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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

July 8, 2009 - 10:16 a.m.  
Concord, New Hampshire

RE: DT 09-059  
FAIRPOINT COMMUNICATIONS, INC.:  
Petition of FairPoint Communications  
for Waiver of Certain Requirements  
Under the Performance Assurance Plan  
and Carrier to Carrier Guidelines.  
(Prehearing conference)

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

Sandy Deno, Clerk

APPEARANCES: Reptg. FairPoint Communications, Inc.:  
Harry Malone, Esq. (Devine, Millimet...)  
Michael Morrissey, Esq.

Reptg. BayRing Communications:  
Alan M. Shoer, Esq.

Reptg. CRC Communications of Maine:  
Trina M. Bragdon, Esq.

Reptg. One Communications:  
Paula Foley, Esq.

Reptg. Comcast Phone of New Hampshire:  
Douglas L. Patch, Esq. (Orr & Reno)

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

1

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

3

Reptg. segTEL, Inc.:

Jeremy Katz

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Kath Mullholand

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Reptg. Residential Ratepayers:

Meredith Hatfield, Esq., Consumer Advocate

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Office of Consumer Advocate

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Reptg. PUC Staff:

Robert Hunt, Esq.

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## STATEMENTS OF PRELIMINARY POSITION BY:

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Mr. Malone

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Mr. Shoer

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Ms. Bragdon

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Ms. Foley

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Mr. Patch

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Mr. Katz

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Ms. Hatfield

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Mr. Hunt

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Mr. Morrissey

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1 P R O C E E D I N G S

2 CHAIRMAN GETZ: Okay. Good morning,  
3 everyone. We'll open the prehearing conference in docket  
4 DT 09-059. On March 26, 2009, FairPoint Communications  
5 filed a petition for a waiver of certain requirements  
6 under the Performance Assurance Plan to remove certain  
7 FairPoint reporting obligations under the PAP and carrier  
8 to carrier guidelines and associated penalties with the  
9 PAP. And, on April 6th, 2009, Freedom Ring Communications  
10 filed an objection to the FairPoint petition. An order of  
11 notice was issued on June 8th setting the prehearing  
12 conference for today.

13 I'll note for the record that the  
14 affidavit of publication has been filed. And, we also  
15 have Petitions to Intervene by a number of parties,  
16 including Comcast Phone of New Hampshire and Verizon  
17 Access Transmission, CRC Communications, and segTEL. I  
18 think that's the complete list.

19 Let's take appearances please.

20 MR. MALONE: I'm Harry Malone, with  
21 Devine, Millimet, on behalf of FairPoint Communications.

22 CHAIRMAN GETZ: Good morning.

23 MR. MORRISSEY: And, Michael Morrissey,  
24 also on behalf of FairPoint Communications.

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1 CHAIRMAN GETZ: Good morning.

2 MR. SHOER: Alan Shoer, on behalf of  
3 BayRing Communications.

4 CHAIRMAN GETZ: Good morning.

5 MR. SHOER: Good morning. With me here  
6 is Ben Thayer of BayRing.

7 CHAIRMAN GETZ: Good morning.

8 MS. BRAGDON: Good morning. Trina  
9 Bragdon, on behalf of CRC Communications.

10 CHAIRMAN GETZ: Good morning.

11 MS. FOLEY: Good morning. Paula Foley,  
12 from One Communications. We also filed a Petition to  
13 Intervene in this docket.

14 CHAIRMAN GETZ: Okay. Thank you.

15 MR. PATCH: Good morning. Doug Patch,  
16 from the law firm of Orr & Reno, representing Comcast  
17 Phone of New Hampshire, LLC. And, with me this morning is  
18 are Stacey Parker and James White.

19 CHAIRMAN GETZ: Good morning.

20 MR. KATZ: Good morning. Jeremy Katz,  
21 from segTEL, and with me is Kath Mullholand also.

22 CHAIRMAN GETZ: Good morning.

23 MS. HATFIELD: Good morning,  
24 Commissioners. Meredith Hatfield, for the Office of

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1 Consumer Advocate, on behalf of residential ratepayers.  
2 And, the OCA has not filed a notice of intent to fully  
3 participate in this proceeding. We are here to simply  
4 monitor the case.

5 CHAIRMAN GETZ: Thank you.

6 MS. HATFIELD: Thank you.

7 MR. HUNT: Good morning. Rob Hunt,  
8 Staff attorney, and Kate Bailey, the Director of  
9 Telecommunications.

10 CHAIRMAN GETZ: Okay. Good morning.  
11 Well, then, Mr. Malone, we'll start with you for an  
12 opportunity for a statement of the position of FairPoint.

13 MR. MALONE: Thank you, Mr. Chairman.  
14 In the March 26th petition, FairPoint requested a  
15 temporary waiver for the month of March of billing credits  
16 due to CLECs for certain metrics under the terms of the  
17 New Hampshire Performance Assurance Plan, and also a  
18 permanent waiver of other metrics that are no longer  
19 available or applicable.

20 The temporary waiver request qualifies  
21 as an "extraordinary event" waiver, one of the three  
22 reasons that the PAP provides for waivers. The cutover to  
23 new systems was an undertaking that was unparalleled in  
24 the industry, and FairPoint exercised great diligence in

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1 organizing the transition. Despite this effort, there  
2 were still cutover problems that were beyond FairPoint's  
3 foresight and control. Some of the metrics were  
4 unavailable because of programming errors that were not  
5 revealed until after cutover and the systems went live.  
6 For other metrics, some of the comparative data necessary  
7 to generate them was not available as a result of manual  
8 order processing or a delay in the billing cycle. These  
9 were situations that normal and reasonable preparations  
10 could not prevent. Thus, the cutover is extraordinary  
11 event for which a waiver is appropriate.

12 In regard to the permanent waiver, the  
13 Commission should grant this request as a policy matter,  
14 because these metrics are now either irrelevant or  
15 unreasonably burdensome to produce. Due to the design of  
16 the new systems, the comparative data for certain metrics  
17 can no longer be generated without significant  
18 reprogramming. Some of these metrics can be replaced by  
19 benchmark evaluations, but others are simply not  
20 available. For other metrics, the services associated  
21 with them are either no longer requested or the orders are  
22 no longer processed in a manner that the metrics  
23 contemplate.

24 It should be emphasized that the  
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1 requested waivers must be viewed in the context of the  
2 public policy underpinnings of the PAP and in no way  
3 reflect a lack of commitment on the part of FairPoint to  
4 provide satisfactory service to its wholesale customers.  
5 The PAP was established to help enforce the  
6 pro-competitive policies of the Telecommunications Act of  
7 1996 and to motivate Verizon to make its operation systems  
8 open to competitors. It does not reflect the realities of  
9 the telecommunications marketplace of 2009. The fact that  
10 for the period prior to the January 2009 cutover the PAP  
11 penalties were minimal is a clear indication that the  
12 policy objectives of the PAP were achieved, and it is  
13 questionable as to whether it has outlived its usefulness.

14 Even if this waiver request is granted,  
15 many other metrics will remain, and FairPoint will  
16 continue to operate in the spirit of the PAP so that the  
17 interests of competition will be preserved. I should also  
18 remind you that the PAP was established to benefit  
19 competition and not individual competitors. Thus, this  
20 request is in the public interest because, while it  
21 maintains the basic integrity of the PAP, it relieves  
22 FairPoint of unnecessary burdens and frees up resources  
23 that can be devoted to improving its overall customer  
24 support. Thank you.

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1 CHAIRMAN GETZ: Okay. Thank you.  
2 Before we turn to Mr. Shoer, though, let me ask this  
3 question: Is there any objections to any of the Petitions  
4 to Intervene in this proceeding?

5 MR. MALONE: No.

6 CHAIRMAN GETZ: Okay. Note that there  
7 are no objections, and recognizing that the various  
8 Petitions to Intervene have demonstrated rights, duties,  
9 privileges or other interests that will be affected by the  
10 proceeding, we'll grant the Petitions to Intervene.  
11 Mr. Shoer.

12 MR. SHOER: Thank you. Thank you,  
13 Commissioner. On behalf of BayRing, we, obviously, have a  
14 strong interest in the PAP and using these metrics. It's  
15 our position that it's impossible to just kind of use this  
16 proceeding to split off into a, really, what is  
17 essentially a very narrow request, without -- without  
18 considering the fact that, at the same time these requests  
19 are going in, FairPoint has ceased paying the obligated --  
20 ceased its obligations to make payments under the PAP, and  
21 has, in our view, not only violated the spirit of the PAP,  
22 contrary to what Mr. Malone just said, but it's also  
23 violating the law and the requirements imposed by this  
24 Commission to oversee the PAP while we work towards a

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1       simplified version. This was not the -- This was not the  
2       way that this agreement was constructed when the  
3       Commission conditioned its order.

4                       This is a piecemeal approach. There  
5       should be a comprehensive look at the PAP, with a  
6       simplified version, as all -- all parties agreed that,  
7       well, at least as far as BayRing and the other companies  
8       agreed with FairPoint. This was not the process that we  
9       signed on to, this was not the process that the Commission  
10      ordered. So, we generally object to that.

11                      Asking us to go through these individual  
12      metrics right now, while we're essentially being dangled  
13      over the cliff in a choke hold, with payments being  
14      withheld, significant payments being withheld, on a  
15      monthly basis, is an impossible -- an impossible situation  
16      for us to -- to objectively, you know, provide input,  
17      without having the Commission at least order in the  
18      meantime that those payments and that the spirit and the  
19      letter of the PAP be followed. Once that order is in  
20      place, once the Commission takes it upon itself to declare  
21      that it will not allow FairPoint to unilaterally determine  
22      when it will ignore the PAP, when it will ignore its  
23      payment obligations, then we can get into a, I think, a  
24      serious discussion about individual metrics and

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1 cooperatively develop a simplified PAP, and not approach  
2 it in this piecemeal approach.

3 There was supposed to be a simplified  
4 proposal, a PAP proposed with simplified metrics. I don't  
5 think that's been filed in New Hampshire yet. I believe  
6 it's been filed in Maine. It was ordered to be filed in  
7 Maine. I think it was filed in Vermont. I don't know why  
8 it was not filed in New Hampshire for the benefit of the  
9 New Hampshire CLECs that are here. That's where we should  
10 be focusing our intention, not on -- not on picking off  
11 these individual metrics, while our payments are being  
12 withheld at the same time. That's the overall general  
13 problem we have with that.

14 As far as the actual specific petition,  
15 our objections were filed. We pointed out that, as far as  
16 we're concerned, that this is -- that the waiver requests  
17 that are being requested here are not authorized under the  
18 PAP, number one. And, if we go through the sections of  
19 the PAP, we do not believe they authorize the type of  
20 relief that FairPoint is seeking here.

21 Number two -- Number two, we do not  
22 believe that this, essentially, that this isn't the way  
23 that this process should move forward, without having  
24 these larger issues consolidated.

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1 CHAIRMAN GETZ: Thank you. Ms. Bragdon.

2 MS. BRAGDON: Good morning. I'll talk  
3 first in general, and then in specifics. Our general  
4 position is that we're very concerned about any PAP waiver  
5 being given, given the assurances that were made by  
6 FairPoint during the proceedings, and before cutover, that  
7 they would be able to abide by the PAP. Also, we agree  
8 with BayRing, that the particular circumstances and issues  
9 set forth in FairPoint's waiver request do not meet the  
10 conditions in Section J of the PAP or set forth what the  
11 particulars that the Company must show in order to qualify  
12 for a waiver. We also disagree with the statements made  
13 by FairPoint regarding the purpose of the PAP and the  
14 particular circumstances. And, at some point, I don't  
15 know if this is the right time, we'd like to be heard sort  
16 of on those details and also on this latest waiver request  
17 for the February through June penalties.

18 As to the very specifics in the  
19 petition, I think that those issues can be addressed.  
20 There's a collaborative process that's been started  
21 between the CLECs and FairPoint in all three states to  
22 work towards a new PAP. And, some of the particular  
23 issues raised in the petition would probably be best  
24 suited in those discussions. Some other metrics are

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1 particularly concerning, because now FairPoint is coming  
2 forth and saying, you know, "our new CS systems can't  
3 measure these things." And, that's of particular concern,  
4 because there were assurances made throughout the process  
5 that FairPoint would -- new systems would be able to  
6 measure everything. And, so, we would object to waiver of  
7 those without further consideration.

8 And, I will note that, in Maine, we  
9 learned that FairPoint and Capgemini was aware of this  
10 inability to measure over a year ago. And, that concerns  
11 us that it's just coming out now. So, thank you.

12 CHAIRMAN GETZ: Thank you. Ms. Foley.

13 MS. FOLEY: Thank you. On behalf of One  
14 Communications, we agree with the objection filed by  
15 BayRing back in April of '09. And, we also agree with the  
16 statements that BayRing made this morning, and also CRC.  
17 It's our position that FairPoint does not meet the grounds  
18 for a PAP waiver under the "uncontrollable events"  
19 standard. The terms of the PAP do not allow a PAP waiver  
20 to apply to parity metrics. And, the PAP also requires  
21 that petitions for waiver be filed within 45 days of the  
22 end of the month in which the uncontrollable event  
23 occurred. FairPoint does not meet either one of those  
24 standards.

1 FairPoint developed its systems, and  
2 that was not an uncontrollable event. FairPoint made the  
3 decision not to abide by the PAP because it would be too  
4 costly and inefficient to do so. However, approval of PAP  
5 qualifications is required before the modifications are  
6 implemented. Rather than seek to modify the PAP  
7 requirements, FairPoint decided not to comply and to seek  
8 retroactive approval of the changes that it implemented.  
9 Therefore, FairPoint does not meet the requirements of the  
10 PUC's approval order that FairPoint be subject to the  
11 current PAP.

12 And, lastly, permanent revisions to the  
13 PAP must be part of the collaborative process that's  
14 already underway between CLECs and FairPoint to revise the  
15 PAP. Thank you.

16 CHAIRMAN GETZ: Thank you. Mr. Patch.

17 MR. PATCH: Thank you, Mr. Chairman.

18 I'm Doug Patch, representing Comcast Phone of New  
19 Hampshire, LLC. We appreciate the opportunity to offer  
20 some brief comments this morning. In general, it is  
21 Comcast's position that the existing FairPoint Performance  
22 Assurance Plan in New Hampshire should remain in effect  
23 until a new three-state PAP and carrier to carrier  
24 guidelines covering Maine, New Hampshire and Vermont are

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1       adopted in a collaborative process that involves  
2       FairPoint, the staffs of the three state commissions, and  
3       wholesale customers.

4                       Comcast Phone also opposes FairPoint's  
5       proposal to eliminate or waive any PAP metrics for its  
6       espoused reasons, that being because FairPoint designed  
7       its systems without the capability to capture the  
8       necessary information.

9                       The Commission specifically considered  
10      the treatment of the PAP in its Order Number 24,823 dated  
11      February 25th, 2008. In fact, the Commission approved the  
12      Settlement Agreement between the Joint Petitioners,  
13      FairPoint and Verizon, and the Commission Staff, which  
14      itself included the Stipulated Settlement by and among  
15      FairPoint and various CLECs. The Stipulated Settlement  
16      provided for only a one month suspension of PAP reporting  
17      and penalties. In Paragraph 6 of the Stipulated  
18      Settlement, FairPoint agreed to adhere to applicable PAP  
19      and carrier to carrier C2C guidelines in the three states,  
20      and be subject to potential penalties and enforcement  
21      mechanisms. FairPoint also agreed, after merging closing,  
22      that it would work cooperatively with CLECs and state  
23      regulatory staff in good faith to develop and implement a  
24      simplified, uniform three-state PAP.

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1                   The Commission approved this treatment  
2       of the PAP in New Hampshire in Order 24,823, the cite for  
3       that is Pages 30 to 32 and Page 76. And, it is for these  
4       reasons that Comcast Phone opposes FairPoint's petition as  
5       a general matter. Comcast Phone, in particular, opposes  
6       any temporary waiver of metrics on the timeliness of daily  
7       usage feed files, the timeliness of carrier bills, or  
8       metrics related to call blocking, order accuracy, or Call  
9       Center speed of answer. Comcast Phone does not oppose the  
10      specific substitution that FairPoint has proposed of  
11      eliminating the metric reporting requirements for Verizon  
12      interfaces that FairPoint does not use, those being EDI,  
13      EB, and CORBA, and replacing them with exactly the same  
14      requirements for the interfaces FairPoint now uses, WISOR,  
15      eWPTS3 [eWPTS?], and Web/GUI. However, Comcast opposes  
16      any grace period for reporting the metrics for the new  
17      interfaces.

18                   Except for the substitution of metrics  
19      for the new FairPoint interfaces, in place of former  
20      Verizon interfaces, all other changes in the PAP should  
21      await a completion of the collaborative three-state  
22      process. Thank you.

23                   CHAIRMAN GETZ: Thank you. Mr. Katz.

24                   MR. KATZ: First, simply to save time,

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1       segTEL agrees with the positions taken by the other CLECs  
2       this morning. Second, segTEL would like to note that we  
3       have not received a single PAP report from FairPoint since  
4       the closing on April 1st, 2008. We've only received two  
5       PAP credit notices, specifying only the amount of the PAP  
6       credit we would receive. SegTEL's ability to participate  
7       constructively and promote our interests in this docket  
8       are impaired without even receiving these reports, being  
9       able to evaluate the effect the proposed changes would  
10      have on our circumstances.

11                       SegTEL has repeatedly tried to get the  
12      reports, and including engaging and accessing our account  
13      team, our single point of contact, management escalation  
14      routes, and finally culminating in correspondence to  
15      Attorneys Morrissey and Coolbroth, as representatives of  
16      FairPoint. None have responded, and we still don't have  
17      these reports. If there's anything at the outset that can  
18      be done that would enhance our ability to participate  
19      constructively in this docket, it would be to find out  
20      where our reports are and when FairPoint intends to  
21      provide them to us.

22                       Next, to the extent that FairPoint is  
23      proposing to evaluate waivers and alterations to the PAP  
24      on policy grounds, rather than legal grounds, segTEL wants

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1 to make sure that policy claims are evaluated against  
2 actual CLEC experience, including testimony, as to how  
3 deep the failures have been in FairPoint's compliance,  
4 both in parity and in actual process.

5 In looking at the damage and the  
6 problems that come about from FairPoint's inability to  
7 maintain wholesale/retail parity, as evidenced by the PAP  
8 credits and failures that have come about, segTEL believes  
9 that prior FCC rulings and experiences underscore the  
10 importance of enforcing the PAP and enforcing parity. We  
11 look back to the year 2000 in the Bell Atlantic consent  
12 decree, in FCC Docket EB-00-IH-0085, where a consent  
13 decree was issued for Bell Atlantic's failure to provide  
14 parity, which started with a mandatory \$3 million fine,  
15 and escalated based on weekly inability to restore  
16 wholesale/retail parity, first with \$4 million and then \$8  
17 million and then \$12 million fines for failure to maintain  
18 parity.

19 That is, in our minds, a sense of  
20 exactly how damaging and how problematic the failure to  
21 abide by the PAP is. And, that's all we have to say for  
22 now. Thank you.

23 CMSR. BELOW: Could I get a  
24 clarification? You said you haven't received any PAP

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1 reports since April 2008?

2 MR. KATZ: Uh-huh.

3 CMSR. BELOW: Are those PAP reports  
4 specific to segTEL?

5 MR. KATZ: Yes.

6 CMSR. BELOW: And, were those required  
7 under the Settlement Agreement with FairPoint --

8 MR. KATZ: Yes.

9 CMSR. BELOW: -- and the CLECs? Okay.

10 MR. KATZ: They were required by the  
11 PAP.

12 CHAIRMAN GETZ: Ms. Hatfield.

13 MS. HATFIELD: Thank you, Mr. Chairman.

14 As I said in my appearance, the OCA has not filed a letter  
15 to formally be a part of this proceeding. But we are here  
16 to monitor, in light of the fact that we see this as  
17 further evidence of FairPoint's failure to stand behind  
18 many of the promises that they made to the State in the  
19 Settlement Agreement that they signed with several  
20 parties. And, we would urge the Commission, in  
21 consideration of this docket, as well as the more recent  
22 docket 09-113, in which FairPoint seeks waivers for PAP  
23 penalties, that the Commission take these dockets in  
24 consideration, in conjunction with several other open

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1 issues with respect to FairPoint, and not allow the  
2 Company to have the Commission look at these things  
3 separately. We view them as part of a much larger problem  
4 that requires immediate action. Thank you.

5 CHAIRMAN GETZ: Mr. Hunt.

6 MR. HUNT: Thank you. First, Staff  
7 doesn't necessarily agree that the events leading to this  
8 filing for a waiver of certain PAP matrix [metrics?] are  
9 necessarily "extraordinary" or "uncontrollable". On the  
10 other hand, it looks as though some of the requests are  
11 reasonable and could legitimately be granted in terms of a  
12 waiver.

13 And, basically, we look forward to  
14 discussing those issues with the parties during the tech  
15 session.

16 CHAIRMAN GETZ: Okay. Before I give  
17 Mr. Malone an opportunity to respond, normally, we would  
18 have a tech session following the prehearing conference.  
19 I guess I'm concerned about how useful that will be,  
20 because we've gotten, at least to my understanding of the  
21 various positions, effectively a Motion to Dismiss,  
22 suggestions to make certain rulings prior to proceeding,  
23 that would be -- and I think that would be certainly the  
24 way that one of the ways BayRing is characterizing this,

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1       and we've gotten some proposals to broaden the scope.  
2       And, actually, I did want to follow up, Ms. Hatfield, with  
3       you. I think there was a motion or a position by some of  
4       the CLECs to broaden the scope on the PAP. Are you  
5       suggesting to broaden it even further than the CLECs would  
6       suggest?

7                       MS. HATFIELD: Mr. Chairman, thank you.  
8       I would support the CLECs' suggestion that this be part of  
9       the larger conversation about -- with respect to the  
10      commitments made, to go through a collaborative process to  
11      develop a new PAP. I think it also might be appropriate  
12      to consolidate this docket with 09-113.

13                     With respect to the other issues, I'm  
14      not sure what approach the Commission should take,  
15      especially in light of the fact that 07-011, it's unclear  
16      to us whether that's an open docket or whether the  
17      Commission is simply monitoring the Company. And, perhaps  
18      this does call for a new docket, to look at all of the  
19      problems related to cutover, as well as FairPoint's  
20      financial issues, which, as I'm sure you're aware, the OCA  
21      has asked the Commission to do on prior occasions.

22                     So, these issues, the CLEC issues are  
23      distinct in many ways, but, in our view, they are -- they  
24      do seem to be very much related to other problems that the

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1       Company is having recovering from cutover, and the extent  
2       to which financial issues come into play, we think is a  
3       critical issue.

4                       CHAIRMAN GETZ:   Okay.   Well, Mr. Malone,  
5       I will give you the opportunity to respond, of course, to  
6       any of the statements you've heard prior, but I  
7       specifically would like to hear about whether it would be  
8       useful to have a technical session, you know, maybe it's  
9       an agreed upon approach that comes out of it, or maybe  
10      it's alternative recommendations on how we proceed.   But I  
11      don't want to -- I want to make sure that the technical  
12      session is to some useful end, rather than basically what  
13      we get out of it is FairPoint asking us to proceed as  
14      proposed and the CLECs either asking that this be  
15      dismissed or expanded in some way.   And, I guess maybe we  
16      have enough information before us to make that kind of --  
17      take those issues under advisement and make some kind of  
18      ruling.   But let me just give you a chance to respond, and  
19      if anybody else wants to weigh in on process, then I'll  
20      give the opportunity.   So, Mr. Malone.

21                      CMSR. BELOW:   Mr. Chairman, just could I  
22      add another thing to respond to, which is where do you see  
23      the status of the collaborative effort to do an overall  
24      simplification of the PAP, you know, across the three

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1 states, in relation to your request here?

2 MR. MORRISSEY: Mr. Chairman, may I  
3 address that particular issue? In a historical context,  
4 as you know, the PAP in Maine, Vermont, and New Hampshire  
5 was molded on the PAP established in New York and in  
6 Massachusetts. Those PAPs have gone through a, you know,  
7 a simplification process, have -- had been changed. In  
8 these three states, for good reasons, primarily the  
9 merger, that process was put on a back burner, and this is  
10 the restart of that process, as was indicated was going to  
11 occur during the merger talks. That process is likely to  
12 be a long process. And, we're trying to do it on a  
13 collaborative basis, hopefully, on a three-state basis, so  
14 that we have a uniform PAP in the three states in which we  
15 operate. But, realistically, that is going to be a fairly  
16 long process. We would hope to reach consensus, you know,  
17 with FairPoint and the CLECs, as to what would be an  
18 appropriate PAP going forward, but reaching that consensus  
19 will not happen in a short time.

20 In the short time, we're faced with, you  
21 know, technical violations of the PAP, which were the  
22 subject of this particular waiver request. We had the  
23 choice of either being in violation or making a filing  
24 indicating -- requesting a waiver so we would not be in

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1 violation every month, which we would be, because we  
2 simply cannot report those metrics.

3 The other petition regards our request  
4 for relief from the penalties for the particular months,  
5 and those again are somewhat time-sensitive. To roll the  
6 latter two into the overall simplification process, I  
7 don't think would serve anyone's needs. It would probably  
8 even be to the detriment of the CLECs in certain  
9 instances. As an example, as pointed out, we are not  
10 paying the credits for the relief that we sought in terms  
11 of the penalties. If, in fact, that was deferred, and, in  
12 fact, the penalties were paid, while that was deferred, I  
13 believe the CLECs would have a problem as "how do they  
14 report those credits?" Since they are still subject to an  
15 ongoing investigation of a possible waiver.

16 And, for those reasons, we would ask  
17 that the first two, the two petitions, the waivers before  
18 the Commission be decided in a timely fashion, and not be  
19 rolled into the general PAP simplification process, which  
20 we believe will take a long time.

21 CHAIRMAN GETZ: Can you explain a little  
22 bit further on the problem? Did I take it that you're  
23 saying that there's some problem that the CLECs would have  
24 by getting the money?

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1                   MR. MORRISSEY: Well, no, not getting  
2     the money. Not getting the money, although it might be  
3     problematic theoretically. But let's suppose that you  
4     ordered us, thinking hypothetically here, to give the PAP  
5     credits, you know, for those months that we've asked the  
6     waiver. And, yet, there is, because the waiver request is  
7     part of an ongoing proceeding, there's an open question as  
8     to whether those credits will, in fact, inure to the  
9     benefit of the CLECs. In other words, you might rule, if  
10    we were rolled into a long proceeding that goes for a  
11    year, a year from now, that, in fact, FairPoint's waiver  
12    was sound and is granted, then there are credits on the  
13    books which will have to be then reversed. So, there will  
14    be an uncertainty as to how those amounts should be  
15    accounted for by the CLECs.

16                  CHAIRMAN GETZ: Any other issues that  
17    you wanted to respond to or procedural issues?

18                  MR. MALONE: Just one, Mr. Chairman,  
19    regarding the overall urgency of this proceeding. I would  
20    have to disagree with Mr. Shoer in his metaphor of  
21    "dangling over the cliff". Based on the information that  
22    we have, up until the time of the cutover, the PAP penalty  
23    payments or billing credits were a nominal amount,  
24    measured in maybe tens of thousands of dollars a month at

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1     most among all CLECs. We shouldn't get the impression  
2     that this is a stream of payments that they have come to  
3     rely on that's going to have, you know, major effects on  
4     their cash flow in the short-term.

5                     And, you know, I think we also want to  
6     emphasize that FairPoint is not Verizon. And, it's not --  
7     FairPoint doesn't believe it's in their interest to  
8     discriminate against the CLECs or to undermine their  
9     ability to compete. It's a different approach than  
10    Verizon had. And, so, you know, whether we're able to  
11    technically meet the metrics of the PAP, it's still the  
12    Company's intention to offer the best service that they  
13    can to their wholesale customers. Thank you.

14                    CHAIRMAN GETZ: Okay. Let me give an  
15    opportunity solely on process issues, and the -- I guess,  
16    certainly there's no harm, I would suspect, in having a  
17    technical session to see if there's some agreement or some  
18    consensus recommendation on how to proceed. But does  
19    anybody want to address how the technical session might go  
20    and what -- any other procedural issues on where we head?  
21    So, Mr. Shoer.

22                    MR. SHOER: Well, just again, I think,  
23    not to belabor the point, but I think it's difficult to  
24    engage in that type of a process, without the Commission

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1     taking a step to set the ground rules, to set the  
2     framework.

3                     And, with all due respect, I think  
4     Mr. Morrissey -- what Mr. Morrissey is characterizing is  
5     true, with respect to the long process that it's going to  
6     take to get to a final simplified metric plan. But, in  
7     the meantime, this notion that they should essentially  
8     just withhold and hold all of the bill credits, which, by  
9     the way, let's be blunt about it, the bill credits that  
10    are supposed to be provided are in reflection of poor  
11    service quality. So, to ask that for you to hold those  
12    bill credits until what this long process takes place,  
13    essentially punishes the CLECs twice. It says to CLECs,  
14    "you're going to have poor service quality". Because,  
15    contrary to what Mr. Malone said, is that we're dealing  
16    with the FairPoint systems that are providing poor quality  
17    of service today. And, the penalty payments may have been  
18    lower a year ago, two years ago, when Verizon was  
19    providing service, I can tell you for a fact, at least as  
20    far as my client is concerned, BayRing, those penalty  
21    payments have gone up considerably, significantly, as a  
22    reflection of poor service quality.

23                    So, it's just -- it's a bizarre concept  
24    in my mind to suggest that they should be rewarded for

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1 providing poor service quality, and that's what  
2 Mr. Morrissey is suggesting, let them hold that cash back.  
3 We think you have plenty of information at your disposal  
4 right now, you, the Commissioners, with all due respect,  
5 to order them, as a framework for us going forward, to  
6 make those -- to continue to provide the bill credits that  
7 are due the CLECs under the PAP. There's no authority to  
8 allow FairPoint to independently withhold those. They  
9 have no authority to do that.

10 So, with that framework in place, we can  
11 talk about the metrics. But we need that framework from  
12 you.

13 CHAIRMAN GETZ: All right. Thank you.  
14 Mr. Katz.

15 MR. KATZ: The PAP credits, in 2007,  
16 going into the transition service period in 2008, tended  
17 to be low, because Verizon was complying with the law and  
18 they had systems that worked. So, it's really no surprise  
19 that the PAP penalties have ballooned now that the systems  
20 don't work. I agree with Attorney Shoer, but perhaps a  
21 solution to dealing with what happens if credits would  
22 have to be disgorged by one party or the other, would be  
23 for the Commission to set up an escrow account, and  
24 require that the full amount of the PAP determination be

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1     paid into an escrow held at the Commission for the  
2     pendency of this docket. Because, frankly, I think that,  
3     at least at segTEL, and probably among some other CLECs,  
4     there's a concern that, if a million to \$2 million per  
5     month of PAP penalties were to accrue for perhaps the five  
6     to ten months that we might need to go through this  
7     docket, at the end of day that money just might not be in  
8     FairPoint's possession. And, placing it into escrow for  
9     the benefit of however this docket is determined, would  
10    probably be a reasonably equitable solution to detail with  
11    the issues brought about by Attorney Morrissey.

12                   CHAIRMAN GETZ: Thank you. Anyone else  
13    on process? Ms. Bragdon.

14                   MS. BRAGDON: Just on the process issue,  
15    I think it would be worth having the technical session to  
16    talk maybe of some specifics, but also to talk about how  
17    the -- the last waiver that was filed. I know that's not  
18    the docket we're here on today, but it's all interwoven.  
19    And, maybe there would be some discussion during the  
20    technical conference about how to approach that case.  
21    And, in Maine, we have done discovery on the request and  
22    some procedural issues. So, that might be a benefit.

23                   CHAIRMAN GETZ: Thank you. Anyone else?

24                   MR. HUNT: Staff does, Mr. Chairman,

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1 believe that a technical session would help to at least  
2 narrow some issues in this docket, and potentially allow  
3 for a discussion of consolidation of this docket and the  
4 other related docket.

5 CHAIRMAN GETZ: All right. Mr. Malone,  
6 last opportunity.

7 MR. MALONE: Just to say, Mr. Chairman,  
8 that, you know, that under the theme of many of the  
9 comments that you've received from the CLECs have to do  
10 with performance problems. And, FairPoint fully  
11 acknowledges that there have been performance problems.  
12 Paying out bill credits is not going to fix those  
13 problems. What will have a better chance of fixing those  
14 problems is if FairPoint is able to take that cash and  
15 plow it back into fixing the problems that everyone knows  
16 that they have. And, we don't think that escrow is a  
17 particularly good solution to this either, because, as we  
18 mentioned in our petition, and everyone knows, FairPoint  
19 does have cash flow issues, and putting it into escrow  
20 does not help those cash flow issues either.

21 CHAIRMAN GETZ: All right. Thank you.  
22 Then, it does sound like there could be some benefit from  
23 a tech session and a discussion of either narrowing or  
24 defining issues more clearly. So, I guess then we will

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1       close this prehearing conference, wait for a  
2       recommendation from the tech session, and take the matter  
3       under advisement. Thank you, everyone.

4                       (Whereupon the prehearing conference  
5                       ended at 10:53 a.m.)

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