:4, 23:2, 26:4, 27:25, 28:4, 28:22, 36:7, 36:10, 43:8, 49:7</p> <p><b>moving [4]</b> - 14:15, 16:24, 17:22, 23:15</p> <p><b>mutual [3]</b> - 30:22, 31:17, 33:18</p> <p><b>myself</b> 29:25</p>	<p><b>neighboring</b> 15:20</p> <p><b>neither</b> 24:4</p> <p><b>net [2]</b> - 55:19, 55:21</p> <p><b>Network [3]</b> - 2:15, 6:1, 29:24</p> <p><b>neutrality [5]</b> - 10:13, 11:1, 13:10, 13:19, 38:24</p> <p><b>news [2]</b> - 35:22, 35:22</p> <p><b>NGIS</b> 30:15</p> <p><b>nine [2]</b> - 19:8, 34:12</p> <p><b>nine-year</b> 34:15</p> <p><b>Nobody</b> 56:3</p> <p><b>none [2]</b> - 18:8, 47:11</p> <p><b>normal</b> 12:14</p> <p><b>northeast</b> 4:11</p> <p><b>Northern [2]</b> - 1:3, 3:9</p> <p><b>Northfield</b> 4:19</p> <p><b>note [2]</b> - 10:15, 13:15</p> <p><b>notes</b> 57:11</p> <p><b>notice [2]</b> - 36:11, 54:12</p> <p><b>notified</b> 54:3</p> <p><b>notion [3]</b> - 16:24, 19:4, 19:25</p> <p><b>numbers [2]</b> - 38:5, 55:14</p>	<p>38:25</p> <p><b>office [4]</b> - 4:22, 50:9, 51:12, 54:11</p> <p><b>OFFICER</b> 1:15</p> <p><b>one-foot [24]</b> - 7:16, 10:10, 10:22, 10:25, 11:8, 11:13, 12:10, 12:12, 12:24, 15:3, 15:16, 15:18, 15:24, 16:1, 17:6, 23:3, 25:3, 27:17, 43:5, 43:10, 44:16, 45:17, 45:24, 55:3</p> <p><b>onerous</b> 41:9</p> <p><b>ongoing [3]</b> - 12:10, 29:10, 52:15</p> <p><b>open [9]</b> - 8:3, 8:6, 28:18, 28:24, 29:14, 30:5, 30:25, 37:13, 54:24</p> <p><b>opened</b> 24:21</p> <p><b>opening</b> 8:13</p> <p><b>operate</b> 46:4</p> <p><b>operates</b> 9:20</p> <p><b>operating [3]</b> - 4:16, 39:24, 44:18</p> <p><b>operational</b> 32:22</p> <p><b>operational-type</b> 14:3</p> <p><b>Operations</b> 5:12</p> <p><b>operator</b> 34:2</p> <p><b>operators</b> 12:13</p> <p><b>opinions</b> 49:6</p> <p><b>opportunity [5]</b> - 7:20, 28:25, 36:4, 48:3, 48:12</p> <p><b>opposed [5]</b> - 29:6, 43:7, 43:14, 43:16, 53:13</p> <p><b>option</b> 48:15</p> <p><b>oral</b> 24:19</p> <p><b>oranges</b> 47:20</p> <p><b>order [5]</b> - 16:16, 19:17, 26:18, 30:12, 38:25</p> <p><b>organization</b> 3:14</p> <p><b>original [2]</b> - 34:8, 35:5</p> <p><b>originally</b> 32:4</p> <p><b>Orost [3]</b> - 2:14, 5:3, 5:3</p> <p><b>others</b> 12:2</p> <p><b>otherwise [3]</b> -</p>
<p style="text-align: center;"><b>L</b></p> <p><b>lack</b> 35:12</p> <p><b>Lackey [6]</b> - 2:2, 4:1, 4:1, 8:25, 9:1, 12:23</p> <p><b>landscape</b> 11:24</p> <p><b>language</b> 36:9</p> <p><b>larger [2]</b> - 24:5, 38:9</p> <p><b>largest [2]</b> - 32:22, 33:20</p> <p><b>Larry [2]</b> - 2:2, 4:1</p> <p><b>laryngitis</b> 26:17</p> <p><b>later [3]</b> - 6:7, 31:8, 54:10</p> <p><b>law [2]</b> - 4:14, 32:2</p> <p><b>layperson [2]</b> - 32:1, 34:3</p>	<p><b>listen</b> 7:12</p> <p><b>listening [2]</b> - 8:4, 8:6</p> <p><b>listing</b> 24:18</p> <p><b>lists</b> 52:12</p> <p><b>litigation [4]</b> - 18:15, 20:14, 29:10, 45:10</p> <p><b>LLC</b> 4:16</p> <p><b>local</b> 40:7</p> <p><b>location [3]</b> - 30:7, 33:19, 36:11</p> <p><b>locations [2]</b> - 30:5, 30:15</p> <p><b>logic [2]</b> - 11:19, 30:17</p> <p><b>longer</b> 11:23</p> <p><b>looking [15]</b> - 10:13, 11:16, 11:21, 11:22, 16:13, 16:14, 20:4, 38:5, 40:9, 41:19, 42:17, 43:6, 43:13, 43:14, 49:16</p> <p><b>losing</b> 32:18</p> <p><b>loss</b> 11:14</p> <p><b>lots</b> 16:3</p> <p><b>low [4]</b> - 16:5, 17:1, 17:2, 44:22</p> <p><b>lower</b> 11:16</p> <p><b>Ludlow</b> 4:19</p> <p><b>Lyndonville [2]</b> -</p>	<p>2:8, 5:12</p> <p style="text-align: center;"><b>M</b></p> <p><b>main</b> 9:6</p> <p><b>maintaining [2]</b> - 25:21, 53:10</p> <p><b>maintenance</b> 55:20</p> <p><b>majority [2]</b> - 23:1, 35:21</p> <p><b>make-ready [3]</b> - 13:14, 47:10, 47:14</p> <p><b>making</b> 15:11</p> <p><b>makings</b> 16:3</p> <p><b>manageable</b> 9:22</p> <p><b>Manager</b> 5:12</p> <p><b>Mandl [20]</b> - 2:2, 4:4, 4:4, 9:1, 9:2, 10:8, 10:11, 10:14, 11:18, 12:18, 12:20, 14:19, 20:4, 37:22, 37:25, 40:5, 48:5, 48:17, 48:20, 49:25</p> <p><b>map [2]</b> - 16:7, 35:3</p> <p><b>margins</b> 21:18</p> <p><b>markets</b> 35:18</p> <p><b>Martin [2]</b> - 2:7, 4:21</p> <p><b>materials</b> 53:14</p> <p><b>matter [5]</b> - 10:6, 11:25, 19:23, 38:3, 52:15</p> <p><b>maybe</b> 47:9</p> <p><b>meandering</b> 6:4</p> <p><b>means [3]</b> - 40:17, 50:12, 57:4</p> <p><b>mechanism [3]</b> - 16:7, 18:22, 39:9</p> <p><b>meet</b> 24:25</p> <p><b>megabit</b> 30:6</p> <p><b>member [2]</b> - 3:25, 4:2</p> <p><b>members [2]</b> - 31:17, 31:25</p> <p><b>memorandum</b> 48:25</p> <p><b>mention</b> 52:13</p> <p><b>mentioned [3]</b> - 13:7, 14:9, 25:25</p> <p><b>mere</b> 47:6</p> <p><b>merits</b> 37:13</p> <p><b>middle</b> 21:18</p> <p><b>mind [2]</b> - 28:17, 43:21</p> <p><b>minimis</b> 38:8</p>	<p><b>minute</b> 29:21</p> <p><b>misguided</b> 20:2</p> <p><b>missed</b> 50:12</p> <p><b>missing [2]</b> - 21:13, 21:15</p> <p><b>mistake [3]</b> - 16:23, 44:9, 46:6</p> <p><b>misunderstood [2]</b> - 48:6, 48:15</p> <p><b>modifying</b> 25:22</p> <p><b>money</b> 34:25</p> <p><b>Monroe [3]</b> - 2:12, 5:18, 5:18</p> <p><b>months [4]</b> - 24:3, 24:11, 24:14, 24:15</p> <p><b>Montpelier [4]</b> - 1:8, 1:12, 4:14, 57:6</p> <p><b>Montroll [6]</b> - 2:12, 5:21, 5:21, 5:22, 41:22, 43:12</p> <p><b>mostly</b> 7:11</p> <p><b>motivated</b> 16:12</p> <p><b>Mountain [5]</b> - 5:8, 5:10, 10:18, 12:7, 29:4</p> <p><b>move [15]</b> - 10:9, 13:24, 14:12, 14:15, 15:25, 21:4, 23:2, 26:4, 27:25, 28:4, 28:22, 36:7, 36:10, 43:8, 49:7</p> <p><b>moving [4]</b> - 14:15, 16:24, 17:22, 23:15</p> <p><b>mutual [3]</b> - 30:22, 31:17, 33:18</p> <p><b>myself</b> 29:25</p> <p style="text-align: center;"><b>N</b></p> <p><b>narrow [10]</b> - 8:2, 10:7, 13:5, 13:17, 13:23, 14:6, 17:14, 19:23, 20:1, 24:2</p> <p><b>narrowly</b> 54:24</p> <p><b>nation</b> 32:20</p> <p><b>National</b> 16:5</p> <p><b>necessarily</b> 54:13</p> <p><b>necessity</b> 54:5</p> <p><b>needed [2]</b> - 32:6, 37:4</p> <p><b>needing</b> 49:7</p> <p><b>needs [4]</b> - 19:4, 31:5, 37:18, 54:23</p>	<p style="text-align: center;"><b>O</b></p> <p><b>O-R-O-S-T</b> 5:4</p> <p><b>object</b> 51:7</p> <p><b>objective</b> 14:6</p> <p><b>obligation [3]</b> - 30:23, 49:15, 50:18</p> <p><b>observations</b> 49:10</p> <p><b>observer</b> 53:18</p> <p><b>obviously</b> 28:7</p> <p><b>occupied [5]</b> - 15:12, 38:17, 39:12, 48:8, 48:10</p> <p><b>occupy [3]</b> - 38:15, 38:16, 38:16</p> <p><b>occupying</b> 48:14</p> <p><b>offer</b> 34:23</p> <p><b>offered</b> 34:22</p> <p><b>offering [3]</b> - 23:10, 34:21,</p>	<p>38:25</p> <p><b>office [4]</b> - 4:22, 50:9, 51:12, 54:11</p> <p><b>OFFICER</b> 1:15</p> <p><b>one-foot [24]</b> - 7:16, 10:10, 10:22, 10:25, 11:8, 11:13, 12:10, 12:12, 12:24, 15:3, 15:16, 15:18, 15:24, 16:1, 17:6, 23:3, 25:3, 27:17, 43:5, 43:10, 44:16, 45:17, 45:24, 55:3</p> <p><b>onerous</b> 41:9</p> <p><b>ongoing [3]</b> - 12:10, 29:10, 52:15</p> <p><b>open [9]</b> - 8:3, 8:6, 28:18, 28:24, 29:14, 30:5, 30:25, 37:13, 54:24</p> <p><b>opened</b> 24:21</p> <p><b>opening</b> 8:13</p> <p><b>operate</b> 46:4</p> <p><b>operates</b> 9:20</p> <p><b>operating [3]</b> - 4:16, 39:24, 44:18</p> <p><b>operational</b> 32:22</p> <p><b>operational-type</b> 14:3</p> <p><b>Operations</b> 5:12</p> <p><b>operator</b> 34:2</p> <p><b>operators</b> 12:13</p> <p><b>opinions</b> 49:6</p> <p><b>opportunity [5]</b> - 7:20, 28:25, 36:4, 48:3, 48:12</p> <p><b>opposed [5]</b> - 29:6, 43:7, 43:14, 43:16, 53:13</p> <p><b>option</b> 48:15</p> <p><b>oral</b> 24:19</p> <p><b>oranges</b> 47:20</p> <p><b>order [5]</b> - 16:16, 19:17, 26:18, 30:12, 38:25</p> <p><b>organization</b> 3:14</p> <p><b>original [2]</b> - 34:8, 35:5</p> <p><b>originally</b> 32:4</p> <p><b>Orost [3]</b> - 2:14, 5:3, 5:3</p> <p><b>others</b> 12:2</p> <p><b>otherwise [3]</b> -</p>

<p>35:13, 48:11, 49:8 ought 33:6 outcome [3] - 20:13, 22:22, 57:15 override [2] - 51:16, 51:22 owes 27:1 owner [6] - 9:16, 18:23, 30:24, 39:13, 48:9, 55:22 owners [10] - 7:12, 12:1, 14:2, 17:5, 18:3, 19:10, 30:2, 39:3, 39:23, 55:4 ownership [2] - 47:2, 47:11 owning 44:18</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <p>P.O 1:22 pages 57:10 paid 12:3 pair 37:7 Pamela [3] - 2:3, 4:6, 12:25 Pardon 32:14 parenthesis 52:5 parenthetically 31:25 participants [3] - 6:15, 35:6, 36:2 participated 34:7 particular [5] - 15:18, 32:23, 34:18, 37:4, 43:20 parties [2] - 51:13, 57:14 partly 12:8 Partners 5:17 party 52:18 passed 31:18 Paul [3] - 2:4, 4:13, 18:2 pay [11] - 12:23, 32:10, 32:13, 33:12, 35:16, 38:24, 39:14, 47:9, 47:21, 47:22, 48:13 paying [6] - 10:20, 38:22, 39:2, 40:7, 41:3, 41:16 peeled 52:3 pending [2] - 8:10,</p>	<p>26:21 People's [2] - 1:11, 57:5 per [2] - 35:15, 35:15 percentage 38:6 perception 22:12 perhaps [3] - 14:13, 27:23, 46:18 Perkinsville 4:19 permissible 44:21 perspective [7] - 21:22, 22:4, 22:8, 22:11, 22:17, 28:14, 42:10 petition [5] - 1:3, 3:9, 19:15, 23:2, 27:3 petitioners [3] - 4:18, 13:2, 24:2 phase [7] - 26:18, 26:19, 26:22, 27:12, 27:18, 27:20, 27:21 Phillips [22] - 2:4, 4:13, 4:13, 5:1, 18:1, 18:2, 18:2, 20:9, 20:16, 20:23, 21:9, 21:14, 21:17, 21:23, 22:6, 22:20, 23:23, 38:12, 40:19, 48:6, 48:17, 51:9 piece [2] - 44:1, 55:22 placed 6:3 places [2] - 35:13, 35:14 plan [2] - 16:6, 30:25 Planning 3:20 plant [4] - 34:5, 35:17, 36:14, 37:7 platform 37:5 players 35:1 playing 32:19 plead 32:23 please [2] - 33:25, 50:11 point [10] - 7:12, 14:20, 17:2, 30:3, 39:10, 41:14, 44:8, 46:16, 48:18, 53:11 points 44:5 pole [50] - 1:4,</p>	<p>3:11, 7:12, 9:16, 12:1, 12:5, 13:18, 14:2, 14:5, 17:5, 18:3, 18:16, 18:23, 19:10, 23:1, 26:8, 30:1, 30:15, 30:16, 30:17, 30:21, 30:23, 30:24, 32:21, 33:19, 34:8, 34:23, 35:15, 35:15, 35:16, 36:14, 38:5, 38:7, 38:7, 38:22, 39:3, 39:13, 39:23, 40:8, 40:12, 41:2, 41:4, 41:9, 44:18, 45:3, 48:9, 55:4, 55:19, 55:22, 55:25 pole-owning [9] - 11:11, 28:14, 30:19, 34:13, 34:16, 35:4, 35:25, 37:16, 54:2 poles [14] - 22:14, 28:22, 30:18, 31:1, 34:4, 36:11, 36:13, 39:6, 39:11, 40:12, 40:13, 41:4, 41:8, 41:17 policies [2] - 16:20, 25:6 policy [27] - 3:6, 3:20, 11:23, 16:11, 18:12, 22:4, 22:8, 22:17, 25:6, 25:12, 25:14, 25:21, 28:13, 34:16, 35:11, 35:12, 35:19, 36:3, 36:18, 37:19, 41:6, 41:18, 42:15, 42:17, 42:18, 43:6, 43:7 pop 19:12 population 32:18 Porter [7] - 2:10, 3:18, 8:9, 21:20, 21:21, 23:8, 23:20 portion 35:20 position [4] - 7:18, 11:3, 20:10, 39:25 post [2] - 50:6,</p>	<p>51:5 posted [2] - 52:2, 53:15 posting 50:9 potential 23:16 potentially 8:22 Power [5] - 5:8, 5:10, 10:18, 12:7, 29:4 powerful 16:7 practical [2] - 11:25, 38:3 pre-existing 47:13 predicated 35:7 premature 19:20 prepared 54:23 present [2] - 25:12, 49:16 President 4:23 presumably 21:24 presume [3] - 38:2, 40:20, 51:17 presumption [10] - 9:15, 13:6, 15:11, 25:20, 25:23, 26:1, 38:14, 38:15, 38:17, 39:8 presumptions [3] - 25:24, 26:8, 39:20 prevail 37:20 previously 10:2 primary 33:11 Primmer 4:14 principles [2] - 13:8, 46:15 print 6:11 probably [6] - 17:15, 37:4, 37:5, 37:6, 53:4, 53:7 problem [6] - 12:11, 20:21, 22:5, 28:12, 33:22, 46:8 procedure 52:9 Procedures 25:1 proceed [2] - 7:17, 24:21 proceeding [15] - 6:17, 6:19, 7:9, 7:14, 8:2, 13:5, 13:16, 21:25, 24:1, 25:17, 26:3, 51:7, 52:22, 53:21, 56:8 proceedings [3] -</p>	<p>52:12, 53:14, 57:12 process [16] - 6:20, 9:23, 12:15, 13:22, 14:18, 18:9, 19:25, 26:19, 42:13, 45:11, 47:14, 48:2, 49:2, 52:8, 52:25, 54:20 produce 20:14 profession 32:1 promote 16:21 promptly 26:6 proposal 10:9 propose 49:1 proposed [6] - 9:3, 9:11, 10:6, 49:25, 50:5, 54:19 prospective 23:19 provide 33:10 provided [2] - 37:1, 40:6 provider 23:10 providers 22:13 provides 18:21 providing [2] - 22:1, 32:12 provision [2] - 33:8, 39:18 provisions 25:6 PSB 53:15 public [12] - 1:1, 1:10, 3:17, 14:14, 14:15, 17:23, 17:24, 36:4, 52:23, 54:9, 54:12, 54:15 pull 45:15 puts 26:6</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <hr/> <p>quality [3] - 27:23, 27:24, 52:15 quick 49:9 quicker 24:15 quickly [2] - 13:25, 14:13 quite 34:24</p> <hr/> <p style="text-align: center;"><b>R</b></p> <hr/> <p>radar 37:2 raise [3] - 40:22, 49:12, 49:14 raised [4] - 10:4, 14:1, 27:2, 55:11</p>	<p>raises [2] - 23:22, 40:3 range 44:21 rapid 33:13 rate [97] - 7:16, 9:6, 9:8, 9:12, 9:12, 10:10, 10:17, 10:19, 10:22, 10:25, 11:3, 11:4, 11:8, 11:8, 11:9, 11:10, 11:13, 11:16, 11:17, 11:19, 11:20, 11:21, 12:3, 12:11, 12:13, 12:17, 12:24, 15:4, 15:18, 15:18, 15:24, 16:1, 16:1, 16:1, 16:5, 16:15, 16:17, 17:6, 18:6, 18:10, 20:8, 20:8, 20:11, 20:12, 20:15, 20:21, 20:23, 20:24, 20:25, 21:1, 21:2, 21:4, 21:5, 21:6, 21:12, 21:12, 22:3, 22:9, 22:16, 22:25, 23:3, 23:6, 23:12, 23:15, 25:8, 27:2, 27:16, 27:17, 29:6, 29:15, 34:23, 35:7, 35:15, 38:20, 39:14, 41:13, 41:15, 41:17, 43:4, 43:5, 43:9, 43:10, 44:11, 44:15, 44:20, 44:24, 45:10, 45:18, 45:21, 45:22, 45:22, 45:23, 45:24, 46:19, 48:12, 48:14, 55:3 rates [13] - 9:18, 9:23, 10:24, 13:11, 13:18, 16:13, 16:18, 30:18, 35:5, 35:16, 46:18, 46:23, 54:25 rather [2] - 39:17, 52:8 ratio [2] - 55:17, 55:18 rationale 32:4 re [2] - 1:3, 57:4</p>
--	--	--	---	--	--



<p>reach [3] - 18:10, 22:24, 35:17  reached 18:10  readily 9:22  ready 17:18  real 23:5  reality [7] - 22:12, 33:2, 34:15, 36:22, 36:23, 37:20, 38:18  realize [4] - 20:5, 23:21, 30:9, 37:6  really [26] - 9:18, 9:19, 15:13, 15:16, 15:19, 17:1, 17:17, 18:9, 18:12, 20:20, 24:22, 27:5, 29:16, 31:2, 33:5, 39:25, 41:9, 42:4, 43:19, 45:20, 46:10, 47:14, 47:16, 47:19, 49:13, 56:4  reason [9] - 15:22, 17:19, 24:12, 34:23, 34:24, 38:19, 41:1, 42:19, 47:1  reasonable 10:21  reasons [3] - 22:5, 25:12, 28:13  rebut 26:1  rebutted [2] - 9:15, 25:24  receive [2] - 32:9, 49:20  recent 18:19  recently [2] - 15:24, 46:21  recognition 16:2  recognize 41:25  recognized 16:25  recorded 57:4  redesign 53:7  redesigning 53:1  redo 43:8  reduced 57:10  redundant 8:21  reexamine 33:1  referenced 53:12  refers 22:7  reflected 18:8  reflection 38:18  refute 18:12  regard 26:25  regarding [3] - 1:4, 3:8, 3:10  region [2] - 25:5, 32:20</p>	<p>regulated 46:23  regulation 8:10  regulations 26:23  regulatory [4] - 4:2, 4:10, 21:3, 24:5  reiterate 15:9  reiterating 7:3  relate [2] - 14:3, 30:4  related [4] - 9:10, 10:6, 33:8, 57:13  relatively [2] - 24:16, 38:8  relevance 36:16  relieve 33:22  relook 43:8  reluctance 48:5  rely [2] - 42:6, 45:25  relying 41:23  remain 30:7  remaining 27:21  remedy [2] - 39:21, 39:22  remembers 26:18  reminded 12:20  rental [4] - 1:4, 3:11, 32:21, 39:1  reopen 44:7  replaced 28:23  REPORTERS 1:22  representing [2] - 4:4, 4:9  request [2] - 27:5, 39:11  requirement 28:22  requirements [2] - 53:10, 53:10  requires [2] - 14:14, 14:14  resolution 33:13  resolve [7] - 7:9, 19:9, 19:13, 20:20, 23:5, 27:18, 37:10  resolved [5] - 8:12, 19:2, 19:7, 22:22, 25:18  resolves 26:6  resolving 21:3  respect 32:2  respond [2] - 37:25, 38:12  responded 24:18  rest [8] - 15:13, 15:21, 16:19, 26:7, 26:11,</p>	<p>32:20, 46:11, 51:25  result [3] - 28:8, 39:13, 46:13  resulted 35:12  results 16:13  retired 32:2  retroactivity 27:6  return [3] - 40:15, 55:21, 55:24  revamped 34:10  revenue [13] - 11:11, 11:14, 28:8, 29:13, 29:15, 33:4, 38:1, 38:6, 38:7, 38:8, 38:23, 39:23, 55:19  reviewed [2] - 10:1, 44:14  revised 9:24  revisions 36:6  rights [3] - 47:4, 47:6, 47:22  RLEC 4:17  RLECs 2:4  road 16:7  rolling 17:18  Roof 31:24  room [3] - 1:11, 3:13, 57:5  rounds 14:10  rule [57] - 1:3, 3:10, 7:15, 8:3, 9:15, 9:18, 9:20, 10:6, 10:21, 12:9, 14:7, 14:13, 14:14, 15:11, 16:3, 18:5, 18:6, 18:16, 18:21, 18:21, 18:22, 19:3, 19:4, 19:13, 20:7, 24:20, 25:21, 28:9, 28:24, 29:11, 29:14, 31:22, 32:5, 32:11, 33:2, 34:7, 34:8, 34:11, 35:6, 35:10, 36:5, 36:18, 36:25, 37:12, 37:14, 39:8, 39:18, 40:1, 40:1, 41:6, 42:14, 42:22, 45:14, 48:8, 48:15, 54:19, 57:4  rulemaking [28] - 8:13, 9:11, 13:2, 19:15, 19:19, 19:23, 20:1,</p>	<p>23:19, 24:2, 24:11, 24:14, 24:21, 25:19, 26:5, 27:3, 27:7, 28:4, 28:10, 28:18, 29:5, 38:2, 38:4, 38:10, 42:13, 46:22, 49:10, 50:8, 54:18  rules [7] - 9:7, 15:25, 27:13, 27:24, 49:11, 53:13, 53:15  ruling [4] - 19:11, 19:21, 27:5, 27:9  rural [2] - 32:17, 35:18</p> <hr/> <p style="text-align: center;"><b>S</b></p> <hr/> <p>sat 40:23  saying [5] - 20:19, 27:4, 40:10, 48:6, 48:16  says [2] - 32:11, 36:9  schedule [10] - 14:21, 17:14, 17:18, 20:1, 26:5, 50:1, 50:5, 54:7, 54:14, 54:14  scheduling 14:20  scheme [3] - 17:22, 24:16, 25:1  scope [11] - 6:18, 7:25, 8:2, 8:7, 9:3, 9:5, 10:7, 13:5, 13:16, 24:23, 48:1  scores 45:4  Scott [2] - 2:8, 5:7  Sears 57:3  Secretary [2] - 17:21, 54:11  section 53:15  seeing 35:4  seek 9:5  seem 10:5  seems [5] - 24:4, 24:11, 24:20, 38:13, 39:20  segments 31:1  self 9:12  semblance 38:23  Senior [2] - 3:24, 4:10  sense [2] - 25:10, 32:3</p>	<p>sent [2] - 49:24, 49:25  separate 16:15  separately 27:8  September 57:17  serious 51:10  serve [2] - 51:1, 51:4  served 36:4  service [20] - 1:1, 1:11, 3:17, 6:10, 8:11, 22:2, 23:11, 27:22, 27:24, 32:12, 33:7, 33:8, 33:9, 33:10, 34:21, 34:22, 37:1, 50:17, 50:20, 52:15  services 38:25  sets 25:2  setting 49:1  settle 41:14  settlement 12:15  several [2] - 7:25, 44:12  share 29:12  sheets 6:3  shifted 33:17  shifting 30:20  shifts 21:6  Shoreham [3] - 18:18, 18:18, 40:25  short [4] - 8:23, 17:5, 30:11, 31:15  shouldn't [4] - 24:7, 24:8, 33:7, 48:13  shudder 34:15  Sichak [3] - 2:5, 3:23, 3:23  sign-in 6:3  signed 6:5  significant [3] - 14:7, 14:12, 35:20  Simard [3] - 2:15, 5:13, 5:13  simply [7] - 10:4, 15:11, 18:11, 21:6, 29:14, 39:6, 43:5  sincerely 32:25  single [2] - 12:17, 55:2  site [5] - 50:7, 50:17, 52:2, 53:1, 53:12  situation [3] -</p>	<p>11:12, 12:8, 45:9  six [5] - 4:20, 24:3, 24:10, 24:14, 24:15  slows 32:16  software 33:21  solicit 13:24  solid 25:8  solidify 22:25  solves 12:11  somebody [2] - 49:12, 51:3  somewhere 6:3  sorry [3] - 35:3, 40:25, 49:18  sort [7] - 21:21, 23:24, 29:10, 34:9, 34:10, 54:20, 54:24  sounds 31:23  southern 35:18  Sovernet [2] - 2:2, 4:1  space [18] - 9:14, 12:21, 13:6, 13:13, 15:12, 29:2, 32:9, 34:13, 37:3, 38:16, 38:18, 39:12, 46:13, 47:13, 48:8, 48:9, 48:14, 55:25  speak 40:20  speaking 31:14  special [2] - 12:4, 19:2  spend 7:3  spoke 34:3  squarely 55:11  stable 45:8  staff [3] - 1:15, 1:16, 3:4  stage 10:1  stake 24:6  stand [4] - 12:16, 31:23, 37:14, 48:18  start [5] - 3:15, 7:6, 17:22, 45:13, 50:9  started [2] - 3:3, 23:10  starting [2] - 14:20, 54:19  state [13] - 1:1, 1:8, 1:11, 4:23, 17:21, 21:8, 22:10, 23:1, 25:10, 30:7, 52:21, 53:5, 57:6</p>
--	---	---	--	--	---

<p>state's [2] - 33:20, 54:11</p> <p>statement [3] - 16:11, 37:23, 41:18</p> <p>states [11] - 13:10, 13:19, 15:20, 15:22, 16:14, 17:3, 25:5, 42:23, 45:5, 46:3, 46:4</p> <p>statewide 30:14</p> <p>status 30:17</p> <p>statutory [4] - 17:21, 24:16, 25:1, 30:8</p> <p>stenograph 57:11</p> <p>stenographic 57:4</p> <p>stenographically 57:9</p> <p>step [6] - 15:5, 15:19, 26:7, 42:23, 46:11, 46:12</p> <p>Stephen [2] - 2:15, 5:25</p> <p>steps 49:1</p> <p>Steve 29:23</p> <p>Stevenson [3] - 2:9, 4:23, 4:25</p> <p>stick 42:9</p> <p>sticking 9:3</p> <p>Storrow [3] - 2:13, 5:16, 5:16</p> <p>Street [3] - 1:8, 1:11, 57:6</p> <p>strikes 23:24</p> <p>strong 49:6</p> <p>struck 18:4</p> <p>structure 12:9</p> <p>stuck 42:18</p> <p>subject [2] - 10:6, 23:11</p> <p>submitted 53:24</p> <p>subordinate [3] - 34:17, 35:8, 37:17</p> <p>subsequent [3] - 14:4, 36:5, 51:3</p> <p>subsidize 33:6</p> <p>subsidizing [2] - 17:5, 29:17</p> <p>substantial 17:17</p> <p>substantially 53:1</p> <p>subtext 33:5</p> <p>suddenly 21:11</p> <p>suggest [2] - 48:22, 52:19</p> <p>suggesting 54:6</p>	<p>superior 47:6</p> <p>support 25:7</p> <p>supporters 18:5</p> <p>supportive 15:10</p> <p>supports 14:8</p> <p>supposition 32:5</p> <p>Supreme [2] - 17:3, 44:14</p> <p>surgically 37:9</p> <p>survey [3] - 39:11, 39:14, 48:9</p> <p>Susan [2] - 1:11, 57:5</p> <p>sweat 42:16</p> <p>Sweeney [2] - 2:5, 3:21</p> <p>symmetric 30:6</p> <p>sympathize 33:4</p> <p>symptoms 19:18</p> <p>systems 53:5</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p>taken [4] - 45:7, 53:11, 57:9, 57:11</p> <p>taking [3] - 43:5, 43:7, 55:19</p> <p>tariff [6] - 14:4, 18:24, 18:25, 26:1, 26:2, 41:12</p> <p>Tarrant [8] - 2:7, 4:8, 4:8, 17:10, 17:11, 24:10, 24:25, 54:7</p> <p>taxes 55:21</p> <p>technology [5] - 32:6, 32:7, 36:19, 39:5, 42:19</p> <p>teeth 28:21</p> <p>telecom [7] - 15:25, 15:25, 20:11, 27:13, 27:22, 45:22, 45:23</p> <p>telecommunicatio [5] - 20:11, 21:2, 31:16, 52:14, 53:13</p> <p>telephone [5] - 4:16, 4:19, 23:11, 32:12, 33:10</p> <p>telephony [3] - 34:23, 36:24, 37:5</p> <p>television 37:1</p> <p>tells 55:7</p> <p>tenants [2] - 30:16, 30:18</p> <p>tentative 52:1</p>	<p>term 32:14</p> <p>terminate [2] - 41:2, 41:10</p> <p>terms [9] - 8:24, 9:19, 10:4, 11:11, 13:2, 26:7, 46:13, 46:22, 48:1</p> <p>testimony [2] - 25:17, 57:9</p> <p>thank [12] - 6:12, 9:2, 15:8, 31:9, 31:10, 33:23, 37:21, 37:22, 47:24, 47:25, 48:18, 56:6</p> <p>thereafter 57:9</p> <p>thereto 57:14</p> <p>thing [5] - 26:25, 27:11, 37:13, 42:24, 52:14</p> <p>third [4] - 27:14, 38:22, 40:8, 40:12</p> <p>Thomae [9] - 2:13, 5:19, 5:19, 31:14, 52:8, 52:11, 52:17, 53:16, 53:23</p> <p>though [4] - 32:10, 33:12, 38:13, 55:16</p> <p>thoughts [2] - 14:18, 29:22</p> <p>throw 45:16</p> <p>throwing 37:11</p> <p>tied 10:17</p> <p>timing 8:24</p> <p>Title 31:19</p> <p>today [16] - 3:2, 3:5, 3:8, 3:14, 3:17, 3:21, 6:13, 10:24, 12:12, 31:7, 36:16, 43:15, 48:23, 49:5, 52:22, 55:11</p> <p>today's 42:17</p> <p>tool 31:3</p> <p>topic [2] - 14:19, 43:20</p> <p>Topsham 4:20</p> <p>total [2] - 38:6, 53:6</p> <p>totally 36:19</p> <p>touch [2] - 8:12, 26:11</p> <p>towards 42:17</p> <p>tradition [2] - 31:24, 31:24</p> <p>traditional 34:21</p>	<p>transcript 57:11</p> <p>transitioning 53:5</p> <p>tremendous 44:10</p> <p>tried 52:5</p> <p>troubles 39:24</p> <p>true 10:18</p> <p>tug 36:1</p> <p>turned 24:19</p> <p>tweaking 45:13</p> <p>twisted 37:7</p> <p>two-foot [32] - 7:16, 10:24, 11:3, 11:9, 11:10, 12:3, 12:13, 15:4, 15:15, 15:18, 16:17, 20:8, 20:12, 20:15, 21:11, 22:9, 22:16, 22:25, 23:11, 25:4, 27:1, 27:16, 29:2, 36:17, 37:14, 38:14, 38:20, 41:17, 45:18, 46:19, 48:12, 48:13</p> <p>two-phase 26:19</p> <p>type [3] - 38:3, 48:24, 48:25</p> <p>typewriting 57:10</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p>U.S 44:14</p> <p>ultimately [5] - 17:20, 35:19, 36:3, 37:18, 37:18</p> <p>uncertainty 12:8</p> <p>undermined 25:7</p> <p>understand [9] - 11:6, 11:16, 22:21, 28:12, 30:19, 33:3, 39:7, 42:7, 56:2</p> <p>understanding [4] - 12:1, 36:20, 39:25, 40:22</p> <p>undertaken 45:12</p> <p>undue [2] - 24:7, 24:11</p> <p>unhappy 33:23</p> <p>unified [12] - 11:17, 15:15, 15:17, 20:8, 20:21, 20:23, 20:24, 20:25, 21:12, 25:8, 31:1, 55:3</p>	<p>uniform [3] - 16:5, 17:1, 29:6</p> <p>uniformity 16:25</p> <p>uniformly 15:23</p> <p>unify [6] - 11:7, 11:8, 11:9, 11:9, 21:5, 43:10</p> <p>unifying 21:2</p> <p>unilateral 28:8</p> <p>union [2] - 30:22, 31:17</p> <p>unitary 10:22</p> <p>United [3] - 1:11, 17:3, 57:5</p> <p>unnecessary 19:20</p> <p>unrealistic 37:15</p> <p>unruly 8:5</p> <p>up-to-date 6:8</p> <p>update 52:2</p> <p>updated [2] - 34:10, 53:7</p> <p>updating 14:6</p> <p>upon [3] - 23:9, 39:5, 55:13</p> <p>usable [4] - 9:14, 12:21, 34:13, 48:8</p> <p>user 35:8</p> <p>users [2] - 34:17, 37:17</p> <p>using [3] - 13:12, 13:13, 46:12</p> <p>usurped 36:18</p> <p>usurps 36:3</p> <p>utilities [11] - 8:1, 11:11, 11:14, 28:10, 30:20, 32:16, 34:13, 34:16, 35:4, 37:16, 54:3</p> <p>utility [5] - 33:18, 33:21, 35:25, 38:6, 38:7</p> <p>utility's 28:14</p> <p>utilize 39:18</p> <hr/> <p style="text-align: center;"><b>V</b></p> <hr/> <p>V.P 4:2</p> <p>Valleynet [4] - 2:12, 2:12, 5:18, 5:23</p> <p>variables 29:8</p> <p>various 7:12</p> <p>vast [2] - 22:25, 35:21</p> <p>vastly 41:16</p> <p>VEC 2:16</p> <p>VEC's 29:12</p>	<p>verify 49:23</p> <p>Vermont [30] - 1:1, 1:8, 1:10, 1:12, 1:23, 4:16, 4:17, 5:3, 5:6, 15:19, 16:18, 16:22, 17:8, 22:9, 26:6, 28:6, 31:16, 32:17, 32:25, 35:13, 35:18, 42:22, 42:25, 44:9, 45:14, 45:15, 45:19, 46:5, 57:6, 57:16</p> <p>Vermont's [2] - 13:18, 16:13</p> <p>versus [2] - 15:15, 18:24</p> <p>vetted 46:1</p> <p>via [2] - 51:1, 51:4</p> <p>Vickie [4] - 2:16, 5:5, 26:14, 28:6</p> <p>view [8] - 9:9, 10:15, 19:22, 19:22, 30:3, 37:19, 41:5, 46:20</p> <p>views [2] - 29:5, 48:4</p> <p>virtually [3] - 15:21, 21:7, 45:6</p> <p>VoIP [23] - 8:11, 12:10, 19:7, 19:17, 19:21, 20:5, 20:6, 20:10, 20:20, 21:1, 21:4, 21:6, 21:23, 23:10, 23:25, 26:18, 26:20, 26:24, 26:24, 27:11, 27:14, 27:19, 27:21</p> <p>VPPSA [2] - 2:15, 5:13</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p>wait [3] - 27:19, 47:9, 47:10</p> <p>waiting [3] - 19:11, 19:17, 47:16</p> <p>Waitsfield [7] - 4:20, 10:19, 18:17, 18:17, 41:1, 41:2, 41:9</p> <p>wanted [7] - 6:24, 13:3, 15:2, 24:15, 37:23, 37:25, 41:2</p>
--	--	---	--	---	---

<p>wants 17:13  war 36:1  Washington 5:15  web [6] - 50:7,  50:17, 52:2,  52:11, 53:1,  53:12  WEC 2:4  week [2] - 9:4,  49:3  weeks 54:10  what's [9] - 7:3,  9:14, 16:5, 19:5,  29:6, 36:16,  42:22, 42:24,  43:14  whatever [3] -  12:12, 39:15,  42:19  whereas 23:2  Whereupon 56:8  whether [10] -  15:3, 15:15, 23:6,  25:20, 27:1,  35:24, 37:16,  37:17, 42:2,  54:25  Whitaker [8] -  2:15, 5:25, 5:25,  29:23, 29:23,  50:15, 50:23,  54:1  whole [5] - 20:5,  37:13, 43:6,  45:15, 47:4  Willette [3] - 2:4,  5:14, 5:14  Williston 57:16  window 37:11  wins 37:18  wish 38:10  within 36:10  won't 36:15  workable 19:1  works 52:24  workshop [5] -  1:10, 3:7, 3:8,  49:6, 57:4  worried 45:1  wouldn't [3] -  23:18, 28:17,  53:17  written [4] - 7:2,  7:4, 49:13, 53:24  wrong [2] - 11:4,  11:5  wrung 45:7</p>	<p style="text-align: center;"><u>Y</u></p> <p>Yeah [4] - 17:11,  29:23, 50:4, 51:8  Young [31] - 1:16,  3:6, 6:25, 8:18,  10:8, 10:12, 11:2,  20:3, 20:13,  20:18, 21:7,  21:10, 21:16,  21:20, 22:19,  23:17, 23:21,  40:3, 43:2, 49:9,  49:22, 50:19,  50:24, 51:8,  51:10, 51:15,  51:21, 52:25,  53:20, 54:16,  56:1  yourself 3:13  yourselves 7:10</p>				
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