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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

March 9, 2010 - 1:35 p.m.  
Concord, New Hampshire

RE: DT 10-025  
FAIRPOINT COMMUNICATIONS, INC.:  
Reorganization.  
(Prehearing conference)

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

Sandy Deno, Clerk

APPEARANCES: Reptg. FairPoint Communications:  
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Patrick C. McHugh, Esq. (Devine, Millimet...)  
Michael J. Morrissey, Esq.

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

Reptg. Otel Telekom:  
Gregory M. Kennan, Esq. (Fagelbaum & Heller)

Reptg. Comcast Phone of New Hampshire, LLC:  
Susan S. Geiger, Esq. (Orr & Reno)  
Stacey L. Parker, Esq.

Reptg. One Communications:  
Paula Foley, Esq.

COURT REPORTER: STEVEN E. PATNAUDE, LCR NO. 52

1

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6 Reptg. Irene Schmitt:  
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New Hampshire Legal Assistance

7

8 Reptg. PUC Staff Advocates:  
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## I N D E X

		PAGE NO.
1		
2		
3	STATEMENTS OF PRELIMINARY POSITION BY:	
4	Mr. Coolbroth	10, 38
	Mr. Shoer	17
5	Mr. Kennan	21
	Ms. Geiger	25
6	Mr. Linder	27
	Mr. Katz	30
7	Ms. Foley	30
	Ms. Hatfield	32
8	Mr. Roth	32
	Mr. Hunt	35
9		
10	QUESTIONS BY:	
11	Chrmn. Getz	16
	Cmsr. Ignatius	39
12		
13		
14	STATEMENTS RE: ISSUE OF STATUTORY AUTHORITY BY:	
15	Mr. Coolbroth	41, 51
	Mr. Shoer	45
16	Mr. Kennan	46
	Ms. Geiger	47
17	Mr. Linder	47
	Mr. Katz	47
18	Ms. Foley	47
	Ms. Hatfield	47
19	Mr. Roth	47
	Mr. Hunt	49
20		
21	QUESTIONS BY:	
22	Chrmn. Getz	44, 51
	Cmsr. Ignatius	49
23		
24		

1 P R O C E E D I N G

2 CHAIRMAN GETZ: Okay. Good afternoon,  
3 everyone. We'll open the prehearing conference in docket  
4 DT 10-025. On October 26, 2009, FairPoint Communications  
5 and its affiliated entities filed for voluntary  
6 reorganization under Chapter 11 of the United States  
7 Bankruptcy Code in the Bankruptcy Court of the Southern  
8 District of New York. On February 11th, it filed with the  
9 Bankruptcy Court its First Amended Joint Plan of  
10 Reorganization, and, on February 12th, it filed copies of  
11 the same document with the Commission. On February 24,  
12 FairPoint filed with the Commission a petition requesting  
13 certain approvals in connection with the Reorganization  
14 Plan.

15 An Order of Notice was issued on  
16 February 26 setting the prehearing conference for this  
17 afternoon. Among other things, the Order of Notice  
18 pointed out that each party would provide a preliminary  
19 statement of its position with regard to the petition,  
20 that we would provide for argument regarding the statutory  
21 authority that governs the proposed change in control, and  
22 the parties could address the appropriateness of the  
23 proposed procedural schedule.

24 I'll note for the record that so far we  
{DT 10-025} [Prehearing conference] {03-09-10}

1 have received Petitions to Intervene from One  
2 Communications, BayRing, Comcast, Otel, CRC, and I believe  
3 we have an e-mail of a Petition to Intervene from segTEL,  
4 I'm not aware that the hard copy was received. We also  
5 have a Petition to Intervene from the New Hampshire Legal  
6 Assistance. And, we have a Notice of Participation filed  
7 by the Office of Consumer Advocate.

8                   What I'd like to do is proceed in I  
9 guess at least four rounds today. And, we'll start with  
10 the Petitioner, and we'll work our way around the room  
11 clockwise. So, on the first round, let's take  
12 appearances. Then, I want to hear if there's any  
13 objections to any of the Petitions to Intervene. And, you  
14 know, I guess it's entirely possible that there may be  
15 other parties here seeking to intervene, we'll hear that  
16 at that time. Then, we would turn to statements of  
17 position by the parties, and at that time I'd also like to  
18 hear any comments about the proposed procedural schedule.  
19 And, then, finally, we would turn to arguments regarding  
20 the statutory authority applicable to this docket. And,  
21 then, to the extent there are other issues, we would take  
22 that up after the arguments on statutory authority,  
23 because I really want to make sure that we get that done  
24 today. It's hard to judge just how much time will be

{DT 10-025} [Prehearing conference] {03-09-10}

1 spent today in the prehearing conference.

2 But, before taking appearances, I have a  
3 couple of comments about the proposed procedural schedule.  
4 And, first, I'm concerned about the short time for data  
5 requests on the filed testimony, and I think it's set  
6 forth as March 12th. And, I also note that the proposed  
7 procedural schedule has on it May 11 and 12 as beginning  
8 of hearings. We have tentatively reserved the week of May  
9 24th for hearings, and view that as the earliest possible  
10 date that we could have hearings in this proceeding. As a  
11 result, it would seem, even within the proposed procedural  
12 schedule, there weren't room to work in more time for  
13 discovery certainly at the outset. But, having said that,  
14 I want to make clear that we have not made any decision on  
15 the procedural schedule and eager to hear what the parties  
16 have to say about those issues.

17 And, I guess a final issue with the  
18 procedural schedule, as with any proceeding we do and,  
19 usually, at a prehearing conference, it's typically  
20 followed by a technical session, certainly better if the  
21 parties can come to an agreement on a procedural schedule  
22 and provide the opportunity to do that. I don't expect  
23 this afternoon to be working out from the Bench arguments  
24 about what's the appropriate procedural schedule and when

{DT 10-025} [Prehearing conference] {03-09-10}

1 the second round of data requests are going to be filed  
2 and those types of issues. So, if you can work it out  
3 among yourselves, fine, and report it; if you can't, then  
4 we'll get varying proposals on procedural schedules in  
5 writing is what I would anticipate.

6 So, with that, is there anything else  
7 before we begin with appearances?

8 (No verbal response)

9 CHAIRMAN GETZ: All right. Well, let's  
10 start with Mr. Coolbroth.

11 MR. COOLBROTH: Good afternoon, Mr.  
12 Chairman, Commissioners. On behalf of FairPoint  
13 Communications, I'm Fred Coolbroth, with the firm of  
14 Devine, Millimet & Branch. With me today is Patrick  
15 McHugh from our firm and Michael Morrissey from the  
16 Company. Also point out we have a number of executives  
17 from the Company here today, including the Company's  
18 President, Peter Nixon, the Company's Chief Financial  
19 Officer, Al Giammarino, and a whole bunch of other folks  
20 as well.

21 CHAIRMAN GETZ: Good afternoon.

22 MR. MCHUGH: Good afternoon.

23 MR. MORRISSEY: Good afternoon.

24 MR. SHOER: Good afternoon,

{DT 10-025} [Prehearing conference] {03-09-10}

1 Commissioners, Mr. Chairman. On behalf of BayRing  
2 Communications, Alan Shoer. With me as well, we have Ben  
3 Thayer, President of BayRing, we have Darren Winslow, its  
4 Chief Financial Officer, and Wendy Wilusz, its Director of  
5 Operations. Thank you.

6 CHAIRMAN GETZ: Thank you. Good  
7 afternoon.

8 MR. KENNAN: I guess you're looking at  
9 me. Mr. Chairman, good afternoon, Commissioner Below,  
10 Commissioner Ignatius. Gregory Kennan, from the law firm  
11 of Fagelbaum & Heller, LLP, representing Otel Telekom.  
12 And, with me is Mr. Gent Cav, President of Otel Telekom.  
13 Good afternoon.

14 MS. GEIGER: Good afternoon, Mr.  
15 Chairman, Commissioner Below, Commissioner Ignatius. I'm  
16 Susan Geiger, from the law firm of Orr & Reno, on behalf  
17 of Comcast Phone of New Hampshire, LLC. And, with me  
18 today is Stacey Parker and James White of Comcast.

19 CHAIRMAN GETZ: Good afternoon.

20 MR. LINDER: Good afternoon, Mr.  
21 Chairman and Commissioners. My name is Alan Linder. I'm  
22 with New Hampshire Legal Assistance. We represent Irene  
23 Schmitt, a low-income residential basic exchange customer  
24 of the Company.

{DT 10-025} [Prehearing conference] {03-09-10}

1 CHAIRMAN GETZ: Good afternoon.

2 MR. KATZ: Good afternoon. Jeremy Katz,  
3 the Chief Executive Officer of segTEL, with me is Kath  
4 Mullholand, Director of Operations of segTEL.

5 CHAIRMAN GETZ: Good afternoon.

6 MS. FOLEY: Good afternoon. I'm Paula  
7 Foley, Regulatory Counsel for One Communications.

8 CHAIRMAN GETZ: Good afternoon.

9 MS. HATFIELD: Good afternoon,  
10 Commissioners. Meredith Hatfield, for the Office of  
11 Consumer Advocate, on behalf of residential ratepayers.  
12 And, with me for the Office is Rorie Hollenberg.

13 CHAIRMAN GETZ: Good afternoon.

14 MR. ROTH: Good afternoon. Peter Roth,  
15 from the New Hampshire Attorney General's Office, today on  
16 behalf of the Advocates, Staff Advocates of the PUC.

17 CHAIRMAN GETZ: Good afternoon.

18 MR. HUNT: Good afternoon. Rob Hunt, on  
19 behalf of PUC Staff. And, with me here today are Michael  
20 Ladam, David Goyette, and the Director of Consumer  
21 Affairs.

22 CHAIRMAN GETZ: Okay. Thank you. Are  
23 there any objections to any of the Petitions to Intervene?

24 MR. COOLBROTH: No objection, Mr.

{DT 10-025} [Prehearing conference] {03-09-10}

1 Chairman, from FairPoint.

2 CHAIRMAN GETZ: Anyone else?

3 (No verbal response)

4 CHAIRMAN GETZ: Okay. Thank you. Then,  
5 well, having heard no objections, and concluding that the  
6 various parties have demonstrated rights, duties,  
7 interests, privileges that may be affected by this  
8 proceeding, we'll grant the Petitions to Intervene.

9 So, that brings us to statements of  
10 position, including any commentary on procedural schedule.  
11 And, also, one issue I'd like to raise with respect to  
12 procedural schedule, and this goes to essentially the six  
13 competitive local exchange carriers, and raising the issue  
14 of, to the extent that the parties can work together and  
15 that the interests are similar, I think it would be  
16 helpful to the process, especially to discovery, if there  
17 could be some concerted action on that, and I'd ask that  
18 you consider that. And, if you can respond to it, then  
19 please do.

20 So, Mr. Coolbroth.

21 MR. COOLBROTH: Thank you, Mr. Chairman.  
22 In this proceeding, FairPoint is seeking authorizations  
23 necessary to emerge from its Chapter 11 bankruptcy case.  
24 The petition has been filed by three FairPoint entities:

{DT 10-025} [Prehearing conference] {03-09-10}

1 FairPoint Communications, Inc., which is the parent  
2 company; Northern New England Telephone Operations, LLC,  
3 which is the utility company that operates in New  
4 Hampshire, the properties formerly owned by Verizon; and  
5 Northland Telephone Company of Maine, Inc., which is a  
6 rural telephone company that operates predominantly in  
7 Maine, but which also serves somewhere around 300  
8 customers in New Hampshire, in East Conway and Chatham,  
9 New Hampshire. And, I'll collectively refer to the  
10 Applicants as "FairPoint".

11 The events certainly have not gone as  
12 FairPoint had anticipated with the acquisition of the  
13 former Verizon properties. The level of competition,  
14 difficulties with conversion from the Verizon systems to  
15 the new FairPoint systems, and the general economic  
16 recession combined as factors to adversely affect the  
17 Company. Despite efforts to restructure the Company's  
18 debt outside of bankruptcy court, FairPoint was forced to  
19 file for Chapter 11 bankruptcy last October.

20 The petition before you today looks  
21 forward, not back. This company is determined to emerge  
22 from bankruptcy and be the region's premier communications  
23 company. After extensive negotiations, FairPoint has  
24 negotiated a plan of reorganization with senior lenders,

{DT 10-025} [Prehearing conference] {03-09-10}

1 based on Regulatory Settlements reached with negotiating  
2 teams from the three states of Maine, New Hampshire, and  
3 Vermont. In New Hampshire, that state negotiating team  
4 has included representatives of the Attorney General's  
5 Office and Staff Advocates Anne Ross and Kate Bailey. We  
6 will present evidence that the plan will provide a  
7 \$1.7 billion debt reduction for FairPoint and place it on  
8 a strong financial footing. At the same time, the plan  
9 preserves the benefits of the conditions and terms that  
10 the Commission imposed at the time of the acquisition of  
11 the Vermont [Verizon?] properties.

12 With FairPoint's petition, we have  
13 included extensive prefiled testimony, addressing not only  
14 the financial issues, but also management issues, and  
15 evidence regarding the extensive efforts undertaken to  
16 improve FairPoint's operations, from provisioning and flow  
17 through to billing, from service quality performance to  
18 broadband expansion, from providing uncomplicated retail  
19 orders to the complex provisioning of wholesale orders.  
20 Our goal has been in this filing to provide reassurance to  
21 the Commission that the reorganized company will have the  
22 financial, technical, and managerial capability to serve  
23 New Hampshire's telecommunications customers.

24 It is in the spirit of getting this  
{DT 10-025} [Prehearing conference] {03-09-10}

1 company promptly and orderly, in an orderly manner, out  
2 from bankruptcy that we are strongly supporting the  
3 procedural schedule that has been submitted by the Staff  
4 Advocates. Bankruptcy is a complex process involving many  
5 players, many moving parts. The situation is even more  
6 complicated for a company that operates as a public  
7 utility in many states, reporting to many state regulatory  
8 commissions. FairPoint has sought throughout this process  
9 to avoid the kind of jurisdictional litigation and  
10 disputes that could cause the Company to be involved in  
11 endless litigation and stay in bankruptcy. The objective  
12 is to get past those issues, avoid them where possible,  
13 and get the company out of bankruptcy. However, in the  
14 end, exit from bankruptcy requires adherence to the  
15 requirements of bankruptcy law for approval of a plan of  
16 reorganization.

17 FairPoint has worked with its senior  
18 lenders to get together a plan that is acceptable to them.  
19 In order to get that plan confirmed, the first step is to  
20 obtain approval of the bankruptcy disclosure statement,  
21 and the hearing for that approval is this Thursday.  
22 FairPoint then needs to seek the approval of impaired  
23 creditors to vote for the plan. And, then, a confirmation  
24 hearing needs to be held to meet the Bankruptcy Code test for

1 confirmation.

2                   Following all of that, then the filing  
3 would be made with the Federal Communications Commission  
4 for the change in control that the Federal Communications  
5 Commission would need to approve. My understanding is,  
6 the FCC will not take the application until the  
7 confirmation has happened.

8                   So, charting the exit from bankruptcy  
9 involves navigating around these many obstacles. We have  
10 proposed a schedule that we believe works. It gets us  
11 through the state approval process. It enables us at the  
12 same time to obtain the state approvals in Maine and  
13 Vermont, and it provides a pathway to make our expeditious  
14 exit from bankruptcy. That's not to say it's the only  
15 schedule, but our view is that a material deviation from  
16 this schedule causes uncertainty, both in the bankruptcy  
17 process and in getting the approval from other states.  
18 So, it is exceptionally important to us to remain on this  
19 schedule.

20                   Now, I will say that we are willing to  
21 work with parties in the technical session, if there is  
22 some movement that gets us to the same hearing dates, and,  
23 in particular, the decision date, we're willing to explore  
24 that. Where we designed this schedule to work with the

{DT 10-025} [Prehearing conference] {03-09-10}

1       corresponding schedules ongoing in the other three states,  
2       so we are somewhat constrained in the flexibility that we  
3       have, but we're willing to look at things if there's a  
4       specific issue that's problematic.

5                   CHAIRMAN GETZ: Well, Mr. Coolbroth, is  
6       there any concern with what I said at the beginning about  
7       May 24th, the week of May 24th as being the hearing's  
8       dates in New Hampshire?

9                   MR. COOLBROTH: No, there's not. We  
10       originally had proposed the 11th and 12th and had  
11       attempted to reserve hearing dates with this Commission  
12       for that. Without participation from the New Hampshire  
13       folks, the Vermont Public Service Board took our dates is  
14       what happened, unfortunately. And, with intervening  
15       schedules, the 24th and 25th are the first possible dates  
16       thereafter. And, so, we're going to proceed with those  
17       dates. And, it is crowding the end, in terms of the time  
18       to get an order out and meet the schedule in bankruptcy,  
19       to have approvals in hand before the end of June. That's  
20       what we're trying to achieve.

21                   CHAIRMAN GETZ: Okay. So, we're saving  
22       the whole week. Whether it's optimistic that a hearing of  
23       this nature could be conducted in two days, but we will  
24       reserve the entire week.

{DT 10-025} [Prehearing conference] {03-09-10}

1                   MR. COOLBROTH: Thank you. In that  
2 regard, with respect to discovery, because of the  
3 anticipated discovery and the time frame that we've  
4 selected for the -- we propose for the procedural  
5 schedule, we have brought senior leaders from the Company  
6 today to start the discovery process through a technical  
7 session this afternoon. We are prepared to field  
8 questions right away that hopefully will expedite and make  
9 more efficient the discovery process. So that we brought  
10 all of the witnesses, except for Mr. Allen, who had a  
11 prior commitment to be away, but, in his place, we've  
12 brought Brian Lippold, who can talk about broadband, and  
13 Janet Brach, who can talk about service quality index  
14 issues. So, we have the people from the Company who can  
15 be responsive to questions about the filing. And, so,  
16 we're willing to do what it takes from our side to make  
17 the schedule work.

18                   And, with that, we look forward to  
19 completing this process, to getting this company out of  
20 bankruptcy and to getting back to the work of serving the  
21 people of New Hampshire. Thank you.

22                   CHAIRMAN GETZ: And, also, Mr.  
23 Coolbroth, I mean, in addition to what's -- well, what is  
24 going on in Vermont or Maine that we should be concerned

{DT 10-025} [Prehearing conference] {03-09-10}

1 about, in terms of setting our schedule? Is there  
2 anything that needs to be discussed or brought up today,  
3 in terms of what's been filed or what actions have been  
4 taken in those two states?

5 MR. COOLBROTH: The petitions that were  
6 filed are quite similar in the three states. My  
7 understanding is that the Maine hearing dates are  
8 scheduled the week before our prior schedule. So, it's  
9 7th, 8th, and 9th of May is when the Maine PUC has  
10 scheduled; the Vermont Public Service Board took May 11,  
11 12, and 13. My understanding is that the NECPUC  
12 Convention is the following week, so that the following  
13 week is unavailable to any of the Commissions. And, that  
14 left us with the week of the 24th.

15 CHAIRMAN GETZ: Okay. Thank  
16 you.Mr. Shoer.

17 MR. SHOER: Thank you. Thank you,  
18 Commissioner. On behalf of BayRing, I just wanted to say  
19 that, as a -- from a preliminary position and preliminary  
20 statement, we probably share a view similar to the other  
21 -- some of the other competitors, and we'll certainly work  
22 together and to try to consolidate our interests in the  
23 efficiency -- in the means of helping the Commission reach  
24 this, move through this proceeding efficiently.

{DT 10-025} [Prehearing conference] {03-09-10}

1                   From BayRing's perspective, our  
2 preliminary going-in position is one of real concern.  
3 And, I can say that with, you know, I think without any  
4 real surprise. That, based upon the situation and the  
5 circumstances that have occurred with FairPoint and with  
6 its troubles over the last year, we have concerns. And,  
7 we had concerns going into the merger with Verizon in the  
8 first place. Those concerns were helped by the  
9 negotiation of minimally acceptable conditions for BayRing  
10 to support that -- that petition, and those were found in  
11 the CLEC Settlement Agreement, which was attached as an  
12 exhibit and became a part of the Regulatory Settlement  
13 that was reached with the Staffs, the Staff Settlement  
14 Agreement, and which was then made conditioned upon your  
15 order of approval. So, those were the minimally  
16 acceptable conditions that BayRing was willing to support  
17 in the original merger.

18                   We had a number of issues that came up  
19 around that, the interpretation and then the  
20 implementation of that Settlement Agreement, in the  
21 context of wholesale conditions and service credits and  
22 the like, that are continuing to be the subject of ongoing  
23 proceedings that were put on hold pending the FairPoint  
24 bankruptcy petition.

{DT 10-025} [Prehearing conference] {03-09-10}

1                   So, there's real concerns out there that  
2 BayRing has some experience with regard to FairPoint's  
3 commitments that it made to its Settlement conditions and  
4 its willingness to live up to those commitments. So,  
5 that's the real overriding concern.

6                   I just want to also report that my  
7 clients tell me that they continue to have operational  
8 issues. They are continuing to have billing errors and  
9 issues that continue to go unresolved after many months of  
10 effort. The systems that were put in place continue to  
11 have trouble dealing with wholesale orders. And, we want  
12 to explain that in much more detail as these proceedings  
13 go on. But I just want to outline that that is a --  
14 that's a serious concern. And, we just want to emphasize  
15 that the concerns that were identified by Liberty in its  
16 report a few months ago from the -- at least from the  
17 ground level up, on the wholesale side, and from what my  
18 clients reported to me from their operational side,  
19 continue to plague their relationship, in terms of getting  
20 quality, fair, just and reasonable wholesale services.

21                   So, that's our overriding concern.  
22 That's what we're here for. We want to find out more.  
23 We're interested, certainly, when, in the words of the  
24 Staff filing, that, well, first, in the Settlement

{DT 10-025} [Prehearing conference] {03-09-10}

1 Agreement that they're proposing that there's a statement  
2 on Page 2, that "the issues related to the New Hampshire  
3 merger conditions, FairPoint will continue to meet the  
4 broadband build-out requirements, capital investment  
5 requirements, SQI service quality program requirements",  
6 and I highlight this, I just want to emphasize this point,  
7 "and the 2008 Settlement Agreement." And, that's the  
8 Agreement that I referenced that contains the CLEC  
9 settlement terms and conditions in it. So, when there's a  
10 statement that "this new Settlement Agreement is not going  
11 to unravel and do anything to undercut the commitments  
12 that were made", we want to make sure that that's the  
13 case.

14 Similarly, in the statement that was  
15 filed with the testimony, I think there was testimony that  
16 was just filed the other day of Kathryn Bailey, on Page  
17 12, she also makes the comment that "The Regulatory  
18 Settlement preserves FairPoint's capital commitments" --  
19 "expenditure commitments, its broadband deployment  
20 commitments and its quality of service commitments and  
21 leaves unchanged its commitments to wholesale providers."

22 Again, we want to see more detail about  
23 what that means and what that statement means, and making  
24 sure that these interests are protected. Thank you.

1                   CHAIRMAN GETZ: Thank you. Mr. Kennan.

2                   MR. KENNAN: Thank you, Mr. Chairman.

3                   It's always a pleasure to appear before the Commission,  
4                   but it's a disappointment that we have to be back here  
5                   addressing some of the same issues we thought we resolved  
6                   a few years ago in docket DT 07-011. Otel was a party --  
7                   Otel Telekom was a party to that docket, as well as to the  
8                   CLEC Settlement that Mr. Shoer was just talking about.  
9                   That CLEC Settlement formed the basis for many of the  
10                  conditions the Commission imposed in the approval order  
11                  relating to competition in wholesale services. So, as a  
12                  result of that approval order, a number of conditions were  
13                  established. And, some of those were put in place to  
14                  preserve and protect the competitive telecommunications  
15                  market in the state.

16                  We have heard that there will be some  
17                  modifications to the Commission's conditions as a result  
18                  of the Regulatory Settlement. We had some testimony,  
19                  statements in Ms. Bailey's testimony that, to the extent  
20                  that conditions are not modified, at least the Staff  
21                  Advocates intended that the other conditions remain in  
22                  place, and those would include the wholesale conditions.  
23                  I thought I heard Mr. Coolbroth say a minute ago that, or  
24                  a few minutes ago, that the benefits of the other

{DT 10-025} [Prehearing conference] {03-09-10}

1 conditions, that is those that are not modified, are  
2 preserved. But I don't recall seeing a direct statement  
3 in the record to date by the Company that says that  
4 directly; that "the conditions in the settlements that are  
5 not modified by the proposed Regulatory Settlement are  
6 preserved and that they intend to honor them."

7 So, I think, as a very nice first start,  
8 a statement here today on the record from the Company that  
9 it "intends to honor all of the conditions that it does  
10 not propose to specifically modify as a result of the  
11 Regulatory Settlement that it will honor those." I think  
12 that is a start and that will go a long way to alleviate a  
13 lot of the uncertainty that Otel and I presume the other  
14 competitors feel coming into this proceeding today.

15 But, beyond that, there remain larger  
16 questions, and I think Mr. Shoer very aptly summarized  
17 what some of those concerns are. What incentives are  
18 going to remain for FairPoint to continue to satisfy its  
19 legal and regulatory obligations to its wholesale  
20 customers? What incentives remain for it to provide high  
21 quality service? What becomes of the PAP, the  
22 "Performance Assurance Plan", to spell it out? Will  
23 FairPoint honor its past and future PAP obligations? We  
24 know that the Vermont Regulatory Settlement contains a

{DT 10-025} [Prehearing conference] {03-09-10}

1 specific provision requiring FairPoint to bring all post  
2 petition PAP credits up-to-date, that's in Section 1.6 of  
3 the Vermont Regulatory Settlement, but the New Hampshire  
4 settlement, at least so far as I could tell, does not have  
5 a corresponding provision.

6 Further, as the Commission is aware,  
7 FairPoint's systems, resource, and management issues have  
8 impacted the CLECs', and I'll speak specifically for Otel,  
9 but I'm sure the other CLECs as well, ability to do  
10 business and caused it to spend more time and effort than  
11 it should in order to address service problems, billing  
12 discrepancies, and other issues. So, there should be  
13 assurances, we think, that these problems will be  
14 rectified and rectified promptly. FairPoint does appear  
15 to be making efforts, and we certainly appreciate that.  
16 But it's when the "rubber hits the road", "proof in the  
17 pudding", or whatever cliché you want to apply to that  
18 situation that we're interested in and not just words.

19 And, we feel one other thing, in  
20 particular, that, as the result of FairPoint's efforts to  
21 rectify these issues, there shouldn't be any new surprises  
22 that come out. For example, I note in Mr. Nolting's  
23 testimony that the Revenue Assurance Team is conducting an  
24 audit of possible billing errors that will include

{DT 10-025} [Prehearing conference] {03-09-10}

1 possible pre-Cutover errors. Well, what's the result of  
2 that going to be? Are the CLECs going to experience large  
3 back bills as the result of that? It's not our fault. If  
4 FairPoint has had errors, that we think is not something  
5 that should be laid at the doorstep of their wholesale  
6 customers.

7                   So, in sum, we see many areas of  
8 uncertainty. We are happy to hear any statements from the  
9 Company that resolve some of these areas of uncertainty.  
10 And, we hope that FairPoint will have those answers. And,  
11 we look forward to working with the Company and the  
12 Commission and the Staff in order to resolve these  
13 questions. Thank you.

14                   And, Mr. Chairman, you asked about  
15 comments on the schedule. I think, at this point, we  
16 would prefer to just work it out as the result of the  
17 technical session. I just wanted to point out one or two  
18 things, though. We learned at the Vermont prehearing  
19 conference the other day that there is no specific  
20 statutory for a rule-based deadline for the resolution of  
21 either the bankruptcy case or this proceeding as it fits  
22 into the bankruptcy proceeding. In other words, there is  
23 no absolute deadline that the bankruptcy court has set  
24 whereby it has to have its proceeding done, and that this

{DT 10-025} [Prehearing conference] {03-09-10}

1 has to dovetail into that and be completed in advance.  
2 And, I was quite surprised to hear Mr. Coolbroth say just  
3 a few minutes ago, or at least I thought I heard him say,  
4 that "the FCC proceeding doesn't even start until the  
5 confirmation hearing is held in the bankruptcy court."  
6 So, while certainly everybody is interested in putting  
7 these issues behind us and getting things resolved as  
8 quickly as possible, we shouldn't be in a rush to judgment  
9 here based on an artificial deadline. That, if time is  
10 necessary to resolve these issues, we ought to take the  
11 time and do it right. Because the experience of two years  
12 ago shows that, if it's not done perfectly right,  
13 continues will -- those problems will persist, and we  
14 don't want to have be back here again in another three  
15 years. Thank you.

16 CHAIRMAN GETZ: Thank you. Ms. Geiger.

17 MS. GEIGER: Thank you, Mr. Chairman.

18 As the Commission is aware, Comcast Phone of New  
19 Hampshire, LLC, is a competitive local exchange carrier in  
20 New Hampshire, and is also a wholesale customer of  
21 FairPoint's. We, therefore, share some of the concerns  
22 that have been expressed thus far by the other CLECs in  
23 this docket.

24 Comcast Phone was an active participant

{DT 10-025} [Prehearing conference] {03-09-10}

1 in DT 07-011, in which this Commission listened very  
2 carefully to the evidence presented by Comcast and other  
3 CLECs, describing the extent to which the CLECs rely on  
4 Verizon, and now FairPoint, for the provision of  
5 competitive voice services in New Hampshire, and the  
6 concerns that the CLECs had with respect to FairPoint's  
7 ability to cut over its wholesale OSS systems and to  
8 support the wholesale customers to the same extent that  
9 Verizon had and at parity with FairPoint's own retail  
10 customers.

11 The Commission's Order Number 24,823,  
12 which was issued in the docket I just mentioned, 07-011,  
13 on February 25th, 2008, included many conditions relating  
14 to FairPoint's obligations to CLECs in New Hampshire.  
15 Comcast Phone is directly affected by FairPoint's  
16 compliance with the conditions and requirements that are  
17 set out in that order.

18 The Regulatory Settlement, included in  
19 FairPoint's disclosure statement filed with the bankruptcy  
20 court on February 24th, 2010, seeks to modify certain  
21 aspects of that order, Order 24,823, but remains silent on  
22 the question of the remainder of the conditions in the  
23 order that apply to wholesale customers in New Hampshire.

24 For this reason, Comcast is

{DT 10-025} [Prehearing conference] {03-09-10}

1 participating in this docket to seek confirmation that all  
2 other conditions in Order 24,823, with respect to  
3 wholesale customers, will continue to remain in full force  
4 and effect despite the bankruptcy and proposed Regulatory  
5 Settlement, including FairPoint's progress and commitments  
6 relating to its OSS systems.

7                   While Comcast is aware that Ms. Bailey  
8 has prefiled testimony in this docket and indicates the  
9 Regulatory Settlement leaves unchanged FairPoint's  
10 commitments to wholesale providers, Comcast believes that,  
11 at a minimum, as the other CLECs have indicated, FairPoint  
12 should affirm Ms. Bailey's representations to both the  
13 Commission and the CLECs in this docket.

14                   Again, I'd agree with what others have  
15 said about working with FairPoint and others in the docket  
16 at the technical session on the procedural schedule.  
17 Thank you.

18                   CHAIRMAN GETZ: Thank you. Mr. Linder.

19                   MR. LINDER: Mr. Chairman, as the  
20 Commission is aware, we were a party to the sale case in  
21 DT 07-011. And, as part of that proceeding, we entered  
22 into a Memorandum of Understanding with the FairPoint  
23 companies dated October 13th, 2007. That Memorandum of  
24 Understanding was referenced on Pages 70 and 71 of the

{DT 10-025} [Prehearing conference] {03-09-10}

1 Commission's order February 25th, 2008 just referred to.  
2 And, the Commission imposed various conditions on the sale  
3 in that order in approving the sale, and did make  
4 reference to the February -- to the October 13th, 2007  
5 Memorandum of Understanding as providing additional  
6 benefits to customers as a result of the sale.

7                   The regulatory agreement for New  
8 Hampshire, which I reviewed, did not appear to me to make  
9 any reference to that February -- or, to that October 2007  
10 Memorandum of Understanding. And, one of the issues that  
11 the Commission has set out in the Order of Notice that it  
12 is interested in is whether that regulatory agreement is  
13 in the public interest and is just and reasonable. And,  
14 in our view, it would -- one small element of determining  
15 public interest and just and reasonableness is whether the  
16 Company is going to continue to honor the Memorandum of  
17 Understanding dated October 13th, 2007. And, our interest  
18 in this proceeding is seeking assurance on the record from  
19 the Company that the Company does intend to continue to  
20 honor and will carry out the commitments that it made in  
21 that Memorandum of Understanding. And, the major  
22 commitments in that is with respect to expansion of the  
23 Lifeline and Link-Up federal telephone assistance programs  
24 for low income customers.

{DT 10-025} [Prehearing conference] {03-09-10}

1                   Secondly, instituting, for a specific  
2 period of time, soft dial tone for customers whose service  
3 is shut off, so they will have access to 911 emergency  
4 service and access to the Company business office.

5                   And, thirdly, with respect to public  
6 payphones and public interest payphones, the Company has  
7 agreed that, before removing a public payphone that may  
8 qualify for public interest payphone status, that certain  
9 parties will be notified, notably the Staff, Consumer  
10 Advocate, and New Hampshire Legal Assistance. And,  
11 finally, the Company made a commitment in that Memorandum  
12 of Understanding to installing additional public interest  
13 payphones and maintaining them.

14                   And, so, we are basically looking for an  
15 assurance on the record that that Memorandum of  
16 Understanding, despite the bankruptcy proceedings, will  
17 continue to be honored by the Company. And, that that is  
18 an element that we would think it would be considered in  
19 determining the public interest.

20                   We do not have any specific  
21 recommendations with respect to the procedural schedule.  
22 I'm confident that we'll be able to work something out  
23 that will be to the satisfaction of all parties. Thank  
24 you very much.

{DT 10-025} [Prehearing conference] {03-09-10}

1 CHAIRMAN GETZ: Thank you. Mr. Katz.

2 MR. KATZ: It shouldn't come as any  
3 surprise that segTEL agrees with the positions espoused by  
4 the three CLECs that went before us. So, in the interest  
5 of efficiency, we'll just incorporate and adopt their  
6 comments to the Commission. Thank you.

7 CHAIRMAN GETZ: Thank you. Ms. Foley.

8 MS. FOLEY: To the Chairman's point  
9 about concerted action among CLECs, CRC Communications of  
10 Maine is joining in the comments I make today on behalf of  
11 One Communications.

12 I don't think anyone in this room is  
13 pleased at the way events have transpired since the  
14 approval of the sale of Verizon's assets to FairPoint in  
15 February 2008. However, because CLECs, such as One  
16 Communications and CRC, rely on FairPoint's service to us  
17 in order for us to provide services to our customers, our  
18 own businesses have been seriously hampered by FairPoint's  
19 financial and operational problems.

20 Therefore, One Communications' and CRC's  
21 participation in this proceeding is to encourage the  
22 Commission to ensure that the wholesale conditions  
23 required by the Commission in its approval order remain in  
24 place.

{DT 10-025} [Prehearing conference] {03-09-10}

1                   For example, Verizon's Performance  
2 Assurance Plan should apply to FairPoint, without the  
3 modifications requested by FairPoint in docket 09-113 and  
4 09-059, until a successor plan is approved by the  
5 Commission, continuation of the prohibition on rate  
6 increases to wholesale customers, intercarrier contracts,  
7 including ICAs, Interconnection Agreements, as extended  
8 stay in place and are not permitted to be rejected by  
9 FairPoint. Also, FairPoint should remain bound by the  
10 Commission's determinations in the CCL docket 06-067.

11                   These conditions were imposed to provide  
12 a measure of certainty to CLECs, who at the time were  
13 facing the prospect of an ILEC that had never provided  
14 wholesale services before. Now, two years out, these  
15 concerns have proved well-founded. CLECs, such as One  
16 Communications and CRC, continue to face operational  
17 issues and wholesale billing discrepancies, which  
18 FairPoint asserts it is diligently addressing, but has not  
19 yet resolved over a year after cutover. One need only  
20 look to the most recent month of PAP reported data in New  
21 Hampshire. FairPoint has reported, but has not paid, over  
22 \$800,000 of assessed PAP penalties due to New Hampshire  
23 CLECs from FairPoint's poor wholesale performance in  
24 January 2010 alone.

{DT 10-025} [Prehearing conference] {03-09-10}

1                   In last week's prehearing conference at  
2                   the Vermont Public Service Board, the Vermont Chairman  
3                   stated that, in order to approved FairPoint's petition, he  
4                   would need to be assured how the new company is in a  
5                   better position to solve the problems resulting from the  
6                   cutover and transition than the old company was. One  
7                   Communications and CRC urge the Commission to follow this  
8                   approach and not approve FairPoint's petition unless it is  
9                   sure that competition in New Hampshire will not continue  
10                  to suffer. We realize that the Staff settlement envisions  
11                  an expedited proceeding, and we are not opposed to a quick  
12                  review, as long as the other states' schedules are taken  
13                  into effect and CLEC issues are not overlooked.

14                  One specific point, I notice that the  
15                  proposed schedule does not anticipate filing of briefs  
16                  after the hearing. If the Commission feels that that will  
17                  be beneficial to its determination, I suggest we also  
18                  include that. Thank you very much.

19                  CHAIRMAN GETZ: Thank you. Ms.  
20                  Hatfield.

21                  MS. HATFIELD: Thank you, Mr. Chairman.  
22                  The OCA has no position at this time.

23                  CHAIRMAN GETZ: Mr. Roth.

24                  MR. ROTH: Good afternoon, Mr. Chairman,

{DT 10-025} [Prehearing conference] {03-09-10}

1 members of the Commission. Our position is that we  
2 support FairPoint's application and its request for relief  
3 in its application. I just wanted to give a little bit of  
4 background about how this process played out for us. We  
5 responded to the bankruptcy petition, and really before  
6 that, but certainly at the point of the filing, we began  
7 to engage the Company and its people immediately. We had  
8 a series of meetings and telephone conferences throughout  
9 November, December, January, early -- into early February,  
10 when we finally struck the Regulatory Settlement. Kind of  
11 our operating instruction in those meetings and those  
12 discussions, or at least our baseline, was that the  
13 regulatory -- the 2008 order be undisturbed. And that, to  
14 the extent that things were modified or more time was  
15 provided for certain things, that nonetheless the things  
16 that weren't touched were understood to be continuing in  
17 force and effect.

18 We, at the same time, hired financial  
19 advisors to review the Company's projections and the  
20 Company's performance, and we have submitted testimony  
21 from Deloitte about that review and about their views on  
22 the Company's future. And, we believe that there's been a  
23 great deal of due diligence done by Staff and by Deloitte  
24 to come to the conclusion that FairPoint is in a better

{DT 10-025} [Prehearing conference] {03-09-10}

1 position now to accomplish all the things that are set  
2 forth in the 2008 agreement.

3 I wanted to make one comment in response  
4 to something that was mentioned by one of the intervenors,  
5 and that is that "the bankruptcy deadline is somehow an  
6 artificial deadline." It was a point of no small  
7 contention that the Company wants and needs to emerge from  
8 the bankruptcy process and the bankruptcy proceeding  
9 quickly. It's -- I don't think, you know, as everybody  
10 here in the room agrees that it's -- nobody's happy with  
11 what happened in the past, I don't think there's anybody  
12 here who believes that FairPoint should stay in bankruptcy  
13 a day longer than it already has or a day longer than is  
14 necessary. The Regulatory Settlement that we reached  
15 includes in it kind of a -- a short time frame, and a  
16 short time frame for getting the bankruptcy plan  
17 confirmed, in recognition of the exigency of getting out  
18 of bankruptcy quickly and getting the approval process  
19 done quickly. Because the longer it spends in bankruptcy,  
20 the more damage I believe occurs to its business and to  
21 its economic and financial interests. And, once the --  
22 the sooner it can emerge from bankruptcy, with the  
23 regulatory approvals that it needs, obtained in a due  
24 process fashion, the better it can be at meeting all the

{DT 10-025} [Prehearing conference] {03-09-10}

1 obligations that everyone is concerned about and providing  
2 good customer service in New Hampshire.

3 So, to the extent that, yes, the rules  
4 of bankruptcy procedure do not dictate that you must get  
5 out of bankruptcy in 90 or 120 days, that is true. But,  
6 as far as the exigency of getting out, it is not  
7 artificial. It is a firm company commitment. And, to be  
8 honest with you, the Company, at this point, is  
9 essentially being -- its new owners are the banks that  
10 loaned to it. And, so, the banks are even more interested  
11 in emerging from bankruptcy. And, so, it's artificial  
12 only as far as, you know, the Bankruptcy Rules of  
13 Procedure and the Bankruptcy Code. But it's very real, as  
14 far as the Company and the lenders are concerned, from as  
15 far as we can tell. That deadline is very important to us  
16 and I think we should stick by it.

17 That said, I think we can work with the  
18 schedule to provide additional time for the discovery that  
19 would be necessary to accomplish this, especially in light  
20 of the fact that we now have another two or three weeks on  
21 the other end. Thank you.

22 CHAIRMAN GETZ: Thank you. And,  
23 Mr. Hunt.

24 MR. HUNT: Thank you, Mr. Chairman. I

{DT 10-025} [Prehearing conference] {03-09-10}

1 do have a statement to make on behalf of Staff. But,  
2 first, I've been asked to specify that I'm speaking only  
3 on behalf of the non-advocate Staff, as opposed to  
4 designated Staff Advocates.

5           The Commission has before it a New  
6 Hampshire Regulatory Settlement between FairPoint and the  
7 Staff Advocates and a request by FairPoint for approval of  
8 a change in control of the operating utility's parent that  
9 is supported by Staff Advocates. The Commission generally  
10 encourages settlement agreements, but the Commission  
11 cannot approve any settlement without independently  
12 determining that the result comports with applicable  
13 standards. Non-advocate Staff's role in this proceeding  
14 is to assist the Commission in making the requisite  
15 independent determination.

16           The preliminary position for  
17 non-advocate Staff is that the Staff expects to perform a  
18 thorough inquiry into the issues raised by the petition.  
19 The Staff would do this in any event, but also notes that  
20 this is the second time in two years that the Commission  
21 has been asked to review and approve the financial,  
22 managerial, and technical competence of new management.

23           With regard to the procedural schedule,  
24 as noted, the procedural schedule is very aggressive. On

{DT 10-025} [Prehearing conference] {03-09-10}

1 the other hand, in the last two weeks, several events that  
2 may affect this proceeding have occurred. FairPoint has  
3 disclosed the need to restate earnings for several  
4 quarters of 2009, and has disclosed its executive bonus  
5 plan for 2010. Several parties have objected to the  
6 disclosure statements and reorganization plan filed in  
7 Bankruptcy Court. Today's disclosure of the e-mail claim  
8 regarding network status is another factor that could  
9 affect the Staff's effort to assess the proposed  
10 agreement. Staff appreciates the need to move quickly in  
11 bankruptcy proceedings, but sees a need to preserve some  
12 flexibility in any procedural schedule to address these  
13 and other matters that may arise in the coming weeks.

14 With regard to the statutory authority,  
15 which I haven't heard much on from the other parties  
16 today, --

17 CHAIRMAN GETZ: Well, we'll have another  
18 opportunity to do that for a separate round.

19 MR. HUNT: Okay. Thank you.

20 CHAIRMAN GETZ: Is there anything  
21 further, Mr. Hunt?

22 MR. HUNT: Nothing else.

23 CHAIRMAN GETZ: All right. Well, before  
24 we turn to oral argument, Mr. Coolbroth, I'll give you, as

{DT 10-025} [Prehearing conference] {03-09-10}

1 the Petitioner, an opportunity. Is there anything that  
2 you want to respond to, in terms of statements by the  
3 other parties' positions?

4 MR. COOLBROTH: Well, several of the  
5 CLECs seem to be suggesting that it would be an issue  
6 before this Commission as to whether FairPoint assumes or  
7 rejects specific executory contracts in bankruptcy, and,  
8 just with the bankruptcy process, that's a decision that's  
9 going to happen there. We expect, right now we have a  
10 date for data responses in late March, we hope and expect  
11 to have an answer on executory contracts by that time.  
12 That process of reviewing the executory contracts is  
13 ongoing now. They involve issues related to pre-petition  
14 claims, and the pre-petition claims is the bankruptcy  
15 process where that occurs. So, we're working on it. We  
16 expect to work our way through it.

17 The other thing I'll point out is that,  
18 for individual CLECs, we are open to discussions. So, if  
19 there is a particular CLEC that has issues and wants to  
20 resolve their claims, certainly, the folks at FairPoint  
21 are willing to enter into discussions with those CLECs.  
22 So, it's kind of two-prong. We have the formal process,  
23 and expect to have the answer in the near future, and  
24 we're also willing to negotiate as well.

{DT 10-025} [Prehearing conference] {03-09-10}

1                   There were points about -- questions  
2                   about whether FairPoint would have incentives to continue  
3                   to satisfy wholesale customers and so forth. And, the  
4                   Regulatory Settlement preserves the PAP, it preserves the  
5                   incentives that FairPoint has, economic -- and certainly  
6                   the economic incentives to perform.

7                   FairPoint intends fully to perform the  
8                   Memorandum of Understanding with New Hampshire Legal  
9                   Assistance and Irene Schmitt. We plan to fully perform to  
10                  that.

11                  And, in other respects, with respect to  
12                  the issues raised by the CLECs, we do have a data request  
13                  process as well. And, to the extent they pin down and ask  
14                  us specifically what our position is on specific issues  
15                  relating to our relationship with them, we'll take those  
16                  data requests, we'll run them through the process, both in  
17                  the Company and with the folks who are in charge in the  
18                  bankruptcy process and make sure we give a thorough and  
19                  correct answer to the questions. I think those are the  
20                  responsive points.

21                  CHAIRMAN GETZ: Commissioner Ignatius.

22                  CMSR. IGNATIUS: Thank you. Mr.  
23                  Coolbroth, the last comment you made that you could use  
24                  the -- CLECs and others, I assume, could "use the

{DT 10-025} [Prehearing conference] {03-09-10}

1       discovery process to clarify certain issues between them  
2       and the Company", how does that fit with your prior  
3       statement that "some things that CLECs have talked about  
4       today are outside of the scope of this Commission"? Are  
5       you saying you're willing to, although it's not in the  
6       scope of this proceeding as you see it, you're willing to  
7       use the discovery process to explore those or would  
8       questions on those lines be rejected as outside of the  
9       scope and therefore not appropriate?

10                       MR. COOLBROTH: I think we would take  
11       questions on them in the nature of data requests. The  
12       question is, is what we do not want to take data requests  
13       on are "would you", in negotiations regarding the  
14       settlement with this Commission, negotiations in the  
15       merger case, we got a series of questions "would you  
16       accept an approval order that had XYZ condition, or  
17       something like that?" And, we had trouble dealing with  
18       those sorts of data requests.

19                       But data requests "do you intend to  
20       honor this feature or some other feature of our  
21       relationship?" I think we'll take those questions. If  
22       the answer to the question is that "that is part of the  
23       bankruptcy process and a determination has not yet been  
24       made", then that would be the answer to the question. If

{DT 10-025} [Prehearing conference] {03-09-10}

1 a determination has been made, and I'm looking at the  
2 timing here, and it looks like it should fit well, that,  
3 in the context of those data requests, we should be able  
4 to provide answers to the questions. And, in addition, as  
5 I said, we're willing to talk to people.

6 CHAIRMAN GETZ: Well, and certainly this  
7 issue that was raised more than once about "what's the  
8 breadth of the wholesale commitments that survive from  
9 Order 24,823?", I expect that that's something that could  
10 be worked out without data requests. And, I would hope  
11 that the parties could come together at least to know if  
12 there's a meeting of the minds on what that issue is.

13 MR. COOLBROTH: Well, you know, the  
14 possibility of coming to an agreement or a stipulation,  
15 that's always possible as well, sure.

16 CHAIRMAN GETZ: Okay. Okay, let's turn  
17 to the next issue, which is to hear arguments, as we laid  
18 it out in the Order of Notice, "whether the proposed  
19 change in control of FairPoint Communications, as parent  
20 company of FairPoint Communications-NNE and Northland, is  
21 governed by the standard set forth in RSA 369:8, II or in  
22 RSA 374:30 or in some other statute."

23 So, we'll begin with you, Mr. Coolbroth.

24 MR. COOLBROTH: Thank you, Mr. Chairman.

1 There are four aspects of the reorganization plan for  
2 which we're seeking approval. First, it is possible that  
3 one or more of the senior bank lenders, who now hold the  
4 Company's debt, may become owners of 10 percent or more of  
5 the stock of the reorganized company. Doing that as a  
6 change in control, we're seeking approval of that under  
7 RSA 369:8, Paragraph II(b).

8 The second, we're asking the Commission  
9 to approve the Regulatory Settlement with the Staff  
10 Advocates under the Commission's rules.

11 Third, although the vast majority of the  
12 terms and conditions of the Commission's order approving  
13 the original acquisition remain in effect, the Regulatory  
14 Settlement does result in some modifications, and we're  
15 seeking approval of those under RSA 365:28.

16 And, finally, the secured lenders are  
17 seeking to have the FairPoint parent company debt be  
18 secured by pledges of all of the FairPoint subsidiary  
19 companies. And, it happens that one of those subsidiaries  
20 has its equity owned by the New Hampshire utility, the  
21 Telephone Operating Company of Vermont, LLC, the Vermont  
22 subsidiary operating company, its membership interests are  
23 owned by Northern New England Telephone Operations, LLC,  
24 the New Hampshire utility. In order for those membership

{DT 10-025} [Prehearing conference] {03-09-10}

1 interests to be pledged to the lenders, the pledgor would  
2 be Northern New England Telephone Operations, LLC, which  
3 is the utility. And, therefore, we're asking for the  
4 Commission's approval for that under RSA 369:2.

5 And, I can address each of those four  
6 aspects in some more detail. And, first, as I address the  
7 state law requirements, I do want to point out that this  
8 discussion is without regard to possible bankruptcy  
9 preemption law -- bankruptcy law preemption issues that  
10 could arise if this Settlement is not approved. Those  
11 issues are still out there, but we're hoping, with the  
12 Settlement, never to face those issues.

13 Looking first at the approval of the  
14 change in control under RSA 369:8, that change in control  
15 occurs with respect to ownership of the stock of the  
16 parent company. And, so, that we think that that approval  
17 is one that falls clearly under RSA 369:8. The letter of  
18 February 25th from the Staff Advocates to the Commission  
19 referenced RSA 374:30. We think that 374:30 is the  
20 statute that would come into play if the Commission were  
21 to make the substantial "adverse effect" determination  
22 that is possible under RSA 369:8, II(b). We don't believe  
23 there is any such effect, but that's how we think the  
24 statutes would work. So that we believe the burden here

{DT 10-025} [Prehearing conference] {03-09-10}

1 is to demonstrate to the Commission that this change of  
2 control will not adversely effect rates, terms, service,  
3 or operations of Northern New England Telephone  
4 Operations, LLC, or Northland Telephone Company of Maine,  
5 Inc. So, we think that that statute applies.

6 CHAIRMAN GETZ: And, the burden is on  
7 you?

8 MR. COOLBROTH: It is. Yes. We're not  
9 aware of any disagreement regarding the applicable  
10 provisions and legal standards for approving the  
11 Regulatory Settlement and the modification of the  
12 Commission's prior order. We don't think there's any  
13 disagreement about that.

14 With regard to the pledge of the  
15 interest in the Vermont subsidiary, we believe that RSA  
16 369:2 is the applicable statute. That's the statute that  
17 deals with mortgaging of utility property. Northern New  
18 England Telephone Operations is proposing to pledge those  
19 equity interests to secure parent obligations under the  
20 parent's senior debt. Northern New England Telephone  
21 Operations, LLC, is not making any other -- is not under  
22 any other obligation. It is not a recourse obligation.  
23 The credit of Northern New England Telephone Operations is  
24 not pledged to support that debt. There is no guarantee,

{DT 10-025} [Prehearing conference] {03-09-10}

1 so that it is a simple pledge. And, therefore, we didn't  
2 think that RSA 369:1, 3, or 4 would apply. There's no  
3 actual or probable cost to be determined, there are no  
4 proceeds to be applied, none of those things that are  
5 referenced in those statutes seem to be applicable here.

6 Having said all of this, however, at the  
7 end of day, we're seeking to get this company out of  
8 bankruptcy. We're not here to set precedents or to engage  
9 in lengthy legal debate. We want to get the Company out  
10 of bankruptcy. So, we think that the Company's evidence  
11 is sufficient to meet the public good standards that are  
12 in RSA 374:30 and RSA 369:1, 3, or 4. And, to the extent  
13 that the Commission determines that those statutes do  
14 apply, we're seeking approval under them.

15 So, that's the approach we've taken.

16 CHAIRMAN GETZ: Thank you. Okay

17 Mr. Shoer.

18 MR. SHOER: We have to -- well, we will  
19 review the statutes that are here. We don't really have a  
20 position at this point on the statutory authority issue  
21 and the interpretation of your authority with regard to  
22 the change in control aspects of it. Again, we just -- we  
23 pointed out that the standard that's set under RSA 369:8  
24 that highlights that "the change must not have an adverse

1 effect on rates, terms, services, and conditions" is  
2 something that we would take issue with at this point,  
3 with regards to the level of service that we're seeing  
4 right now, but not in terms of your authority to review  
5 this at this time.

6 So, we would hold and present our  
7 position after we've had a chance to research that in more  
8 detail.

9 CHAIRMAN GETZ: Okay. Thank you.  
10 Mr. Kennan.

11 MR. KENNAN: Thank you, Mr. Chairman. I  
12 think, just as a very preliminary matter, I invited the  
13 Company to make a direct statement as to its intentions as  
14 to the remaining conditions that are not affected by the  
15 Regulatory Settlement, the conditions from the 2008 order.  
16 I heard Mr. Coolbroth say quite distinctly that the  
17 Company would honor the MOU with Ms. Schmitt and with  
18 Legal Assistance. I did not hear a direct answer to the  
19 question that I posed, which is "will the Company state  
20 that it is going to honor the remaining wholesale  
21 conditions?" I think, without that statement, on its  
22 face, the Company has presented that there will be an  
23 adverse effect on the rates, terms, and conditions on  
24 which it offers services to its wholesale customers. And,

{DT 10-025} [Prehearing conference] {03-09-10}

1       therefore, this is not a 369:8 proceeding. So, that's my  
2       preliminary thought on that subject.

3                   CHAIRMAN GETZ: Thank you. Ms. Geiger.

4                   MS. GEIGER: Yes. Thank you, Mr.  
5       Chairman. Comcast does not take a position on the  
6       statutory authority issue at this time.

7                   CHAIRMAN GETZ: And, Mr. Linder.

8                   MR. LINDER: Mr. Chairman, I don't think  
9       we have anything to add to what's been previously said.  
10      But, just focusing on the Regulatory Settlement, I think  
11      the Commission will use the "just and reasonable" standard  
12      and whether it's in the public interest, and that is  
13      really all we can contribute at this point. Thank you.

14                  CHAIRMAN GETZ: Thank you. Mr. Katz?

15                  MR. KATZ: No position at this time.

16                  CHAIRMAN GETZ: And, Ms. Foley.

17                  MS. FOLEY: One Communications does not  
18      have a position.

19                  CHAIRMAN GETZ: Ms. Hatfield.

20                  MS. HATFIELD: Thank you. The OCA also  
21      doesn't have a position at this time.

22                  CHAIRMAN GETZ: Mr. Roth.

23                  MR. ROTH: Clearly, FairPoint has the  
24      burden on the persuasion of which standard to apply, which

{DT 10-025} [Prehearing conference] {03-09-10}

1 statute to apply for this proceeding. In my letter with  
2 the proposed procedural schedule, I listed several, and it  
3 was in an effort to be overly inclusive, in terms of  
4 making sure that the Commission had jurisdiction and  
5 knowing that there is a complicated set of materials that  
6 were in front of the Commission.

7 I think that our position is -- or, our  
8 position is that 369:8 is probably the best fit for the  
9 bulk of the process. Though, I think 369:2, with respect  
10 to the Vermont Telco shares, also has to be paid attention  
11 to. And, under 369:8, it will be FairPoint's burden to  
12 establish that there is no adverse effect on rates, terms,  
13 and conditions.

14 And, with respect to the argument made a  
15 moment ago by the CLEC that "the failure to say that there  
16 are no changes, I think as sort of evidence that there  
17 will be or is an admission that there is an adverse  
18 effect" misses the mark a little bit, especially in that  
19 365:28 it requires another order to modify an order. And,  
20 if the order doesn't modify the order, then it's not  
21 modified, is -- I guess would be my position.

22 Finally, I wanted to just make a note,  
23 you know, sort of a countervailing argument to the  
24 preemption argument. Now, the Company has said, you know,

{DT 10-025} [Prehearing conference] {03-09-10}

1 "if we don't get the settlement approved, you know, there  
2 could be preemption." Obviously, we dispute that and  
3 disagree with that proposition. We are hoping that we  
4 will have an approval so as to not have to face that  
5 argument. But, just for the record, we do not agree with  
6 and we would hope -- we would very vigorously dispute  
7 preemption of the Commission's jurisdiction to make these  
8 findings on these issues. Thank you.

9 CHAIRMAN GETZ: Thank you. Mr. Hunt.

10 MR. HUNT: Thank you, Mr. Chairman. In  
11 light of Attorney Coolbroth's comments and Attorney Roth's  
12 comments on the standard, Staff will limit its position  
13 today to agreeing that, regardless of which statute ends  
14 up being applied, FairPoint has the burden of proof.

15 CHAIRMAN GETZ: Commissioner Ignatius.

16 CMSR. IGNATIUS: Thank you. Mr.  
17 Coolbroth, in your discussion of why 369:8, Section II(b)  
18 applies in this case, you know from the statute that there  
19 are a lot of very specific deadlines that are unusual, and  
20 we're already past those, in terms of the clock ticking  
21 from the point that the Company filed its petition in  
22 February. So, how do you square the terms of that statute  
23 that you say will govern some aspects of the filing with  
24 the fact that there's deadlines that we can't meet?

{DT 10-025} [Prehearing conference] {03-09-10}

1                   MR. COOLBROTH: We think that the  
2                   procedural schedule was designed with the overall time  
3                   frame that is contemplated by that, which, if you add up  
4                   the various times and periods during which extensions can  
5                   be granted, I think adds up to about 120 days.

6                   In any event, the Commission's being  
7                   called upon to rule on an amendment of a prior order under  
8                   365:28, which has no time limit. So that we are not  
9                   asserting that these statutory time periods must be  
10                  followed in the review here. And, as I say, we're under  
11                  365:28 in any event, so that we were not asking for part  
12                  of the case to be approved in one time frame and the rest  
13                  of the case to be approved in another. It is, we found,  
14                  somewhat difficult to make a perfect fit with what we need  
15                  to get out of bankruptcy and statutes that really don't  
16                  contemplate that. We've done our best to make it work  
17                  here. But we think the roughly four-month time schedule  
18                  that we had in mind for the procedural schedule is kind of  
19                  where it came from. And, it roughly corresponds to the  
20                  statutory time frames here.

21                  CMSR. IGNATIUS: Is it fair then to say  
22                  that you're committed to following the standards of  
23                  approval in Section II(b), that "the filing has no adverse  
24                  effect on rates, terms, service, or operation of the

{DT 10-025} [Prehearing conference] {03-09-10}

1 public utility within the state", and waiving the time  
2 frames that are set forth in the rest of that statute?

3 MR. COOLBROTH: To the extent they're  
4 inconsistent with the procedural schedule that we have  
5 proposed, that's correct.

6 CMSR. IGNATIUS: Thank you.

7 CHAIRMAN GETZ: Okay. I want to make  
8 sure, let's nail that down. So, the Company is waiving to  
9 the -- the time, the specific time frames within 369:8,  
10 II(b) contemplate that we would take certain actions  
11 within 30 days, 60 days, give more time for refileing,  
12 etcetera, that the Company is accepting or is proposing a  
13 procedural schedule, an accepted procedural schedule as a  
14 substitute for the time frames that are set forth in the  
15 statute?

16 MR. COOLBROTH: Yes, Mr. Chairman.

17 CHAIRMAN GETZ: Okay. And, well, as the  
18 Petitioner, you have the last opportunity, if you want to  
19 respond to any of the other arguments about the -- of the  
20 authority that would govern this proceeding.

21 MR. COOLBROTH: We obviously disagreed  
22 with Otel's comment on the existence of an adverse effect.  
23 The test, we think, is the current situation with the  
24 Company where it is, versus a change in control that will

1 result in a company that emerges from bankruptcy with  
2 \$1.7 billion less debt. And, we think that's a lot better  
3 situation. And, so, we disagree with the Otel comment.

4 CHAIRMAN GETZ: All right. Thank you.  
5 I had indicated at the beginning, if there were any other  
6 issues that we needed to address, after we heard oral  
7 argument, that we would open the floor. Are there any  
8 other issues that we need to address this afternoon?

9 (No verbal response)

10 CHAIRMAN GETZ: Okay. Hearing nothing,  
11 then we will close the prehearing conference. And, we'll  
12 await a recommendation, at least with respect to a  
13 procedural schedule from the parties following the  
14 technical session. Thank you, everyone.

15 (Whereupon the prehearing conference  
16 ended at 2:44 p.m. and a technical  
17 session was held thereafter.)

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