

1                                   **STATE OF NEW HAMPSHIRE**2                                   **PUBLIC UTILITIES COMMISSION**3  
4   **May 25, 2010** - 1:07 p.m.  
Concord, New Hampshire**DAY 2**5                                   **{P.M. SESSION ONLY}**6  
7  
8                   **RE:   DT 10-025**  
                  **FAIRPOINT COMMUNICATIONS, INC.:**  
9                   **Reorganization.**10  
11           **PRESENT:**   Chairman Thomas B. Getz, Presiding  
12                           Commissioner Clifton C. Below  
                          Commissioner Amy L. Ignatius

13                           Jody Carmody, Clerk

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**MICHAEL T. SKRIVAN**

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FP-28	<b>RESERVED</b> (Record request regarding whether the tower and hut included in the contract rejected involving a network facility in Vt. provides any service to N.H. locations; and a further record request of whether FairPoint anticipates rejecting any additional contracts for facilities that provide service to the N.H. territory)	54
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(Whereupon the hearing resumed at 1:07 p.m. following the recess, continuing with the cross-examination by Mr. Linder of Witnesses Peter G. Nixon and Michael T. Skrivan.)

CHAIRMAN GETZ: Okay. Good afternoon. We're back on the record. And, where were we? Mr. Linder.

MR. LINDER: Thank you.

BY MR. LINDER:

Q. Mr. Nixon and Mr. Skrivan, when we broke off our previous conversation, we were beginning to speak about the Company's rejection of the payphone commission contracts. And, when I say "commission", I'm referring to the contracts with property owners that permits payphones to be installed on their property, and, in return, and if you would confirm this, in return, they receive a commission on the revenues generated?

A. (Skrivan) Yes, that's right.

Q. Okay. Now, it's my understanding that, after the contracts are rejected, the Company still intends to service and maintain those payphones, unless instructed otherwise by the property owners to remove them?

[WITNESSES: Nixon|Skrivan]

1 A. (Skrivan) Yes, that's correct.

2 Q. You have -- have you had an opportunity to look at the  
3 Supplemental Report dated May 17th, 2010, filed by the  
4 Non-Staff Advocate, Accion Group? And, the reason that  
5 I ask is there are two pages in there that discuss the  
6 commission payphones?

7 A. (Skrivan) Yes.

8 Q. Okay. So, if I can direct your attention --

9 MR. LINDER: And, by the way, I believe  
10 that document, if counsel can confirm this, has been  
11 marked as an exhibit on the Non-Staff Advocate Exhibit  
12 List as, if I'm reading it correctly, number "3C" and  
13 "3P", "P" being "public", "C" being "confidential"?

14 MR. JUDD: That's correct.

15 MR. LINDER: Okay. Thank you. So,  
16 that's the document that we're referring to.

17 BY MR. LINDER:

18 Q. And, if I can direct your attention to Pages 10 and 11,  
19 because those are the pages, along with Page 14, that  
20 discuss the commission payphone contracts. So, I'll  
21 wait till you get there.

22 A. (Skrivan) Yes, I'm there.

23 Q. Okay. And, on Page 11, the report, in the third  
24 paragraph from the top, refers to several numbers.

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[WITNESSES: Nixon|Skrivan]

1 That there are "786 payphones serving 555 locations" in  
2 the three Northern New England states of Vermont and  
3 Maine and New Hampshire. Do you see that?

4 A. (Skrivan) Yes.

5 Q. Do you have any reason to disagree with those numbers?

6 A. (Skrivan) No, I do not.

7 Q. Okay. And, the next sentence indicates that there are  
8 approximately "1,800" such commission payphones in the  
9 State of New Hampshire, and that, of that amount, it's  
10 "153" contracts that would be -- that are being  
11 rejected. Do you see those numbers?

12 A. (Skrivan) Yes. But the "1,800" doesn't say "commission  
13 payphones", it just says "payphones".

14 Q. Okay. So, the commission payphones would be the "153"  
15 number?

16 A. (Skrivan) That's my understanding, yes.

17 Q. Okay. And, you don't have any particular reason to  
18 disagree with that number, give or take a few?

19 A. (Skrivan) No.

20 Q. Okay. Now, if we look at the second paragraph on Page  
21 11 of the Exhibit Non-Staff Advocate 3P, it says "The  
22 Company has stated that this decision", I'm assuming  
23 the decision to reject, "was a result of their  
24 inability to accurately account for the incentives paid

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1 to the property owners as required in their contracts  
2 with the Company." Do you see that?

3 A. (Skrivan) Yes.

4 Q. Could you comment on that please, as to whether it's  
5 accurate? Whether there are other reasons? Or, just  
6 expand please.

7 A. (Skrivan) Yes. I would say it's accurate. And, the  
8 way I would characterize it is, essentially, there was  
9 a business decision regarding a software solution that  
10 would be required, not for billing, but for calculating  
11 the commissions to be paid to these payphone providers.  
12 And, the business decision was made, rather than to  
13 spend the scarce resources to develop that programming,  
14 to reject the contracts and avoid the obligation to do  
15 that. So, you know, really, purely a business decision  
16 of FairPoint's deregulated payphone service operation.

17 Q. Thank you for clarifying that. Again, on Page 11, the  
18 first paragraph, the first sentence states that "The  
19 use of payphones has changed dramatically over the past  
20 ten years with current usage typically limited to an  
21 emergency or backup form of communication for many low  
22 income citizens." And, my question is, whether you  
23 would have any reason to disagree with the portion of  
24 the sentence that says "current usage is limited to an



1 emergency or backup form of communication for low  
2 income citizens"?

3 A. (Skrivan) Well, I would agree, I cannot disagree with  
4 that. But I don't really know, I haven't studied the  
5 usage. So, I really can't comment positively that I  
6 agree with it, just that I have no reason to disagree  
7 with it.

8 Q. And, you would have no reason to disagree that the  
9 payphones are used by low income customers?

10 A. (Skrivan) Correct.

11 Q. Okay. The next item on Page 11 of the report that  
12 we're discussing indicates that, in the fourth  
13 paragraph, that, if the property owner decides that  
14 they're not interested in allowing FairPoint to keep  
15 the payphone on the property, since they're no longer  
16 receiving compensation, that FairPoint at that point in  
17 time would need to remove the payphone?

18 A. (Skrivan) Yes.

19 Q. Okay. And, if a payphone had to be removed, FairPoint,  
20 I assume, would comply with the notice requirements in  
21 the Public Utilities Commission rules and the statute,  
22 and also the provision in the Legal Assistance  
23 Memorandum of Understanding with FairPoint?

24 A. (Skrivan) Yes. That would certainly be my intention

1 that we would comply with all of those.

2 Q. Okay. Now, again, in the fourth paragraph on Page 11  
3 of the Non-Staff Advocate report that we're discussing,  
4 it says that "there could be" -- "there could be public  
5 interest payphone issues as a result of the removal of  
6 payphones." Could you comment on that, as to whether  
7 you concur with that or do not?

8 A. (Skrivan) Yes, I'd be happy to comment on that. First  
9 of all, our Payphone group has told us that none of  
10 these payphones are currently classified as "public  
11 interest payphones". So, *per se*, we wouldn't be  
12 pulling out a public interest payphone. To the extent  
13 that your department that you represent would be  
14 interested in talking to us about placing a public  
15 interest payphone at one of those locations, we'd be  
16 happy to talk to you.

17 Q. Okay. Thank you for clarifying that. And, going back  
18 one page, to Page 10 of the report that we're  
19 discussing, actually, it's the first paragraph of the  
20 "Payphone" discussion, which would be the next to the  
21 last paragraph on the page. The last sentence says "We  
22 understand [that] FairPoint has no plans to sell the  
23 payphone base to a firm prepared to continue servicing  
24 the units and the customer relationships." Do you see

1           that sentence?

2   A.   (Skrivan) Yes, I do.

3   Q.   Okay.  Could you comment on that or confirm whether  
4           that statement is accurate?

5   A.   (Skrivan) Yes, I'd like to comment on it.  I agree, we  
6           currently have no plans to sell the payphone base.  I  
7           would sort of disagree with the assumption that "we  
8           don't plan to continue servicing the units."  You know,  
9           just to be clear, we do continue to -- plan to continue  
10          servicing the units.  And, I think, you know, the  
11          "customer relationship" issue would go to the  
12          "commission" issue, which we do not intend to continue  
13          paying commissions.

14   Q.   But, at this point in time, there is no intent to sell  
15          the payphone business?

16   A.   (Skrivan) That's correct.

17   Q.   Okay.  If I can just direct your attention to Page 14  
18          of the report, again, Non-Staff Advocate Exhibit 3P.  
19          And, that page has the conclusions on it.  Do you see  
20          the section that says "Conclusion"?

21   A.   (Skrivan) Yes.

22   Q.   Okay.  I'd like to direct your attention to the fifth  
23          paragraph of the conclusions.  And, I'd like to direct  
24          your attention to the last sentence of that paragraph.

[WITNESSES: Nixon|Skrivan]

1 Which reads, "In our opinion, a potential solution  
2 would be to sell the payphone business line to a  
3 suitable payphone operator." And, I wonder if the  
4 Company has any position on that, if you could share  
5 that with us, if the Company does?

6 A. (Skrivan) Well, I would say that that -- I mean, in my  
7 opinion, that's not really -- that's not really a great  
8 solution. It's like a very large solution for what's  
9 potentially a small problem, if you look at it on an  
10 individual location basis. If there's an individual  
11 location owner who's not happy, then they can ask us to  
12 remove the phone and contract with someone else who's  
13 willing to pay them a commission. So, from that  
14 standpoint, the location provider's issues would be  
15 resolved much more simply than by us going through the  
16 effort of selling the entire payphone business.

17 Q. And, would you agree that, if the Company did decide to  
18 sell the payphone business, that that could have an  
19 impact on the Memorandum of Understanding with New  
20 Hampshire Legal Assistance and its client, with respect  
21 to commitments regarding payphone notice and  
22 installation of public interest payphones?

23 A. (Skrivan) I'd have to think about that. I'm not sure  
24 that, if we sold the payphone business, that that would

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1 preclude us from providing public interest payphones.

2 MR. LINDER: Okay. Thank you. I have  
3 no further questions.

4 CHAIRMAN GETZ: Just one thing I want to  
5 clarify for the record, and maybe you can confirm this,  
6 Mr. Judd. On the list I have, it looks like the  
7 Supplemental Report, the public version from May 17 would  
8 be "Non-Advocate Exhibit 4". Is that -- and the lines are  
9 a little off kilter, but the first exhibit looks like it's  
10 prefiled testimony.

11 MR. JUDD: May I approach? I believe  
12 that's the list that we gave to you when we handed in our  
13 exhibits yesterday morning.

14 CHAIRMAN GETZ: Okay, it's a little  
15 different. So, --

16 MR. JUDD: And, I apologize for the  
17 alignment issues.

18 CMSR. IGNATIUS: No, it's not a question  
19 of alignment. What was submitted from the parties,  
20 including the Non-Advocate Staff in your case, did not  
21 have any "3P", "3C", there was no designation of  
22 "confidential" or "public" by that letter. The initial  
23 report was "3", the Supplemental Report -- excuse me, 2,  
24 3, 4.

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1 CHAIRMAN GETZ: Well, we'll just  
2 substitute. Apparently, we got a different version.  
3 Thank you.

4 MR. JUDD: Thank you.

5 CHAIRMAN GETZ: So, again, if the record  
6 could ignore my attempts to clarify the numbering issues.

7 MR. JUDD: But, if I could offer one  
8 clarification, I'm sure it was inadvertent. But counsel  
9 cited the exhibit during your cross-examination as "3C",  
10 which would be the confidential version. Is that the  
11 version you meant to refer to?

12 MR. LINDER: The "3P".

13 MR. JUDD: Thank you very much.

14 MR. LINDER: Thank you very much.

15 CHAIRMAN GETZ: Thank everyone.

16 Mr. Kennan.

17 MR. KENNAN: Thank you, Mr. Chairman. I  
18 have no questions for these witnesses.

19 CHAIRMAN GETZ: Mr. Shoer.

20 MR. SHOER: Thank you, Mr. Chairman.

21 Good afternoon.

22 BY MR. SHOER:

23 Q. I believe it was yesterday we were asking Ms. Hood  
24 about her understanding about the status of the

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1       wholesale agreements and the settlement agreements with  
2       the CLECs in the context of the bankruptcy. And, she  
3       may have referred these to Mr. Skrivan, I can't recall.  
4       So, I'll ask the question just to be sure. Is it still  
5       FairPoint's intent not to take any action in the  
6       bankruptcy court proceeding to reject any of the  
7       wholesale agreements that were in place, and,  
8       particularly, the settlement agreement that was reached  
9       by the CLECs and FairPoint in the Verizon proceeding,  
10      DT 07-011?

11   A.   (Skrivan) Yes, that is our intent.

12   Q.   And, when I was looking through some of the bankruptcy  
13       documents, there's a section on executory contracts and  
14       how they're to be treated, I believe it was Section 11.

15               MR. McHUGH: Of what document?

16               MR. SHOER: Of the debtors' Modified  
17       Second Amended Joint Plan of Reorganization dated  
18       March 10.

19   BY MR. SHOER:

20   Q.   And, on Page 47 of this section on executory contracts,  
21       there's a description at the end of the first paragraph  
22       about "For the purpose of the Plan, various regulatory  
23       consent orders to which FairPoint was a party with the  
24       [Commissions] shall not be deemed to be an executory

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1 contract." Am I correct that the regulatory concept  
2 orders that are referenced in there include the orders  
3 that were reached by the Commission in DT 07-011?

4 A. (Skrivan) I don't know the answer to that. I think I'd  
5 have to look at that document.

6 CHAIRMAN GETZ: What's the FairPoint  
7 numbering on that exhibit?

8 MR. McHUGH: I'm trying to find the  
9 document, Mr. Chairman.

10 MR. SHOER: It's the March 10th of --

11 MR. McHUGH: Is it a FairPoint exhibit?

12 MR. SHOER: I think it might be -- I  
13 think it's a FairPoint exhibit. I don't have your exhibit  
14 list in front of me.

15 MS. FOLEY: Sixteen.

16 MR. SHOER: Sixteen, Pat?

17 MR. McHUGH: Yes. What page are you on,  
18 Alan?

19 MR. SHOER: Forty-seven.

20 MR. McHUGH: Thanks. Unless I have the  
21 wrong one, Alan, my Page 47 at the bottom is "Discharge of  
22 Claims and Termination of Old FairPoint Equity Interests."  
23 Do we have the right document?

24 (Atty. Shoer and Atty. McHugh

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1 conferring.)

2 MR. McHUGH: I found the cite.

3 MR. SHOER: Thank you.

4 (Atty. McHugh handing document to Mr.  
5 Skrivan.)

6 BY MR. SHOER:

7 Q. Mr. McHugh will show you just that one sentence  
8 referenced there. Mr. Skrivan, do you know if that --  
9 if the regulatory consent orders that are referenced  
10 there are in reference to the order that was reached --  
11 order that was issued by this Commission in DT 07-011?

12 A. (Skrivan) Speaking as a non-attorney, that would be my  
13 understanding of that sentence.

14 Q. Okay. Thank you. Turning to some questions about the  
15 new services that FairPoint is looking to offer. I was  
16 asking questions of Mr. Murtha yesterday about the  
17 Ethernet services that are going to be made available  
18 to retail and wholesale customers as part of  
19 FairPoint's build-out of its new network. Do you  
20 recall any of that testimony?

21 A. (Skrivan) Yes.

22 Q. And, the question I had, and I asked Mr. Murtha, and he  
23 pointed me to you yesterday, was concerning "how  
24 FairPoint intends to make those services available to

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1       wholesale customers?" For example, will those services  
2       be made available through a tariff, through a wholesale  
3       tariff?

4   A.   (Skrivan) No, they will not. They will be made  
5       available through a contract.

6   Q.   Okay. And, how about for retail customers? Are those  
7       going to be available through a retail service tariff?

8   A.   (Skrivan) No. Through contracts as well.

9   Q.   Okay. And, has FairPoint established the terms and  
10       conditions under which those services would be  
11       available under contract at this point?

12   A.   (Skrivan) I don't know if we have a hard and fast set  
13       of terms and conditions. I understand there have been  
14       some negotiations on those and some development of  
15       those contracts, yes.

16   Q.   Okay. Will you be requiring or insisting that the  
17       wholesale customer forgo any rights or remedies that  
18       might be available in other tariffs as a condition in  
19       accepting the terms of the wholesale contract?

20   A.   (Skrivan) Well, I need to narrow the answer a little  
21       bit. With respect to the Ethernet services that we'll  
22       be providing under contract, --

23   Q.   Uh-huh.

24   A.   (Skrivan) -- the contract itself will govern rates,

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1 terms and conditions. With respect to services which  
2 would be offered to a customer under the tariff, which  
3 would be different services, non-Ethernet services in  
4 this example, then those, the rates, terms and  
5 conditions would be subject to the tariff provisions.

6 Q. Okay. And, will those rates, terms and conditions that  
7 are part of the contract be negotiated? Are those  
8 negotiable terms?

9 A. (Skrivan) That's my understanding.

10 Q. Okay. A couple of questions with regard to the  
11 implementation of the PAP, the PAP and the simplified  
12 PAP. We asked a question in discovery, it was number  
13 18, CLEC Number 18, about FairPoint's intent to resume  
14 discussions with the PAP -- with the collaborative  
15 about the PAP. And, there was a response that  
16 FairPoint planned to "distribute its proposal to the  
17 CLECs in the near future." Has that occurred?

18 A. (Skrivan) That has not occurred yet. We are interested  
19 in moving forward with that, and we are planning,  
20 really, to get that moving.

21 Q. Do you have any timeline on when that plan will be  
22 distributed to the CLECs?

23 A. (Skrivan) Generally, the timeline that we've talked  
24 about is during June.

1 Q. And, the effort to simplify the PAP, that was a  
2 requirement of the CLEC settlement, if I recall. Do  
3 you recall that as well?

4 A. (Skrivan) Well, I remember it being a requirement. I'd  
5 have to double check the CLEC settlement to see if  
6 that's where it was.

7 Q. Okay. And, do you know if that document requires it --  
8 needed to be approved by the Commission before it  
9 became effective?

10 A. (Skrivan) I expect that it needs to be approved by the  
11 Commission. I don't recall what's in the document.

12 Q. Okay. And, we talked a little bit earlier today with  
13 Ms. Weatherwax and Ms. McLean about the metric  
14 remediation process. Were you here for any of that  
15 discussion?

16 A. (Skrivan) Yes.

17 Q. Is the metric remediation process tied to the  
18 simplified PAP document that you're saying is going to  
19 be distributed to the CLECs in June?

20 A. (Skrivan) I don't see a direct connection between  
21 those. Obviously, they're related, but I don't see a  
22 direct connection between those.

23 Q. How are they related?

24 A. (Skrivan) Well, they're both related to the PAP in

1 general.

2 Q. So that efforts to simplify the -- or, efforts to  
3 simplify, in FairPoint's view, the metrics in the  
4 remediation process could also be present in the  
5 simplified PAP that will be part of the CLEC  
6 discussions?

7 A. (Skrivan) Well, when you say the "remediation process",  
8 just to make sure I'm understanding what you're saying,  
9 I understand the remediation process to be to look at  
10 the measurements that we're producing, to make sure  
11 that they're being measured properly, you know,  
12 according to the data that's in the system, so we're  
13 actually reporting what we intend to report. And, so,  
14 from that standpoint, again, I'm not sure I see the  
15 direct connection between the simplification and the  
16 remediation of the data that we're producing today.

17 Q. Okay. So, the simplified PAP that is -- document is  
18 going to be presented to the CLECs in the June time  
19 frame, will -- will or will not include any of the  
20 metric provisions -- will or will not be revealed in  
21 the simplified PAP?

22 A. (Skrivan) I guess it's my understanding, as we  
23 remediate or verify that a PAP metric is being reported  
24 correctly, were we to find out that it was not being

1 reported correctly, we would take efforts to correct  
2 it. And, as soon as it was corrected, it would be  
3 reported, you know, according to what we believe is the  
4 correct way to do that. I don't think that would wait  
5 for a simplification process.

6 Q. But, if you were to determine that there was a  
7 correction or a change in the metric remediation  
8 process, that correction would be or could be  
9 implemented in the simplified PAP?

10 A. (Skrivan) I guess the way I would care to represent it  
11 is, any correction we made in the calculations would be  
12 carried through to the simplified PAP.

13 Q. I have just a few questions concerning some of the  
14 exhibits that were attached to One Communications'  
15 documents. Do you have that up there in front of you?

16 A. (Skrivan) Yes.

17 Q. If you could turn to Exhibit OC-21.

18 A. (Skrivan) Yes.

19 Q. It's OC, One Communications, 21. It's about halfway.

20 A. (Skrivan) I'm sorry. I don't have exhibits called "One  
21 Communications". Is it Joint CLECs or --

22 Q. These were -- I believe they were just One  
23 Communications' exhibits.

24 MR. McHUGH: Is it a data request?

[WITNESSES: Nixon|Skrivan]

1 MR. SHOER: Yes -- no, it was not,  
2 actually, it was not a data response. These were the PAP  
3 Market Adjustment Summary documents.

4 WITNESS SKRIVAN: I don't have that.

5 (Atty. McHugh handing document to  
6 Witness Skrivan.)

7 BY MR. SHOER:

8 Q. So, you see the -- there's an Exhibit OC-21 that's  
9 about halfway through. Do you see those reports?  
10 These are the "PAP/CCAP Market Adjustment Summary"  
11 reports?

12 A. (Skrivan) Yes, I see those.

13 Q. Okay. If you were to go to -- please go to the  
14 January 10th report. There are --

15 A. (Skrivan) January of 2010?

16 Q. January of 2010. See that?

17 A. (Skrivan) Yes.

18 Q. Okay. Do you read that report the same way I do, that  
19 the grand total of the market adjustment -- PAP market  
20 adjustment for January '10 was "843,463", the summary  
21 "Grand Total"?

22 A. (Skrivan) I see the "Grand Total" on there. I have to  
23 tell you, I'm not an expert on the difference between  
24 mode of entry and critical measures. So, I just -- I

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1       see a column there called "Market Adjustment", and I  
2       see the total at the bottom.

3   Q.   Okay.  And, do you agree that the total is the number  
4       that I just stated, "843,463"?

5   A.   (Skrivan) Yes.

6   Q.   And, then, looking at February 2010, the number is  
7       reported in the "Grand Total" here as "820,974",  
8       correct?

9   A.   (Skrivan) Yes.

10  Q.   And, then, flipping to March, there's a drop-off to --  
11       the number now reports as "631,865"?

12  A.   (Skrivan) Yes, I see that.

13  Q.   So, would you agree with me that that's about a  
14       \$200,000 drop from February to March?

15  A.   (Skrivan) Yes.

16               MR. McHUGH:  Mr. Chairman, if this will  
17       speed this along, I will stipulate that the document is,  
18       you know, contains what it says, and that we can do the  
19       subtraction from there.

20               MR. SHOER:  I agree the math will speak  
21       for itself.

22  BY MR. SHOER:

23  Q.   Now, we were talking about the "metrics remediation  
24       project".  Am I correct that the metrics remediation

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[WITNESSES: Nixon|Skrivan]

1 project has been concluded? Are you aware of that?

2 A. (Skrivan) I don't know.

3 Q. You don't know that. Were you here this morning when  
4 we talked about the performance measurements for the  
5 metrics remediation process?

6 A. (Skrivan) Yes.

7 Q. Do you recall that the metrics remediation process had  
8 a performance metric of reducing FairPoint's penalties  
9 in the range of 20 to 30 percent?

10 A. (Skrivan) I recall that discussion.

11 MR. SHOER: Okay. Thank you. No  
12 further questions.

13 CHAIRMAN GETZ: Thank you. Ms. Foley.

14 MS. FOLEY: Good afternoon, Mr. Nixon,  
15 Mr. Skrivan.

16 WITNESS NIXON: Good afternoon.

17 BY MS. FOLEY:

18 Q. Do you have the New Hampshire Regulatory Settlement in  
19 front of you?

20 A. (Nixon) I do.

21 Q. Mr. Skrivan, do you have it as well?

22 A. (Skrivan) No. But I can look on with Mr. Nixon's.

23 Q. Great. Would you please turn to Section 1.6 of the  
24 Settlement.

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1 A. (Skrivan) Oh, I do have it.

2 A. (Nixon) I have it.

3 A. (Skrivan) Yes.

4 Q. Am I correct that, according to this section of the  
5 Settlement, the parties agree that "all pending dockets  
6 [before the New Hampshire PUC will] be continued until  
7 either a party...withdraws from the Settlement or...  
8 [until] the Effective Date of the Plan"?

9 A. (Nixon) Yes.

10 Q. And, were you here, either Mr. Nixon or Mr. Skrivan,  
11 when Ms. Hood testified yesterday that the current  
12 projected Effective Date of the Plan is "late third  
13 quarter 2010"?

14 A. (Nixon) I was.

15 Q. I'd like to ask you about what's been marked for  
16 identification as "OC-19". That's FairPoint's response  
17 to Staff 44. If you don't have it up there, let me  
18 know, I can give you a copy.

19 A. (Nixon) I have it.

20 Q. Mr. Skrivan, do you have it? It's your response.

21 A. (Skrivan) Yes.

22 Q. Am I correct that this response indicates the dockets  
23 that FairPoint is seeking to have continued pursuant to  
24 that section of the Regulatory Settlement we just

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1 discussed?

2 A. (Skrivan) Yes.

3 Q. Am I correct that DT 09-039 is a complaint against  
4 FairPoint brought by a CLEC?

5 A. (Skrivan) Yes.

6 Q. Am I correct that DT 09-007 is a complaint against  
7 FairPoint brought by a CLEC?

8 A. (Skrivan) That is, although it's been closed.

9 Q. Am I correct that DT 06-067 is a complaint against  
10 FairPoint brought by a CLEC?

11 A. (Skrivan) I'm not sure who brought that claim. I don't  
12 have that information here.

13 Q. One thing I noticed that isn't on this list is DT --  
14 excuse me, DT 09-113, which is FairPoint's request for  
15 a modification of the penalty under the Performance  
16 Assurance Plan, is that correct?

17 A. (Skrivan) Yes.

18 Q. Therefore, FairPoint is not requesting that that docket  
19 be stayed and is willing that that docket should go  
20 forward?

21 A. (Skrivan) I don't know if that was our request or that  
22 was just an oversight on this list. We intended on  
23 this list to include all the dockets that were stayed.  
24 It's my understanding that particular docket was

[WITNESSES: Nixon|Skrivan]

1 included in the original stay order.

2 Q. Would your response be the same for docket DT 09-059,  
3 which is also a FairPoint request for a waiver of the  
4 Performance Assurance Plan?

5 A. (Skrivan) Yes.

6 Q. I'd like to ask some questions now regarding what's  
7 been marked for identification as "FP-1". And, that is  
8 the NHPUC Merger Order in docket DT 07-011. If you  
9 don't have a copy, I can provide you with one.

10 A. (Skrivan) I don't think I have a copy.

11 MS. FOLEY: Pat, do you have it?

12 MR. McHUGH: I've got it. Yes.

13 (Atty. McHugh handing document to  
14 Witness Skrivan.)

15 WITNESS SKRIVAN: Yes.

16 BY MS. FOLEY:

17 Q. Could you turn to Page 78 of that order please.

18 A. (Skrivan) Yes.

19 Q. The section I'm interested in is in the first paragraph  
20 on that page, the second sentence in. Could you read  
21 that please.

22 A. (Skrivan) "In the event a CLEC incurs substantial and  
23 extraordinary costs directly related to the transition  
24 from Verizon to FairPoint, it may petition the

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1 Commission for reimbursement."

2 Q. Is FairPoint seeking a change to that provision within  
3 the order?

4 A. (Skrivan) I don't know whether to characterize it as a  
5 "change", but more of a "subsequent event". Subsequent  
6 to this order, of course, FairPoint entered into  
7 bankruptcy. And, as of the date that we filed our  
8 petition, that established a certain date under which  
9 liabilities and claims prior to that are considered,  
10 again, I'm not an attorney, but are considered  
11 "pre-petition claims" and subject to the authority of  
12 the Bankruptcy Court. So, our position is that all  
13 claims are subject to the Bankruptcy Court, including  
14 claims that might fall into this category for  
15 pre-petition activities.

16 Q. So, if I could just clarify, it's FairPoint's position  
17 that this provision no longer applies to CLECs?

18 MR. McHUGH: I object. That's not what  
19 they said. Don't answer the question. I would like it  
20 reasked, Mr. Chairman, or their prior testimony stands.

21 MS. FOLEY: Mr. Chairman, it was a  
22 request for a clarification.

23 MR. McHUGH: It wasn't a clarification.  
24 You completely misstated their testimony, Attorney Foley.

[WITNESSES: Nixon|Skrivan]

1 I don't agree with that at all.

2 CHAIRMAN GETZ: Well, let's start fresh  
3 then, because I thought we were in the general  
4 neighborhood of a clarification. Could you rephrase your  
5 question.

6 BY MS. FOLEY:

7 Q. If I understand you correctly, Mr. Skrivan, and, if I  
8 did not, please clarify, is it FairPoint's position  
9 that CLECs are no longer able to bring claims under  
10 this provision to the Commission?

11 A. (Skrivan) With respect to pre-petition activities, it's  
12 our position that those claims should be subject to the  
13 bankruptcy laws.

14 Q. And, is it FairPoint's position that a claim under this  
15 provision would be a "pre-petition claim"?

16 A. (Skrivan) I guess that would depend on the  
17 circumstances of the claim under this, under this  
18 provision.

19 MS. FOLEY: Thank you. That's all I  
20 have.

21 CHAIRMAN GETZ: Ms. Bragdon.

22 MS. BRAGDON: Right up close.

23 BY MS. BRAGDON:

24 Q. Mr. Skrivan, I have a couple of questions for you

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1 related to some data responses. And, if you don't have  
2 copies, I can bring them to you. I'm going to be  
3 asking about Exhibit CRC-8, 9, and 10. Do you have  
4 them or would you like me to bring you a copy?

5 A. (Skrivan) I'd like you to bring those.

6 (Documents handed to Witness Skrivan.)

7 BY MS. BRAGDON:

8 Q. If you could turn to Exhibit Number 8, which was your  
9 response to Joint CLECs Data Response Number 34. Do  
10 you have that?

11 A. (Skrivan) Yes.

12 Q. Okay. And, in this data response, you state that  
13 "FairPoint currently does not have any plans to seek  
14 recovery of costs associated with systems  
15 modifications" from wholesale customers. Is that  
16 correct? That's part of your answer. We're going to  
17 get through the rest of it. But is that part correct?  
18 You see it in the second paragraph?

19 A. (Skrivan) I'm just reading the Question CLECS-34, which  
20 asks more or less the question that you asked. Yes.  
21 Okay, I see my answer.

22 Q. Okay. So, the first part of your answer is "FairPoint  
23 doesn't have any plans to seek recovery of costs  
24 associated with systems modifications."

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1 A. (Skrivan) Uh-huh.

2 Q. But you go on to state that "FairPoint cannot commit to  
3 what it [might] do in the future with [regard] to cost  
4 recovery." Correct?

5 A. (Skrivan) Correct.

6 Q. Have you been asked or has anyone asked you to develop  
7 or conduct any type of analysis regarding the  
8 identification of costs associated with the development  
9 of systems?

10 A. (Skrivan) No, I have not.

11 Q. And, are you aware of that going on at all within the  
12 Company?

13 A. (Skrivan) The only thing I'd really be aware of is  
14 there will be general accounting transactions  
15 associated with recording the costs, whether they're  
16 capitalized or expensed.

17 Q. Do you have any understanding or knowledge of how  
18 FairPoint or if FairPoint is keeping track of costs  
19 associated with the initial development of the systems  
20 versus the costs associated with fixing or modifying  
21 them?

22 A. (Skrivan) I don't have any direct knowledge of that,  
23 no.

24 Q. Do you know if anybody in the Company is looking into



1       that issue?

2   A.   (Skrivan) Again, I would only expect, from what I know,  
3       that, as a standard accounting practice, we would be  
4       looking at these costs to determine how they ought to  
5       be booked. And, in terms of whether or not someone is  
6       classifying those as part of the original configuration  
7       or subsequent configuration, I don't know the answer to  
8       that.

9   Q.   And, who would be the right person at FairPoint to know  
10       that?

11   A.   (Skrivan) I would say someone in the Finance  
12       organization, under Lisa Hood's direction.

13   Q.   Okay. So, in terms of -- so, I just want to understand  
14       where the line is drawn, in terms of this specific data  
15       response, where you say "FairPoint does not have plans  
16       to seek recovery of costs associated with [the] systems  
17       modifications." What does that mean? Does that mean  
18       at this very minute you don't have that intention, but  
19       five minutes from now you could? Where is the line?

20   A.   (Skrivan) Well, we don't -- we aren't currently talking  
21       about doing anything like that. And, I mean, and not  
22       in the next five minutes either probably, since I'll  
23       probably be up here for that period of time. Sometime  
24       in the future, when we have time to catch our breath,

1 we might talk about this. And, we might even decide at  
2 some point it makes sense to go to the Commission to  
3 talk about cost recovery. Based on my knowledge of  
4 interconnection, that would be a discussion that would  
5 include presentations by all parties, positions, and,  
6 in all likelihood, in the context of an interconnection  
7 agreement cost study, it would be forward-looking costs  
8 anyway.

9 Q. So, it would likely come up in the context of a TELRIC  
10 proceeding?

11 A. (Skrivan) I would expect that the cost of systems would  
12 come up in that context. And, whether or not it would  
13 include the specific costs that we spent originally and  
14 as enhancements, you know, we would just, you know,  
15 have to look at the facts and situation to know how  
16 that would go.

17 Q. So, the part of the answer where you say "FairPoint  
18 doesn't have any plans to seek recovery" of those  
19 costs, is it really more fair to say "you haven't  
20 considered the question and reached a decision"?

21 A. (Skrivan) I would say so. I would also say, I would  
22 certainly expect FairPoint to consider the cost of its  
23 systems to be included in any type of rate proceeding  
24 that it would go into. Whether those would be on a

1 forward-looking basis or historical basis would be  
2 based on the type of proceeding. Those are costs that  
3 we expend to run our business, and they're part of the  
4 rate base.

5 Q. And, you would include in those costs costs associated  
6 with modifying or fixing systems that were not properly  
7 designed?

8 A. (Skrivan) I think that would be an area that we would  
9 have to explore, and we would have to understanding the  
10 accounting. For example, if it turns out that that,  
11 and I'm not an expert on the accounting for software  
12 costs, you know, there are extremely specific  
13 guidelines for how you do GAAP accounting for financial  
14 costs -- or, for software development costs. If it  
15 turns out that those costs were expensed, then there  
16 wouldn't be a capital asset even to talk about. If it  
17 turns out that they're capitalized, then, you know, we  
18 would review the situation and make our recommendation  
19 accordingly. We would expect the other parties to make  
20 their recommendations. And, we would expect that to be  
21 the, you know, the subject of a rulemaking.

22 Q. So, you could be in a situation where you're asking  
23 CLEC customers to pay for the very systems that are not  
24 serving them correctly at this time?

1 A. (Skrivan) I certainly wouldn't describe it that way,  
2 no.

3 Q. Okay. Let's turn to Exhibit Number 9, which is the  
4 response to CLECS-43. And, the question posed there  
5 was "Post-reorganization, will FairPoint seek to be  
6 relieved of its obligation to offer resale services?"  
7 And, your response, and I'll paraphrase, and you can  
8 correct me if you would like, is that "FairPoint  
9 intends to comply with...the Joint Stipulation", which  
10 you quote as saying "shall not now or in the future  
11 seek any suspension or modification", *et cetera, et*  
12 *cetera*. You see that?

13 A. (Skrivan) Yes.

14 Q. But then there's this next sentence that says  
15 "FairPoint can not, nor should it be expected to,  
16 predict what it may or may not do in the future." So  
17 what exactly are you saying here?

18 A. (Skrivan) What I mean by that is that there's, under  
19 the current law, the Telecom Act requires all  
20 telecommunications -- all local exchange carriers to  
21 resell their telecommunications services. And, for  
22 incumbent local exchange carriers, it requires us to  
23 resell telecommunications services at a discount, at a  
24 wholesale discount.

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1 I don't see anything that would remove  
2 that obligation, except as is indicated here,  
3 potentially an exemption that is available to 2 percent  
4 carriers. And, that exemption, pursuant to the order  
5 in the merger case, we agreed not to pursue.

6 So, in the future, we don't know what  
7 the National Broadband Plan is going to do, we don't  
8 know how the Act may be changed, we don't know how the  
9 FCC may change its orders. In the context of a changed  
10 environment in the future, something could change.

11 Q. Let me clarify that. In a situation where you were  
12 ordered by a government agency to take a different  
13 position, I would expect you would comply with that,  
14 correct?

15 A. (Skrivan) Yes.

16 Q. But, are you also saying that, if the environment  
17 changed, and you weren't compelled, but had the  
18 opportunity to, you might, in fact, seek suspension?

19 A. (Skrivan) That could happen.

20 Q. Okay. So, how does that comport with the statement  
21 that FairPoint has committed to "shall not now or in  
22 the future seek suspension or modification"?

23 A. (Skrivan) I guess the way I'd like to describe it is  
24 we're not backing away from that. We're just not

1 precluding other things that can happen in the  
2 industry.

3 Q. So, you're going to go along with it for now, but, if  
4 circumstances change, you might want to do something  
5 different?

6 A. (Skrivan) Well, I wouldn't say "if circumstances  
7 change", I would say "if the law changes", we would  
8 want to consider our rights within the context of  
9 changes to the underlying law and rules.

10 Q. And, once again, if the law allowed you to do  
11 something, but did not compel you, you're still saying  
12 you might take advantage of the "allow" part?

13 A. (Skrivan) Well, I think we ought to.

14 Q. Let's turn to Exhibit Number 10, which is a response to  
15 CLEC Number 49. And, this data request relates to  
16 FairPoint's intention to file a TELRIC case. And, your  
17 response is -- your response at the time was "FairPoint  
18 is not at this time prepared to file a TELRIC case."  
19 Correct?

20 A. (Skrivan) Correct.

21 Q. Have you been asked or have you asked someone else in  
22 your organization to develop a TELRIC study?

23 A. (Skrivan) No, not specifically. We are working on cost  
24 modeling capabilities, which could be used for a

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1 variety of purposes, and, in fact, could be used for a  
2 TELRIC study. And, so, that is something that we're  
3 working on. We don't have any specific plans with  
4 respect to a TELRIC study, to perform one or to file  
5 one anywhere.

6 Q. And, if you had to prepare one, how long would it take  
7 you to pull together one?

8 A. (Skrivan) My estimate, and I haven't thought about this  
9 a lot, but, you know, my estimate is it would take us  
10 six months to a year to pull one together.

11 MS. BRAGDON: Okay. That's all I have.  
12 Thank you.

13 CHAIRMAN GETZ: Thank you. Ms. Cole?

14 MS. COLE: Thank you, Mr. Chairman. I'm  
15 not sure to whom to address these questions, so I'll  
16 address them generally to the panel and let you fight it  
17 out.

18 BY MS. COLE:

19 Q. Are either of you familiar with the Broadband  
20 Technologies Opportunities Program, commonly known as  
21 "BTOP"?

22 A. (Nixon) Yes.

23 Q. Are you familiar with an award made in the State of  
24 Maine under the BTOP Program known as "3-Ring Binder"?

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1 A. (Nixon) I am.

2 Q. What impact on FairPoint do you anticipate that the  
3 Maine BTOP Program called "3-Ring Binder" will have on  
4 future FairPoint earnings?

5 A. (Nixon) We have not performed an analysis of that.

6 Q. Okay. Do you have an opinion about it, however?

7 A. (Nixon) They're a competing -- they would become a  
8 competing carrier. So, it's one more competitor in the  
9 field of which there are many.

10 Q. Thank you. Are you familiar with the UNH application  
11 for BTOP funding?

12 A. (Nixon) I am.

13 Q. And, if that were awarded, what impact would a BTOP  
14 award to the UNH system for the creation of a New  
15 Hampshire transport network have on future earnings for  
16 FairPoint?

17 A. (Nixon) We have not performed the analysis.

18 Q. And, do you have an opinion on that?

19 A. (Nixon) Do I have an opinion on which? On the impact?

20 Q. On the possible impact of the award for the UNH system.

21 A. (Nixon) It would be a publicly funded, subsidized  
22 network competing with the private sector, and, as  
23 such, it would be competing with us for our customers.

24 MS. COLE: Thank you very much. Nothing

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1 further.

2 CHAIRMAN GETZ: Thank you. Ms. Geiger.

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

4 Having trouble viewing Mr. Skrivan, and I hope you can  
5 hear me. Is this mike on? Thank you.

6 BY MS. GEIGER:

7 Q. Mr. Skrivan, in Exhibit 3, which is attached to  
8 Mr. Giammarino's prefiled testimony, which you adopted,  
9 there's a summary of the New Hampshire Regulatory  
10 Settlement that mentions several commitments that  
11 FairPoint has made in that Settlement. Do you have  
12 that?

13 A. (Skrivan) Yes, I have that.

14 Q. That summary does not mention any commitments to  
15 FairPoint's wholesale customers, does it?

16 A. (Skrivan) I don't see a lot of reference in here to  
17 either "retail" or "wholesale". What I see is that the  
18 summary is addressing "Service Quality Requirements",  
19 "Broadband Commitments", "Expenditure Commitments", all  
20 of which I think would equally benefit wholesale and  
21 retail customers. And, then, there are "Financial",  
22 "Management", and "Other" commitments, which are more  
23 miscellaneous in nature.

24 Q. Could you explain how the "service quality" commitments

1 would benefit wholesale customers?

2 A. (Skrivan) Yes. The first point there, for example,  
3 says that "FairPoint will commit to meet the broadband  
4 build out and capital investment requirements and  
5 continue operating under the service quality" -- "SQI  
6 service quality program." And, to me, the capital  
7 investments, which are substantial in nature, would  
8 benefit all potential customers of FairPoint.

9 Q. But is it fair to say that that summary doesn't single  
10 out wholesale customers, in terms of commitments that  
11 FairPoint is making under the Regulatory Settlement?

12 A. (Skrivan) Yes.

13 Q. Now, Mr. Skrivan, you answered several data requests  
14 from Comcast concerning several specific wholesale  
15 obligations arising from Docket DT 07-011. Do you  
16 recall that?

17 A. (Skrivan) Yes.

18 Q. And, I put before you documents that have been  
19 premarked for identification as "Comcast Exhibits 1",  
20 "2", and "3". Do you have those?

21 A. (Skrivan) Yes, I do.

22 Q. Now, just to make the record clear, the Exhibit 1 is  
23 Comcast's data requests, with instructions that contain  
24 some definitions. And, the definitions I'm primarily

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1 concerned about is the definition of the "2008 Approval  
2 Order", which I think is defined as this Commission's  
3 order in DT 07-011. Do you see that?

4 A. (Skrivan) Yes.

5 Q. And, then, the "2008 Settlement Agreement" is the  
6 Settlement Agreement in DT 07-011. You see that?

7 A. (Skrivan) Yes.

8 Q. And, then, the other definition in that section is  
9 "CLEC Settlement Agreement", do you see that?

10 A. (Skrivan) Yes.

11 Q. And, that was the CLEC Settlement Agreement in DT  
12 07-011, correct?

13 A. (Skrivan) Yes.

14 Q. And, then, just again so the record is clear, Comcast  
15 Exhibit 2 was FairPoint's initial answers to Comcast  
16 data requests. And, Comcast Exhibit 3 contains your  
17 supplemental answers to some of those initial answers,  
18 correct?

19 A. (Skrivan) Yes, it appears so.

20 Q. Okay. In Comcast Exhibit 2, if you turn to that  
21 document, FairPoint was asked three questions  
22 concerning several specific provisions of the  
23 Settlement Agreement in DT 07-011 and the CLEC  
24 Stipulation in that docket, all of which concern

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1 FairPoint's wholesale obligations, is that correct? By  
2 "several questions", I mean I think the first 27  
3 questions in the package.

4 A. (Skrivan) Yes.

5 Q. And, is it fair to say that there were three, three  
6 questions that were asked about the several specific  
7 wholesale obligations in the Joint Settlement, in the  
8 2008 Settlement, and the CLEC Settlement. And, those  
9 three questions, if I'm reading them correctly, is  
10 that, "Would the specific provisions that are mentioned  
11 in those 27 questions remain in effect and unchanged at  
12 the conclusion of this particular docket, meaning DT  
13 10-025?" The second question is, "Would they remain in  
14 effect and unchanged upon the Federal Bankruptcy  
15 Court's approval of FairPoint's Plan of  
16 Reorganization?" And, the third question is "Whether  
17 FairPoint is proposing any changes or modifications to  
18 the particular provision that's being asked about?"  
19 Correct?

20 A. (Skrivan) Yes.

21 Q. Okay. And, I believe your initial response contained  
22 in Comcast Exhibit 2 to all three questions was that  
23 "FairPoint is proposing no change to the particular  
24 provisions mentioned in those questions in this

1 docket", meaning DT 10-025, correct?

2 A. (Skrivan) Okay. So, what questions was that one?

3 Q. I think 1 through 27, they're all -- they're very  
4 similar questions, and they each relate to particular  
5 provisions in the Settlement Agreement and the CLEC  
6 Stipulation in DT 07-011.

7 A. (Skrivan) Yes. So, I agree that we answered that we're  
8 "proposing no changes to those sections."

9 Q. Okay. And, then, in your supplemental answer that you  
10 provided to the same questions, I believe you said  
11 that, again, in response to the particular provision  
12 that was being asked about, that "the particular  
13 provision will remain in effect and unchanged upon the  
14 Federal Bankruptcy Court's approval of FairPoint's  
15 Reorganization Plan." And, again, that's in Comcast  
16 Exhibit 3, correct?

17 A. (Skrivan) Yes.

18 Q. And, if you turn to Comcast Exhibit 3, there's a  
19 question 1-30, and it's on Page 35 of the package I  
20 gave you, which asks "whether the FairPoint/Comcast  
21 interconnection agreement will remain in effect and  
22 unchanged after the Bankruptcy Court approval of the  
23 Plan of Reorganization?" Do you see that?

24 A. (Skrivan) No. Where is that again?

1 Q. If you turn to Page 35 of Comcast Exhibit 3, I believe  
2 the question is 1-30?

3 A. (Skrivan) Yes, I see it.

4 Q. Okay. And, what's your response to that question?

5 A. (Skrivan) The reply says "As provided in the Plan  
6 Supplement, FairPoint has not rejected the  
7 FairPoint/Comcast ICA", which stands for  
8 "Interconnection Agreement". "It will continue to  
9 observe the terms of this Agreement subject to  
10 applicable bankruptcy and non-bankruptcy law, ongoing  
11 utility regulation, and the terms of the Regulatory  
12 Settlement."

13 Q. Thank you. Now, Mr. Skrivan, you heard Ms. Hood  
14 testify yesterday, did you not?

15 A. (Skrivan) Yes.

16 Q. And, did you hear her answers to some questions that I  
17 posed about her answers to Oral Data Request Number 2,  
18 which has been marked for identification as "FairPoint  
19 Exhibit 25"?

20 A. (Skrivan) Yes.

21 Q. And, do you recall that she indicated that FairPoint  
22 "may reject CLEC interconnection agreements up to and  
23 including the Effective Date of FairPoint's emergence  
24 from bankruptcy"?

1 A. (Skrivan) Yes, I do.

2 Q. And, how do you reconcile Ms. Hood's answer with the  
3 answer that you gave in response to Comcast Question  
4 1-30?

5 A. (Skrivan) Well, at the time that I wrote this answer,  
6 we had not rejected the agreement, nor had we assumed  
7 it. Since then, we have assumed the agreement.  
8 However, as I understand the bankruptcy law, there is a  
9 potential, even after you assume an agreement, that it  
10 can be rejected further down the road under, I suppose,  
11 certain sets of circumstances. And, so, the -- what  
12 Ms. Hood was saying was that FairPoint's not in a  
13 position to guarantee that it won't reject any of the  
14 CLEC interconnection agreements. We're in a position  
15 to say that's not our intention. And, that -- but, at  
16 the same time, we have to reserve our rights, because  
17 there are certain negotiations that will go on  
18 regarding proofs of claim. And, it's possible that  
19 there could arise a situation where we would, in fact,  
20 reject a CLEC contract.

21 Now, having said that, if I may be  
22 permitted to go on just a little bit, under the  
23 Telecommunications Act of 1996, we are -- we have  
24 certain obligations to provide certain network elements

[WITNESSES: Nixon|Skrivan]

1 and services to CLECs. And, if, in fact, we were to  
2 reject one of these agreements, it's our intention to  
3 continue providing those. It's my belief we'd be  
4 obligated to do that, but it's our intention to  
5 continue providing those under the existing rates,  
6 terms and conditions of the contract which was  
7 rejected, until a replacement contract could be put in  
8 place. And, the way a replacement contract could be  
9 put in place would be either by the CLEC exercising its  
10 option to opt into another agreement or by negotiating  
11 an agreement with us or by trying to negotiate and end  
12 up arbitrating an agreement, subject to the full  
13 protections that the Act provides to both parties in  
14 those situations.

15 Q. Mr. Skrivan, could you describe some of the  
16 circumstances that might lead FairPoint to reject an  
17 interconnection agreement at any time up to the  
18 Effective Date of the Reorganization Plan?

19 A. (Skrivan) Well, I mean, I have to say that I could -- I  
20 could only speculate. But the type of thing I could  
21 speculate on, if there were a litigation against a  
22 CLEC, and, let's say, for example, there was a service  
23 that we used to be obligated to provide pursuant to  
24 interconnection, which has been de-listed by the FCC,

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1 but, because these contracts are so sold, that  
2 provision is still technically listed in the contract,  
3 but it's been superseded by the change of law  
4 provisions. And, I'm just thinking of an example, I  
5 don't know that the Bankruptcy Court would do this.  
6 But, if then they said "well, our reading of this says  
7 that you have to continue", let's say dark fiber loops,  
8 "you have to continue providing dark fiber loops at the  
9 rates in the interconnection agreement", we might find  
10 that as a cause to reject that particular contract and  
11 have that carrier move into an interconnection  
12 agreement which only includes the services that we're  
13 obligated to offer through the interconnection  
14 arrangement. And, again, that's just a speculation as  
15 to what in my mind could cause such a thing to happen.

16 Q. Mr. Skrivan, might another circumstance that would  
17 cause FairPoint to reject an interconnection agreement  
18 be that FairPoint was unable to reach an agreement with  
19 a CLEC in the Bankruptcy Court regarding the CLEC's  
20 proof of claim?

21 A. (Skrivan) My answer is "that's possible." But, even in  
22 that situation, it seems to me more likely that the  
23 proof of claim would be litigated, and a settlement  
24 reached through litigation, and there would be no

1 reason to actually cancel the underlying contract,  
2 assuming that we would end up in more or less the same  
3 contract after -- I said "cancel", "reject" I guess is  
4 the proper term. I just don't know that I see in that  
5 situation the benefit of rejecting an interconnection  
6 agreement, when, as soon as it is rejected, the CLEC  
7 could opt into another one or simply continue to  
8 operate, until we get another one put in place through  
9 negotiation or arbitration.

10 Q. Now, Mr. Skrivan, if an interconnection agreement is  
11 rejected, what, in fact, governs the relationship  
12 between FairPoint and the CLEC who is the party of the  
13 rejected contract?

14 A. (Skrivan) Well, I think, at the core, that's a legal  
15 question. But, if that were to happen, the first thing  
16 I would look at would be the rejected interconnection  
17 agreement, and see if it says "here's what you do if  
18 the contract is canceled without a replacement contract  
19 being put in its place." Sometimes those agreements  
20 state that "you will continue to operate under those  
21 rates, terms and conditions until a new agreement goes  
22 into place."

23 Q. And, is that irrespective of what a particular  
24 interconnection agreement might say, do I understand

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1 FairPoint's position to be that it will, in fact,  
2 continue to abide by the terms and conditions of a  
3 rejected interconnection agreement until a new  
4 agreement can be put into place?

5 A. (Skrivan) Yes.

6 Q. Okay. Now, do I also understand correctly that by that  
7 you mean that FairPoint will continue to pay the  
8 affected CLEC whose contract is rejected, according to  
9 the same terms and provisions of the rejected contract?

10 A. (Skrivan) Yes, I would expect that.

11 Q. And, will FairPoint continue to exchange traffic with a  
12 CLEC whose interconnection agreement has been rejected?

13 A. (Skrivan) Yes.

14 Q. And, if FairPoint does, in fact, reject its  
15 interconnection agreement with Comcast or any other  
16 CLEC, what assurances does this Commission have that  
17 traffic will continue to be exchanged between Comcast  
18 and FairPoint or between another CLEC and FairPoint,  
19 such that end-use retail customers of both companies  
20 are not harmed by the lack of an interconnection  
21 agreement?

22 A. (Skrivan) I guess what I would go to for that would be  
23 Section 251(a) of the Telecommunications Act, which  
24 requires all telecommunications carriers to directly or

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1 indirectly interconnect with each other.

2 Q. And, lastly, Mr. Skrivan, assuming FairPoint's  
3 Reorganization Plan is approved and FairPoint emerges  
4 from bankruptcy, will FairPoint continue to abide by  
5 all of the wholesale obligations that are expressed in  
6 the Commission's order, the Settlement Agreement, and  
7 the CLEC Stipulation in DT 07-011?

8 A. (Skrivan) The answer is, except to the extent that the  
9 Regulatory Settlement might impact those, the answer is  
10 "yes".

11 MS. GEIGER: I have no further  
12 questions.

13 CHAIRMAN GETZ: Thank you. Mr. Judd.

14 MR. JUDD: Thank you, Mr. Chairman.

15 BY MR. JUDD:

16 Q. Mr. Skrivan, that last line of questioning, just a  
17 point of clarification. Am I to understand that, in  
18 the event you were to reject an interconnection  
19 agreement with a CLEC, that you would expect there to  
20 be no impact on that CLEC's end-user?

21 A. (Skrivan) Not as a result of us rejecting the  
22 interconnection agreement, correct.

23 Q. Mr. Nixon, we had conversations yesterday regarding  
24 Legacy FairPoint. And, as that can got kicked down the

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1 road, it got kicked to you. So, a point of  
2 clarification, if we could. Are all of the Legacy  
3 FairPoint companies operating with rural exemption?

4 A. (Nixon) They are.

5 Q. Which, help me understand, that means that you have no  
6 -- your company has no CLEC customers in other  
7 jurisdictions, is that correct?

8 A. (Nixon) I believe that's correct.

9 A. (Skrivan) I'd like to correct that.

10 A. (Nixon) Well, there's a -- go ahead.

11 A. (Skrivan) The Rural Exemption impacts Section 251(c)  
12 obligations. And, it does not impact Section 251(b)  
13 obligations. And, one of the Section 251(b)  
14 obligations, for example, is an obligation for  
15 reciprocal compensation. So, to the extent that a CLEC  
16 would come into the operating area of a Telecom Group  
17 and offer their own local services and seek to  
18 interconnect with us, we can and do. So, we do, in  
19 fact, have interconnection agreements with CLECs in a  
20 number of our Telecom Group operating areas, but  
21 they're more limited to the resale side, and do not  
22 include some of the Section 251(c) obligations, such as  
23 collocation, unbundled network elements, and resale at  
24 a wholesale discount.

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1 Q. Thank you for the clarification. Mr. Nixon, this  
2 morning your counsel distributed a "Notice of Filing of  
3 Second Supplement to Plan Supplement", which, if I  
4 understand it correctly, rejected a contract involving  
5 a network facility in Vermont. Are you familiar with  
6 that rejection?

7 A. (Nixon) I am not.

8 Q. Well, we'd ask then that we get some clarification as  
9 to whether the tower and the hut that was the contract  
10 from which was rejected, whether that provides any  
11 service to New Hampshire locations? Unless you would  
12 know that already?

13 A. (Nixon) I do not.

14 MR. McHUGH: We'll take that as an oral  
15 data request, Mr. Chairman.

16 MR. JUDD: Thank you very much.

17 CHAIRMAN GETZ: Okay. We'll reserve  
18 that as "FP-28".

19 **(Exhibit FP-28 reserved)**

20 BY MR. JUDD:

21 Q. And, perhaps counsel would like to add to that, we'd  
22 also like to know whether you anticipate rejecting any  
23 additional contracts for facilities that provide  
24 service to the New Hampshire territory?

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1 A. (Nixon) I'm not aware of any, but I do not know that  
2 with certainty.

3 Q. Thank you. Now, Mr. Nixon, you negotiated the  
4 Regulatory Settlement and signed it and executed on  
5 behalf of your company, is that correct?

6 A. (Nixon) I did.

7 Q. Great. Well, we've got a few questions, and I need  
8 your help understanding a few pieces of that. Let's  
9 start with, would I be correct in assuming that you  
10 read the testimony of Ms. Bailey on behalf of the  
11 Advocate Staff?

12 A. (Nixon) I did.

13 Q. And, do you believe that she accurately described the  
14 terms and conditions of the Regulatory Settlement?

15 A. (Nixon) I believe that's the case.

16 Q. Under the Regulatory Settlement, is it your  
17 understanding that all of the terms of the 2008  
18 Settlement approved by this Commission would remain in  
19 effect, but as explicitly modified by the Regulatory  
20 Settlement in this docket?

21 A. (Nixon) That's correct.

22 Q. Would I be correct in assuming you have read the  
23 reports submitted on behalf of the Non-Advocate Staff  
24 in this docket?

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1 A. (Nixon) Yes, I have.

2 Q. Terrific. Specifically, the Supplemental Report  
3 contained some conditions. And, they were subject to  
4 some discussion yesterday.

5 A. (Nixon) I've read them. And, I have them in front of  
6 me.

7 Q. That would be great. Let's look at the very first one,  
8 which is on Page 15. Now as I read Section 1.2 of the  
9 Regulatory Settlement, if this Commission were to make  
10 approval of the Regulatory Settlement to be, your  
11 words, "contemporaneous" with the Bankruptcy Court's  
12 confirmation of the Plan of Reorganization, that would  
13 be consistent with the Regulatory Settlement. Am I  
14 understanding that correctly?

15 A. (Nixon) I believe we are seeking the approval and the  
16 order of approval to take place prior to the end of  
17 June, so that, at the final bankruptcy hearing in early  
18 July, that we can file those and have those resolved at  
19 that time.

20 Q. I appreciate understanding that's your preference.  
21 However, I'm reading Section 1.2 to, in the very first  
22 sentence, to say that the "approvals granted by the  
23 Commission", being this Commission, "contemporaneously  
24 with", and then there's a parenthetical "(or in advance



1 of) the Bankruptcy Court's Confirmation of the  
2 Reorganization Plan." So, would I be correct that it  
3 was your intent, when negotiating the Regulatory  
4 Settlement, to contemplate a contemporaneous approval  
5 by this Commission, as well as one in advance?

6 A. (Nixon) I think it's better to say what we were  
7 contemplating is that they would run on parallel  
8 tracks, and not in a serial fashion.

9 Q. Excellent. Thank you. Thank you. Returning again to  
10 the proposed conditions, with the exception of the  
11 second condition, would you tell us whether you believe  
12 any one of the others would constitute an additional  
13 substantive new condition that, under your Section 1.2  
14 and 1.5 of the Regulatory Settlement, would permit  
15 FairPoint to withdraw from that Regulatory Settlement?

16 A. (Nixon) It's hard for me to sit and speculate whether  
17 it's a "substantive new condition". I think a better  
18 way to say that would be that the parties anticipated  
19 and designed the Regulatory Settlement in such a way  
20 that it did not require or anticipate or need new or  
21 additional conditions. Indeed, as you look at the  
22 conditions proposed by the Non-Staff Advocate, I think  
23 there's two general frameworks we can take a look at  
24 them in.

[WITNESSES: Nixon|Skrivan]

1                   One framework is that the Plan has been  
2                   confirmed, absent the Regulatory Settlements, and the  
3                   vote has taken place. And, so that there is no  
4                   contemplation of any changes to the Regulatory  
5                   Settlements. Indeed, if there are changes to the  
6                   Regulatory Settlements, it would risk putting this  
7                   process back to square one, and perhaps even  
8                   litigation. So, there's no contemplation that there  
9                   would be a change. And, I think that is what is --  
10                  that addresses in and of itself several of the  
11                  conditions.

12                 The other is that the -- and, again, I'm  
13                 not a lawyer, but, as I understand, the ability of the  
14                 Commission always has the ability to go and review an  
15                 order once made. So, if, indeed, that there was some  
16                 action taken place or some event that took place that  
17                 you wish to review subsequent to an order, you have the  
18                 right to call the Company in for that review. Hence,  
19                 our belief that there are no new conditions required or  
20                 any necessitated at this time.

21    Q.   Well, stated differently then, would I be correct that  
22           it was your intent, when you negotiated the Regulatory  
23           Settlement, that an order from this Commission would  
24           essentially be one sentence: "We approve the

1 Regulatory Settlement"?

2 A. (Nixon) I think we anticipated that it would be an  
3 approval of the change of control, the Regulatory  
4 Settlement, and the member pledge of Vermont Telephone  
5 Company.

6 Q. So, I understand, what I just understood you to say is,  
7 if the Commission put any qualifiers in their approval,  
8 that the Company might consider that a substantive  
9 change, and you would have to review that after you  
10 read the order, is that correct?

11 A. (Nixon) Yes, that's exactly correct.

12 Q. Okay. There's been some discussion yesterday  
13 concerning Section 15 of the Plan of Reorganization and  
14 how it interrelates with the Regulatory Settlement.  
15 Let's talk about what happens after the Effective Date.  
16 Was it your intent, when you negotiated the Regulatory  
17 Settlement, that, once the Plan of Reorganization is  
18 confirmed and you have reached the Effective Date, that  
19 there would be no further change to the Regulatory  
20 Settlement?

21 A. (Nixon) I'm sorry, repeat the question.

22 Q. Let me rephrase it, because perhaps it was a bit long  
23 and perhaps confusing. After you reach the Effective  
24 Date, was it your intent that you would be -- that you

1 are reserving the right to return to the Bankruptcy  
2 Court to modify the Regulatory Settlement?

3 A. (Nixon) No, we're not reserving -- we're not intending  
4 or reserving the right to return to the Bankruptcy  
5 Court. And, I think, if I could, again, not being an  
6 attorney, as you look at the Plan, is -- the reference  
7 here was to "Section 15", which I believe to be  
8 considered some "general boilerplate", if there is such  
9 a thing of "bankruptcy boilerplate". If you read that  
10 in its entirety, along with Section 14.4 of the Plan,  
11 it speaks of the fact that, after the Effective Date,  
12 that it's anticipated that the Commission would  
13 preserve their right and preserve the rights that they  
14 have to continue to review and to act in the authority  
15 of the Regulatory Settlement.

16 Q. So, is it your understanding that Section 15 of the  
17 Plan of Reorganization refers to continuing  
18 jurisdiction of the Bankruptcy Court concerning the  
19 Regulatory Settlement between now and the Effective  
20 Date?

21 A. (Nixon) "Between now and the Effective Date" is  
22 correct.

23 Q. Does, to the best of your knowledge, does the Company  
24 have any intention of, between now and the Effective

1 Date, of asking the Bankruptcy Court to reject any  
2 provision of the Regulatory Settlement?

3 A. (Nixon) No, we do not.

4 Q. Section 2.7 of the Regulatory Settlement, and I don't  
5 believe you need to get to it, but please feel free to,  
6 if you wish, says that you can use the broadband  
7 penalties for investment in the network "subject to the  
8 approval of the Commission." You're familiar with that  
9 provision?

10 A. (Nixon) I am.

11 Q. Help me understand one piece there. Was it your intent  
12 that you would get pre-approval from this Commission?

13 A. (Nixon) That's always been our intent.

14 Q. Section 4.8 has been the subject of some discussion,  
15 and I appreciate your help in understanding that. In  
16 particular, reconciling that with Section 2.7. And,  
17 here is the specific point. Was that intended to mean  
18 that the restriction was in place until the penalty was  
19 paid?

20 A. (Nixon) No. I'd say the intent is that it has to be, I  
21 think it's the key, is a "breach of material  
22 condition", number one. And, then, number two, that  
23 the restriction is not in effect, unless there's been a  
24 breach of material condition. So, if you go to -- so,

1 an example that's called for in this particular  
2 provision, if there are service quality penalties that  
3 accrue during the year, that, as long as the Company  
4 pays those penalties on a timely basis in the normal  
5 course, the Company is not in default of that  
6 provision.

7 Q. This Regulatory Settlement also permits you to defer  
8 penalties by investing that in your system, is that  
9 correct?

10 A. (Nixon) I'm not sure I'd say they "defer the  
11 penalties". We have to pay the penalty, and then we  
12 have three years in which to construct pre-approved  
13 projects.

14 Q. Thank you. I appreciate the clarification. So, is it  
15 your understanding that, under this Settlement, if you  
16 are in breach and would otherwise owe a penalty, and  
17 you make a commitment to invest that in your system,  
18 and you complete that within that three-year period,  
19 that you're not in breach, is that correct?

20 A. (Nixon) Well, you put -- you qualified it with we're  
21 "in breach" in the early part of your question.

22 Q. Okay. You've incurred -- let me restate it then. If  
23 you have incurred the obligation to pay a penalty?

24 A. (Nixon) Right.

1 Q. Thank you. You can make a commitment to invest that in  
2 your system, correct?

3 A. (Nixon) That's correct.

4 Q. And not have to pay the penalty, is that correct?

5 A. (Nixon) Yes, I think it's a matter of semantics.

6 Again, the provision calls that we would pay the

7 penalty, but the Company would retain the money for

8 investment in our network with pre-approved projects.

9 And, so, I believe that the position of the Company is

10 that, as long as we paid that penalty, in other words,

11 reserved that penalty internally within the Company, we

12 were in good faith seeking pre-approval of the

13 projects, and building those projects with an

14 expectation of completion within the three years, that

15 none of those events would trigger a breach.

16 Q. So, as long as that investment is completed within  
17 three years, you're saying that you would be, if you  
18 make the commitment and you complete it within three  
19 years, you would be in compliance, is that correct?

20 A. (Nixon) That's correct.

21 Q. And, during that three-year period, while you're still  
22 awaiting completion of the project, is it the Company's  
23 position that during that three-year period you're in  
24 compliance?

1 A. (Nixon) That's correct.

2 Q. Therefore, during that period, you would -- is it your  
3 understanding that the Company would be able to issue  
4 dividends?

5 A. (Nixon) That's correct.

6 Q. Is it the intent of the Company to take the dollars  
7 that are designated, that otherwise would be paid as  
8 penalty, and somehow isolate those or put them into  
9 escrow or some other means to confirm that, in fact,  
10 during the intervening three-year period they will be  
11 spent on the infrastructure?

12 A. (Nixon) There is no provision here that calls for the  
13 Company to establish an escrow fund and to maintain  
14 that to incur the cost necessary to do that. But,  
15 certainly, the Company could say restrict a fund up and  
16 hold the money aside. It doesn't call for that. I  
17 think the real test is, "is the Company continuing to  
18 making good faith, are we building out those penalties,  
19 should they occur?" And, I think we heard from the  
20 witnesses yesterday about the rigor and discipline of  
21 the plans that they're currently undertaking, but  
22 should they occur. We certainly would be willing to  
23 meet with and provide the assurances, too, that there's  
24 sufficient money there to build out those projects.



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1 Q. Thank you.

2 CHAIRMAN GETZ: If I can interrupt?

3 MR. JUDD: Of course.

4 CHAIRMAN GETZ: I just want to make sure  
5 I understand the point that I think you're trying to make,  
6 Mr. Judd. And, it's "what's the status for the Company  
7 with respect to whether a breach applies or not?" And,  
8 then, I take it that you're saying, Mr. Nixon, is once,  
9 when the Company commits to make an investment in lieu of  
10 paying a penalty, then it's not in breach?

11 WITNESS NIXON: That's correct.

12 CHAIRMAN GETZ: And, anything that would  
13 flow from being in breach wouldn't apply, such as being  
14 restricted in making dividends or something else?

15 WITNESS NIXON: I'm sorry. Again, for  
16 clarity purposes, we would not view the Company as being  
17 in breach in that example. And, therefore, we would be  
18 able to pay dividends in that example.

19 CHAIRMAN GETZ: Okay. Thank you.

20 MR. JUDD: Thank you for your  
21 assistance.

22 BY MR. JUDD:

23 Q. Mr. Nixon, in the event your company decides to use --  
24 to resell broadband services to meet its commitment for

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1 expansion of broadband, is it your understanding that  
2 your company would seek pre-approval from this  
3 Commission before embarking on that?

4 A. (Nixon) Let me read the terms. I'm not sure that it's  
5 -- let's refresh my -- here it is, Section 2.6. I  
6 don't believe that we're required to have pre-approval.  
7 The condition states that, as long as whatever  
8 technology we use meets the requirements of the 2008  
9 order, that that is sufficient.

10 Q. And, I was asking for your understanding of the intent  
11 of the Company. And, so, perhaps I could restate it.  
12 Then, should I understand it's the intent of FairPoint  
13 that you would notify the Commission after-the-fact, as  
14 some sort of a compliance filing, to certify that you  
15 have met your broadband commitment?

16 A. (Nixon) We would certainly provide the filing  
17 after-the-fact that we met the broadband commitment.

18 Q. And, there's a commitment in Section 4.6 regarding  
19 "incentive and bonus plans". Have you established what  
20 the protocol would be for advising the Commission of  
21 the status of meeting both your obligations, as well as  
22 the expenditures under the incentive and Bonus Plan?

23 A. (Nixon) I believe, in the Plan that has been filed, the  
24 Plan Supplement, already articulates and specifies that

1 the provisions of the Success Bonus do conform and  
2 conform to this provision that does two things. It  
3 sets up that the Success Bonus is driven by service  
4 quality metrics, of which there are three that Ms. Hood  
5 testified to, as well as a profitability component,  
6 EBITDAR. And, so, that's been done. It's in the Plan,  
7 and that's already been established.

8 Q. Is it your intent, under Section 4.6, that you would  
9 make a filing with the Commission that establishes  
10 compliance with the terms of 4.6, that to confirm that  
11 that is -- that that formula that you just mentioned  
12 was, in fact, used?

13 A. (Nixon) We certainly can, but I don't believe it was  
14 contemplated here, nor is a condition necessary. We  
15 have and meet with the Staff on a regular basis. That  
16 was not, I don't believe, contemplated or specifically  
17 required as part of this provision, nor is it necessary  
18 as a condition. And, certainly, we're not opposed to  
19 being transparent and sharing with the Staff to confirm  
20 that we have -- that the service quality indices that  
21 we said that we would meet, we have indeed met. Those  
22 are published. Actually, those service quality indices  
23 are published on a biweekly basis.

24 MR. JUDD: Thank you. I have nothing

1 further.

2 CHAIRMAN GETZ: Commissioner Below.

3 CMSR. BELOW: Yes. Thank you. I have a  
4 few questions.

5 BY CMSR. BELOW:

6 Q. Under action Section 2.4 of the New Hampshire  
7 Regulatory Settlement, there's a provision that says  
8 "FairPoint's pricing obligations relating to  
9 stand-alone DSL services will terminate on April 1,  
10 2011, but [that] FairPoint will continue to provide  
11 stand-alone DSL service." And, as I recall, that was  
12 -- there was some annual limit to an increase in the  
13 pricing for that of, say, 15 percent per year. Could  
14 you refresh my memory. Is this primarily a retail  
15 service offering that's referenced here?

16 A. (Nixon) I know it's retail. I have to look at Mr.  
17 Skrivan to see if it's also wholesale. But it is a  
18 retail offering.

19 A. (Skrivan) It's primarily a retail commitment here.

20 Q. And, do you know what that is priced at today  
21 approximately?

22 A. (Skrivan) I don't know.

23 Q. Don't know. But this modifies the original Settlement  
24 by terminating that annual price increase, is that

1 correct?

2 A. (Nixon) I think it's does two things.

3 Q. Okay.

4 A. (Nixon) So, in the first -- in the original Merger  
5 Order, I believe that it was a two-year limit, and then  
6 the 15 percent adder would begin at the end of two  
7 years. This says that that original price has to stay  
8 until I believe it says "April 1st, 2011", so now it's  
9 three years. Then, after that, there are no -- then,  
10 after that, there is pricing flexibility.

11 Q. Okay. There are provisions that failures to meet  
12 broadband commitments, the penalties, in excess of the  
13 first half million, would be invested within three  
14 years of the penalty as additional expenditures on  
15 improving FairPoint's network, subject to the PUC  
16 approval. Can you tell me if such additional  
17 expenditures under this Regulatory Settlement, if it's  
18 approved, would come into play with regard to your  
19 Section 7.12 of your Credit Agreement that restricts --  
20 makes some restrictions on your flexibility with regard  
21 to capital expenditures. Restricting you from making  
22 or becoming legally obligated to make capital  
23 expenditures in excess of certain amounts and, you  
24 know, with certain exceptions for a period of five

1 years. Would that investment in lieu of penalty fall  
2 within that limitation?

3 A. (Nixon) There is no provision within the Credit  
4 Agreement that I'm aware of that would give special  
5 deference to this. So, it would have to fall within  
6 the provisions of that Credit Agreement.

7 Q. Okay. I think, in the Regulatory Settlement, you also  
8 reconfirmed certain commitments to make capital  
9 expenditures through 2013. And, in the summary of that  
10 -- of the summary in Exhibit AG-3, it refers to those  
11 expenditures being "157.6 million through  
12 December 31st, 2009, subject to [some] verification."  
13 Do you know what the status is, say, as of the end of  
14 April on those capital expenditures?

15 A. (Nixon) I do not.

16 A. (Skrivan) I don't know that.

17 Q. Okay.

18 A. (Nixon) As a point, there's one in particular that I do  
19 recall, though, in terms of the broadband build-out.  
20 That as of, I think, the end of April, it was, in New  
21 Hampshire, over \$40 million.

22 Q. Okay. With regard to the provision that says you would  
23 be barred from paying dividends if you're in material  
24 breach of the New Hampshire Regulatory Settlement,

[WITNESSES: Nixon|Skrivan]

1       that's within the first two years following the  
2       Effective Date. Does that mean exactly two years, say,  
3       if the Effective Date was September 15th of this year,  
4       would that limitation run through September 15th of  
5       2012?

6   A.   (Nixon) That's correct.

7                   CMSR. BELOW: Okay. That's all.

8                   CHAIRMAN GETZ: Commissioner Ignatius.

9                   CMSR. IGNATIUS: Thank you.

10  BY CMSR. IGNATIUS:

11  Q.   Following on Commissioner Below's questions just a  
12       moment ago and the conversations with Mr. Judd about  
13       that Section 4.8, I understand your position on having  
14       paid a penalty, it would not be considered a material  
15       breach. But there was another aspect of that  
16       discussion that took us in a different direction than I  
17       had expected, and I may be wrong, so I'm really asking  
18       for clarification and correct my thinking, if I got off  
19       track there. Under the provision where you are allowed  
20       to retain any penalty over \$500,000 and invest it,  
21       you're, in effect, it sounds like holding what would  
22       have been paid in a penalty into the future, but using  
23       that money currently is a possibility, is that right?  
24       Invest today what you would have to pay as a penalty

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1 next year?

2 A. (Nixon) So, let me say it differently, if I might,  
3 maybe we're saying the same thing, but just again for  
4 clarification. So, if there is, in the event that  
5 there is a penalty that will be applied for missing, in  
6 this case, a broadband milestone, that money would then  
7 be retained by the Company to be spent over three years  
8 in pre-approved network projects. So, that money is  
9 being set -- that money has to spent over three years.

10 Q. How do we assure that the money is invested in those,  
11 as you say, it's for certain things that are  
12 pre-approved by the Commission, how do we align the  
13 timing of those investments and approval prior to the  
14 investments with the -- making those funds available?  
15 Can you -- it almost sounded to me like you were  
16 anticipating a penalty, knew that those funds would  
17 then be available, because they would be withheld by  
18 you and not have to be paid over as a penalty. And,  
19 then, you would, if -- setting aside you're no longer  
20 in material breach, you then can use for dividends.  
21 That's the bottom line of my question. How do we  
22 assure that those penalty monies that are being  
23 retained by you don't end up in the form of dividends?

24 A. (Nixon) So, within the -- I guess the way I would look



1 at that is that we provide you the quarterly financial  
2 statements, you see and understand our cash position.  
3 And, you have the information necessary to monitor the  
4 Company's financial performance in the state. And,  
5 should you at any time question whether there's  
6 sufficiency there, you certainly have the ability to  
7 ask us to come in to demonstrate that sufficiency.  
8 There is no provision that says that money needs to be  
9 set aside in a particular fund in reserve. And, it is  
10 the opportunity to spend the money over three years on  
11 projects, partly because of the time it takes to design  
12 -- engineer, design, and then construct and get  
13 approval for those projects, is something that it takes  
14 time to do that. Hence, why that there was a period of  
15 time established for three years to complete those  
16 project builds.

17 So, I'd say it's predicated on the  
18 information that we already provide on a regular basis.  
19 And, your ability that, if there's any question with  
20 that regard, to have us come in and demonstrate that.

21 Q. All right. If you look at Section 4.4 of the  
22 Agreement, the Regulatory Settlement for New Hampshire,  
23 I just want some explanation on what was -- what  
24 mechanisms are in place. This is a requirement, not

1       only about the Board of Directors, but also that  
2       "FairPoint maintain a state president who [will]  
3       provide a senior regulatory presence in New Hampshire  
4       able to reasonably respond to various future FairPoint  
5       based Commission dockets or regulatory issues." What  
6       is the authority vested in the state president?

7   A.   (Nixon) The state president has matters as they relate  
8       to the conduct of the regulatory affairs, legislative  
9       affairs, economic development, and maybe a liaison of  
10      the business community and the other communities back  
11      to the Company.

12   Q.   That sounds like duties of the vice president -- excuse  
13      me, of the state president. But what is the ultimate  
14      authority to take action if there -- if problems arise  
15      that are specific to New Hampshire, and not  
16      company-wide?

17   A.   (Nixon) So, one of -- great question. One of the  
18      reasons we have a state president is because they then  
19      have the authority to reach within the operating  
20      business units of the Company, to direct those to  
21      respond, if necessary, to respond to state needs. And,  
22      what we have discovered is that having somebody with  
23      that authority and that responsibility and that  
24      accountability at a senior level within the company

[WITNESSES: Nixon|Skrivan]

1 provides us one more level of assurance to the  
2 legislator, to the regulators, and to the business  
3 community, that there needs have a very high priority,  
4 and is somebody they call on that has the ability to  
5 reach within the company to get that done.

6 Q. Thank you. Mr. Skrivan, part of your duties as a  
7 Regulatory Department I assume is to follow the status  
8 of complaints and issues that each of the Commissions  
9 are dealing with?

10 A. (Skrivan) That's really more primarily the focus of our  
11 External Affairs Groups. And, my group is more of a  
12 support for them for various types of things.  
13 Specifically, my duties -- the duties of my group  
14 include filing tariffs. So, any tariffs that are  
15 developed and filed in the state are -- at some point  
16 come through my group. And, so, that's for state and  
17 federal tariffs. My group is responsible for  
18 administering our compliance obligations. So, we  
19 track, and we're not responsible for complying, because  
20 that's the whole company's job, but we're responsible  
21 for, you know, just verifying that reports get made and  
22 people know what they're supposed to do. And, my group  
23 takes care of negotiating interconnection agreements.  
24 And, that's pretty much it. So, we get involved in

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1 state issues, but we're not the front line for docket  
2 management, let's say, within the State of New  
3 Hampshire.

4 Q. Who is the right person to go to if there is a concern  
5 that customer complaints are not being resolved  
6 adequately?

7 A. (Nixon) That would be to a state president.

8 Q. And, is there any -- anyone's responsibility between  
9 the -- well, all right. And, Mr. Skrivan, in  
10 Mr. Giammarino's testimony, which you've sponsored, in  
11 that last section, on Page 52, I want to ask you about  
12 one sentence. This came up yesterday, so, if you were  
13 here, you heard this and it was saved for you. On Line  
14 9, it says that "FairPoint will continue to operate  
15 under a service quality program that will subject us to  
16 sizable financial penalties in the future for failing  
17 to achieve important service quality metrics." And,  
18 that sentence was in the context of reasons why we  
19 should have comfort to know that things will go well,  
20 because there are costs associated for the Company if  
21 they don't go well. Is that fair?

22 A. (Skrivan) Yes.

23 Q. And, my question then is, those are the same penalties  
24 that we've had in place for the last few years, isn't

1           that correct?

2   A.   (Skrivan) The penalties really have been put in place  
3       as a result of the Merger Order. And, so, really, 2009  
4       was the first year that we operated under those  
5       penalties.

6   Q.   Did the penalties during that first year serve to  
7       ensure that service quality was high?

8   A.   (Skrivan) Clearly, they did not ensure that. But,  
9       also, there was -- there was a definite financial  
10      motivation on the Company's part to try to avoid  
11      penalties through its systems. And, you know, we  
12      weren't able to do that.

13   Q.   So, how will those same penalties provide a greater  
14      incentive than they did during 2009?

15   A.   (Skrivan) I don't know that I would represent that they  
16      "provide a greater incentive". I mean, we just didn't  
17      do it in 2009. And, from the testimony that you've  
18      heard from the last couple days, we've, at least from  
19      my observation, we've been able to turn the corner to a  
20      great deal on the service quality. And, in order -- it  
21      seems to me that the program, the way it's been  
22      designed, will motivate us, if we don't have enough  
23      internal motivation, which I would say we have internal  
24      motivation, plus the market has given us considerable

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1 motivation. But, on top of that, this motivation will  
2 just continue to keep us looking at those service  
3 quality metrics.

4 CMSR. IGNATIUS: All right. Thank you.  
5 I appreciate your time.

6 CHAIRMAN GETZ: Mr. McHugh, any  
7 redirect?

8 MR. McHUGH: I do, Mr. Chairman. I'm  
9 wondering if it's possible to take a quick break before we  
10 get there.

11 CHAIRMAN GETZ: One second.

12 (Chairman and Commissioners conferring.)

13 CHAIRMAN GETZ: Actually, off the record  
14 for a second.

15 (Brief off-the-record discussion  
16 ensued.)

17 CHAIRMAN GETZ: Okay. Back on the  
18 record, Steve. All right. Let's take a brief recess, and  
19 then we will return with redirect for this panel, and then  
20 we'll move onto the CLEC witnesses.

21 (Whereupon a recess was taken at 2:59  
22 p.m. and the hearing resumed at 3:19  
23 p.m.)

24 CHAIRMAN GETZ: Okay. We're back on the

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1 record. And, turning to Mr. McHugh for opportunity for  
2 redirect.

3 MR. McHUGH: Thank you, Mr. Chairman.

4 **REDIRECT EXAMINATION**

5 BY MR. McHUGH:

6 Q. Mr. Nixon, you recall the questions you were asked by  
7 Attorney Judd with respect to Section 1.2 of the New  
8 Hampshire Regulatory Settlement?

9 A. (Nixon) Yes, I do.

10 Q. If you take a look at Section 1.4 for me. Does that  
11 contain a 120 day term with respect to the Commission  
12 issuing a final order?

13 A. (Nixon) It does.

14 Q. And, does that provision tie to the request that we've  
15 made with the Commission that it respectfully issue a  
16 decision on or before June 24?

17 A. (Nixon) It does.

18 MR. McHUGH: Thank you, Mr. Chairman.  
19 That's it.

20 CHAIRMAN GETZ: Okay. Thank you. Then,  
21 the witnesses are excused. Thank you. Okay. Then, turn  
22 to the CLEC witnesses. Are the parties prepared to  
23 proceed *en masse*?

24 MS. BRAGDON: Yes.

[WITNESSES: Wilusz|Mullholand|Winchester|Tisdale]

1 MR. SHOER: Yes.

2 CHAIRMAN GETZ: Okay. Thank you.

3 MR. SHOER: We have a foursome.

4 (Whereupon **Wendy Wilusz, Kath**  
5 **Mullholand, Nicholas Winchester, and**  
6 **Edward Tisdale** were duly sworn and  
7 cautioned by the Court Reporter.)

8 CHAIRMAN GETZ: Ms. Bragdon.

9 **WENDY WILUSZ, SWORN**

10 **KATH MULLHOLAND, SWORN**

11 **NICHOLAS WINCHESTER, SWORN**

12 **EDWARD TISDALE, SWORN**

13 **DIRECT EXAMINATION**

14 BY MS. BRAGDON:

15 Q. Good afternoon. Mr. Winchester, do you have in front  
16 of you today your prefiled testimony dated April 19th,  
17 2010 in this matter, which has been premarked "CRC  
18 Exhibit Number 1"?

19 A. (Winchester) Yes, I do.

20 Q. And, if you were asked those same questions today,  
21 would you give the same answers?

22 A. (Winchester) Yes, I would.

23 Q. Do you have any corrections or edits to make?

24 A. (Winchester) No, I do not.

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[WITNESSES: Wilusz|Mullholand|Winchester|Tisdale]

1 Q. Okay. Mr. Tisdale, do you have before you the prefiled  
2 testimony you filed in this proceeding marked as "CRC  
3 Exhibit Number 2", dated April 19th, 2010?

4 A. (Tisdale) Yes.

5 Q. And, if you were asked those same questions today,  
6 would you give the same answers?

7 A. (Tisdale) Yes.

8 Q. And, do you have any edits or corrections to make?

9 A. (Tisdale) No.

10 MS. BRAGDON: Thank you.

11 MR. SHOER: Thank you.

12 BY MR. SHOER:

13 Q. Ms. Wilusz, do you have a copy of your testimony in  
14 front of you?

15 A. (Wilusz) I do.

16 Q. Okay. And, this has been marked as "Exhibit BayRing  
17 Number 1". It's the testimony that's dated April 19th,  
18 2010. If I were to ask the same questions in this  
19 document, would your answers be all the same?

20 A. (Wilusz) They would.

21 Q. And, do you have any corrections, changes or edits at  
22 this time that you wish to make to the formal record of  
23 this testimony?

24 A. (Wilusz) No, I do not.

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1 MR. SHOER: Thank you.

2 CHAIRMAN GETZ: Ms. Cole.

3 MS. COLE: Mr. Chairman, before I  
4 qualify my witness, segTEL has an additional exhibit,  
5 marked as "segTEL 2", to Ms. Mullholand's testimony that  
6 has been distributed to all the parties this morning,  
7 which we would like entered into the record.

8 CHAIRMAN GETZ: Okay. Well, we'll mark  
9 it for identification, and then we'll address, at the end  
10 of the proceedings, what's going to be admitted into  
11 evidence.

12 MR. McHUGH: Mr. Chairman, just one  
13 procedural matter. Number one, there will be an objection  
14 to it. But, number two, the understanding that I have is  
15 that they are going to try and get in new testimony with  
16 the use of this exhibit. So, I will be objecting to both  
17 the exhibit and the new testimony.

18 CHAIRMAN GETZ: Okay. Let's see where  
19 this goes.

20 MS. COLE: Would you like me to deal  
21 with the exhibit first, sir?

22 CHAIRMAN GETZ: Sure.

23 MS. COLE: This exhibit serves three  
24 separate, but related, functions. First, this document

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1 relates directly to Ms. Mullholand's testimony, prefiled  
2 testimony, on Page 13, where she discusses "DSL  
3 qualification". It is being offered to support the  
4 testimony, but it was not available to Ms. Mullholand at  
5 the time she filed her testimony, and was only recently  
6 published. This document is a public document, routinely  
7 made available on the FairPoint website. In fact, Mr.  
8 Murtha testified that FairPoint holds biweekly meetings  
9 with the CLECs, and this document is an example of the  
10 agenda Mr. Murtha referred to in his testimony.

11 Second, this exhibit functions as  
12 rebuttal testimony to Mr. Murtha's claims that FairPoint  
13 has completed virtually all of the items on the Liberty  
14 Group's list that CRC referred to yesterday. The CLC --  
15 and the CLEC community disagrees with this claim, and  
16 would like the Commission to have a full hearing on the  
17 CLEC perspective.

18 Third, the exhibit will be helpful to  
19 the Commission, because Commissioner Ignatius asked Mr.  
20 Murtha to address the discrepancy between FairPoint's  
21 claims that the software issues are mostly fixed, and the  
22 CWIC -- and that the CLECs are still having -- still  
23 filing long lists.

24 So, it functions in three different

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1 ways.

2 CHAIRMAN GETZ: And, your opportunity  
3 for an objection, Mr. McHugh.

4 MR. McHUGH: Well, first of all, to the  
5 extent that Ms. Mullholand's testimony covers it, it's  
6 something new that is not permitted in the procedural  
7 order that was recently issued.

8 And, number two, again, it's new  
9 testimony that's being offered solely to rebut something  
10 that came up through a question that Commissioner Ignatius  
11 asked. So, it's not something that I generated.

12 Third, these two incidents, as Mr.  
13 Murtha would come back and testify, were from carriers not  
14 party to these -- a carrier, a single carrier, not party  
15 to these proceedings, which have since been closed out.

16 CHAIRMAN GETZ: And, so, you're making  
17 an offer of proof to that point?

18 MR. McHUGH: Correct.

19 (Chairman and Commissioners conferring.)

20 CHAIRMAN GETZ: Well, Ms. Cole, I mean,  
21 one issue that comes immediately to my mind was, I think  
22 this would have been more appropriately and obviously  
23 could have been a part of your cross-examination or  
24 opportunity to cross-examine Mr. Haga yesterday, which you

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1 didn't take advantage of. And, I'm certainly sensitive,  
2 Mr. McHugh, to the fact that the procedural schedule did  
3 not provide for this, what amounts to a round of -- an  
4 extra round of testimony.

5 But, having said all that, it seems to  
6 be an issue that's limited in its scope. I'm going to  
7 permit examination on this issue. And, I understand your  
8 offer of proof with respect to what Mr. Haga would say.  
9 And, if you want to --

10 MR. MCHUGH: Mr. Murtha.

11 CHAIRMAN GETZ: I'm sorry, Mr. Murtha.  
12 And, then, you have the -- if you want to recall them,  
13 you'll have that opportunity. And, it sounds like you are  
14 familiar enough with this issue to cross-examine Ms.  
15 Mullholand about it.

16 So, we're going to proceed with this, to  
17 permit this to be marked for identification, and to have  
18 some brief what amounts to supplemental or surrebuttal  
19 direct.

20 (The document, as described, was  
21 herewith marked as **Exhibit segTEL-2** for  
22 identification.)

23 MS. COLE: Thank you, Commissioner.

24 BY MS. COLE:

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[WITNESSES: Wilusz|Mullholand|Winchester|Tisdale]

1 Q. Would you please state your full name and your position  
2 at segTEL.

3 A. (Mullholand) My name is Kath Mullholand. I'm the  
4 Director of Operations for segTEL, Incorporated.

5 Q. And, have you sponsored testimony that has been  
6 prefiled as "segTEL Exhibit 1" in this docket?

7 A. (Mullholand) Yes.

8 Q. And, is this testimony true and accurate to the best of  
9 your knowledge and belief?

10 A. (Mullholand) Yes.

11 Q. And, do you affirm that testimony under oath?

12 A. (Mullholand) Yes.

13 Q. Would you please state briefly the purpose of your  
14 testimony today.

15 A. (Mullholand) The purpose of my testimony was to  
16 indicate to the Commission that there are CLEC issues  
17 with the software systems. That these CLEC issues are  
18 not completely addressed. And, that we believe that  
19 there are financial implications to the remaining work  
20 that has to be done.

21 Q. Do you have any corrections or supplements to your  
22 testimony today?

23 A. (Mullholand) I do. Yesterday, there was some  
24 discussion about the variation between the FairPoint

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1 experience, FairPoint believes that many of the CLEC  
2 software issues have been addressed and completed, and  
3 the CLEC experience that there is still a lot of work  
4 to be done. And, I think that I can, through this  
5 exhibit, give you an example of why that might be the  
6 case.

7 SegTEL-2 is a page from the agenda for  
8 the call between the CLECs and FairPoint on May 13th of  
9 2010. It's a seven-page PDF agenda, and this is  
10 Page 3. This is a Regression Feedback report. And,  
11 "regression feedback" is the process where FairPoint  
12 releases a fix to the software, and the CLECs test it  
13 to see if there are other things that were impacted by  
14 it, and then FairPoint takes it back and acts on that  
15 feedback.

16 This particular page deals with two  
17 items that were deployed on April 22nd, and has to do  
18 with DSL qualification, which I addressed in my  
19 original testimony. The issue with DSL qualification  
20 is that CLECs do not always find the information they  
21 need for DSL qualification, to be able to then go  
22 forward and provide a customer with the service that  
23 they have requested. DSL qualification includes things  
24 like the length of the loop, whether or not it has load

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1 coils on it, and other factors in the loop that might  
2 make it difficult for DSL to be provided over that  
3 loop. It might provide interference, so that the DSL  
4 quality wouldn't be acceptable.

5 One of the CLECs' requests, over the  
6 course of the various change management proceedings  
7 that we've had with FairPoint and the other  
8 collaborative discussions we've had, one of the CLEC  
9 requests was that we'd be able to qualify a loop for  
10 DSL when it's through a remote terminal. It's an  
11 additional piece of equipment between the CLEC --  
12 between the FairPoint central office and the customer  
13 site. CLECs asked for a remote terminal CLLI, that's  
14 in Request 16070 on this. And, they also asked that,  
15 if the LC, meaning that there is a terminal in the  
16 field is populated, that there would be -- that it  
17 would be indicated in the response, that the end-user  
18 is behind a remote location. This was deployed. It  
19 was regression tested.

20 And, at the 5/13 call, CLECs indicated  
21 that it was not working as they expected it to work,  
22 for two reasons. One was that the CLLI code being  
23 returned, instead of being an 8-digit CLLI -- I'm  
24 sorry, instead of being an 11-digit CLLI code, was an

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[WITNESSES: Wilusz|Mullholand|Winchester|Tisdale]

1 8-digit CLLI code. And, the response from FairPoint is  
2 "this is returning as it's designed."

3 Another area of concern was whether --  
4 when the LC field is populated, certain information was  
5 going to be provided back. And, in fact, in our  
6 testing, we determined that the LC field was being  
7 populated on all returns. And, so, the response was  
8 that "this is working as it was requested, but there's  
9 an underlying data issue interfering with the data  
10 being returned properly."

11 And, I think this is an example of where  
12 the CLECs made a request and understood what they were  
13 asking for. FairPoint believed they understood what  
14 the CLECs were asking for. Put a fix in place. But  
15 the end result, although it matched FairPoint's design  
16 and FairPoint's business requirements, it was not  
17 exactly what the CLECs were asking for, and so didn't  
18 quite finish the job.

19 Mr. Murtha mentioned yesterday that  
20 FairPoint is doing thousands of successful  
21 transactions. I don't know how many loop  
22 qualifications there are in any given month, and he may  
23 not either. But, if we say that there are a thousand  
24 loop qualifications that successfully go out to

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1 FairPoint and come back with data, that's a successful  
2 transaction, as far as FairPoint's concerned, because  
3 it went out, got the data, and came back. But, if that  
4 data is not what the CLEC needs to do its order, then  
5 it's not a successful transaction from the CLEC point  
6 of view.

7 Q. Ms. Mullholand, what has your experience been when a  
8 CLEC has informed FairPoint about a problem, and was  
9 advised that a fix was in progress or in process? Has  
10 FairPoint ever been able to give you the story or  
11 inform the CLEC about the nature of the fix, how that's  
12 going to be accomplished, or has that been largely  
13 closed to you?

14 A. (Mullholand) I think that's one of the issues that has  
15 been most frustrating for the CLECs. And, I think  
16 Ms. Wilusz's testimony went to this as well. Which is  
17 that, when we make a request of FairPoint and tell them  
18 what we're looking for, it's -- what happens within  
19 them as they're doing their business requirements is  
20 largely closed to us. They basically are -- they're  
21 kind of saying we "can't handle the truth on that  
22 matter." And, so, we're saying we'd like to see a  
23 little bit more openness. We'd like to see the design.  
24 We'd like to see how they're resolving this problem, so

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1       that perhaps we can give some input before it's ready  
2       for testing. To say, "yes, I know that you're saying  
3       that an 8-character CLLI should be enough. But remote  
4       terminals are 11-character CLLIs. And, so, we'd really  
5       like to see the whole 11 characters."

6               In the design process, that's not a big  
7       change. But, once an issue has been closed, as  
8       FairPoint's attorney indicated, these are closed  
9       issues, once an issue has been closed, to reopen it, to  
10      again change that 8-character CLLI to an 11-character  
11      CLLI is an entirely new process and an entirely new  
12      request.

13              MS. COLE: Thank you. I offer the  
14      witnesses for cross-examination.

15              CHAIRMAN GETZ: Well, I guess, as of  
16      yesterday, everyone was forgoing cross of this witness.  
17      So, I would permit Mr. McHugh, if you would like to cross  
18      this witness?

19              MR. McHUGH: No cross for any of the  
20      witnesses, Mr. Chairman.

21              CHAIRMAN GETZ: Okay. Thank you. Is  
22      there anyone else that's had a change of heart since  
23      yesterday?

24              (No verbal response)

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[WITNESSES: Wilusz|Mullholand|Winchester|Tisdale]

1 CHAIRMAN GETZ: Okay. Hearing nothing,  
2 then, Commissioner Below.

3 CMSR. BELOW: Okay.

4 BY CMSR. BELOW:

5 Q. Ms. Mullholand, you've itemized various concerns and  
6 such. But, on Page 15 of your testimony, you concluded  
7 with a recommendation that "the Commission deny  
8 approval of FairPoint's reorganization." I guess,  
9 aside from our authority over approving it or not, the  
10 overall reorganization, were you intending to suggest  
11 that we deny the Regulatory Settlement?

12 A. (Mullholand) Yes.

13 Q. Okay. And, then you go on and detail in the  
14 alternative various actions and conditions that we  
15 might take. Some of which might arguably be stayed in  
16 the current proceeding or others that, just in terms of  
17 timing, would come later in the process, even after  
18 reorganization is finalized. I guess my question is,  
19 what do you perceive the value to be of denying the  
20 Regulatory Settlement?

21 A. (Mullholand) I think that the -- that the primary issue  
22 with the Regulatory Settlement is that CLECs were not  
23 involved in the process of coming up with the terms of  
24 that settlement. And, we would like to see things in

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[WITNESSES: Wilusz|Mullholand|Winchester|Tisdale]

1 place that would ensure that FairPoint will provide  
2 non-discriminatory service to the wholesale community,  
3 as they emerge from bankruptcy and as they change, how  
4 they are doing business, in order to adapt to their  
5 reorganization.

6 One of our -- I mean, ultimately, at the  
7 end of the day, what we want is confidence. We want to  
8 be able to place our orders, and we want to be able to  
9 know that those orders will be effectively completed.  
10 If that is not attainable yet, then I think what we  
11 want is a Performance Assurance Plan and some of these  
12 other conditions that ensure that FairPoint continues  
13 to have motivation to work towards that ultimate goal,  
14 of ensuring that the wholesale providers are able to do  
15 what they need to do.

16 Q. Okay. Ms. Wilusz, I think you also, in your testimony,  
17 on Page 23, Line 11 or 10, suggest that absent adequate  
18 responses to a series of seven questions, that the  
19 Commission should not -- also "not approve the  
20 Regulatory Settlement" or "revise" it, I take it by  
21 that you mean condition it. And, you know, obviously,  
22 you've expressed similar frustrations as to the pace of  
23 improvements, in terms of your dealings with FairPoint.

24 I guess my question is similar. What

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1 value do you think would come from not approving the  
2 Regulatory Settlement?

3 A. (Wilusz) My sentiments would be very similar to Ms.  
4 Mullholand's. I do agree that a settlement needs to be  
5 made. But I do also agree that that settlement needs  
6 to take into account the very large customer base that  
7 all of us as CLECs represent here today. So, to not  
8 have the CLEC and the wholesale community covered and  
9 protected in that order is -- is lacking. We would  
10 like to see those, those issues covered, and the  
11 protections put in place, to make sure that we can  
12 continue doing business as we need to, in order to be  
13 able to support the customers that we not only  
14 currently have, but those that we would like to gain,  
15 and those customers that would like to come to us.  
16 We'd like to make sure that we can, some day, get back  
17 to the term "business as usual", which I can assure you  
18 the CLEC community is very far from having achieved.

19 Q. And, do you feel that the representations with regard  
20 to FairPoint commitments that have been expressed  
21 recently, including the recognition of the original  
22 settlement between the CLECs and FairPoint, is  
23 inadequate? That the preservation of the original  
24 commitments going forward is not adequate?

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1 A. (Wilusz) That's a tough question for me. I'd need to  
2 really go back and probably read through both in quite  
3 detail to make sure that I feel very comfortable in  
4 this answer. But, what I can say to that is, I do  
5 believe it offers us better protection. My issue  
6 today, going forward with either at this point, is that  
7 there seems to be a very strong lack of communication  
8 or ability to communicate clearly and honestly between  
9 the companies.

10 So, when I read the commitments that  
11 FairPoint has made, it makes me nervous. I'm nervous  
12 with anything that is left up to interpretation, which  
13 includes simple terms such as "business as usual". It  
14 seems to me we should be able to come up with a clear  
15 and agreed upon definition as to what that is. I would  
16 like to see definitions such as "done" or "completed"  
17 defined, which I think are also extremely easy terms to  
18 understand, that we use in our everyday language. So,  
19 I have a lack of faith that they will be executed based  
20 on some of the language and the vagueness of terms that  
21 we use every day.

22 So, do I believe that the original  
23 settlement protects us more so? Yes, I do. But I do  
24 definitely think that more -- more detail needs to be

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[WITNESSES: Wilusz|Mullholand|Winchester|Tisdale]

1 added to it, and considerations made to some of the  
2 continuing issues that we continue to have.

3 Q. Okay. I believe that, Mr. Winchester and Tisdale, you  
4 don't actually, in your testimony, recommend denying  
5 the Regulatory Settlement. In fact, I think you say  
6 you "don't oppose the reorganization", but express many  
7 of the similar concerns and problems with the  
8 operational support systems. Is that still your  
9 position? Do you take any position on whether we  
10 should approve the Regulatory Settlement that's before  
11 us or not?

12 A. (Winchester) The position that I've stated in my  
13 testimony remains the same.

14 CMSR. BELOW: Okay. That's all.

15 CHAIRMAN GETZ: Commissioner Ignatius.

16 CMSR. IGNATIUS: Thank you. Good  
17 afternoon.

18 WITNESS MULLHOLAND: Good afternoon.

19 BY CMSR. IGNATIUS:

20 Q. I guess both, is it Ms. "Willets"?

21 A. (Wilusz) "Wilusz".

22 Q. "Wilusz", thank you, and Ms. Mullholand both made a  
23 mention of other ways that communication should be  
24 better between the CLEC community and FairPoint. If

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[WITNESSES: Wilusz|Mullholand|Winchester|Tisdale]

1       you were in the midst of a Regulatory Settlement  
2       negotiation, have you thought about what sort of  
3       procedural steps or requirements you might impose going  
4       forward?

5   A.   (Mullholand) Well, I think I enumerated several of them  
6       in my testimony. An audit of the PAP, a recognition  
7       that, you know, basically, the -- FairPoint has  
8       guidelines that establish what its software should do.  
9       There's local service ordering guidelines that ILECs  
10      willingly sign onto to make ordering consistent across  
11      the country. So that, when you place an order with  
12      Qwest or with Verizon, you're entering similar  
13      information. There's local service ordering guidelines  
14      for LSRs, and there's access service ordering  
15      guidelines, I think the ASOG, for high-cap type  
16      circuits. And, I think one thing that could happen is  
17      a look at their software to see how well it measures up  
18      to the LSOG requirements, and to see, to actually audit  
19      whether or not it's there.

20               Because I think one of the confusions  
21      that's here is "what is a change?" "What is a  
22      request?" "What is an enhancement?" And, under  
23      Verizon, those things were fairly distinct. There were  
24      things where the software didn't work as it was

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[WITNESSES: Wilusz|Mullholand|Winchester|Tisdale]

1       supposed to, because it didn't match the local -- the  
2       service ordering guidelines or the fields didn't  
3       effectively work the way that they should, and those  
4       were considered "defects". And, then, there were  
5       things that, when the software was rolled out, it  
6       didn't work as the CLECs would like it to work, and  
7       communication ensued on "how do we fix this so that it  
8       works the way we expect it to?" And, then, there would  
9       be outright enhancements. "We'd like to be able to do  
10      something that we can't do right now." That's an  
11      "enhancement". But those things were very clearly  
12      defined in buckets of types of things. So, that when  
13      somebody was talking about a defect list, you knew that  
14      those were defects to the actual software, and not an  
15      issue where FairPoint says "this software is working as  
16      designed", and the CLEC is saying "But it's not working  
17      for us. It's not doing what it's supposed to do."

18   Q.   You didn't see anything in the Regulatory Settlement  
19       that prohibits the CLECs or FairPoint from working on  
20       those kinds of improvements?

21   A.   (Mullholand) No, I don't think there's anything there  
22       that prohibits us from doing that. I think our concern  
23       is, is that FairPoint, as FairPoint emerges from  
24       bankruptcy, and even as it's been in bankruptcy, these

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[WITNESSES: Wilusz|Mullholand|Winchester|Tisdale]

1 issues have been pushed to the side because of other  
2 concerns. And, indeed, FairPoint's request that  
3 certain dockets be forgone during this period is a good  
4 example of how CLEC concerns have not had enough  
5 bandwidth, if you will, to be considered as they  
6 otherwise might.

7 Q. Is there a working group between some of the CLECs and  
8 FairPoint within New Hampshire to work on issues?

9 A. (Mullholand) There is -- there are two different  
10 working -- there are several things in place. There is  
11 the Wholesale User Forums, which one of the -- this  
12 exhibit is an example of the agenda, which is a general  
13 conversation between the CLECs and FairPoint going over  
14 the known issues list. Their communication about what  
15 CLECs are asking for and what FairPoint is delivering  
16 has -- it continues to be an issue, I think. There's  
17 also the change management process, which has been  
18 fairly well structured and defined, but I don't think  
19 that it has really gotten into its -- come into its own  
20 yet, because we're still at that space where "Are we  
21 talking about a defect? Are we talking about a change?  
22 Or, are we talking about an enhancement?" And, those  
23 discussions continue to take place, trying to figure  
24 out exactly how these issues with the software will end

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[WITNESSES: Wilusz|Mullholand|Winchester|Tisdale]

1 up getting resolved.

2 Q. When you have, and I'm talking about only operations in  
3 New Hampshire, for those of you who extend beyond New  
4 Hampshire's borders, when there is a problem in New  
5 Hampshire that you feel has not been resolved to your  
6 satisfaction, where do you take that as the next step?

7 A. (Wilusz) There is a published escalation list that we  
8 can follow, and we do. So, we'll follow that  
9 escalation list up. One of the frequent complaints  
10 that we've had about the escalation list is the --  
11 until recently, the lack of response time documented.  
12 So, for instance, my company's escalation list, my  
13 customers, tell them that, if they can't reach somebody  
14 within a 30 minute period of time, whatever that time  
15 frame is, what their next step is. So, we tend to  
16 waste very valuable time either with what we consider  
17 too long of a wait time frame before we can escalate to  
18 another level, or just a downright lack of response in  
19 the issues that we are presenting.

20 As any other person I think that's in  
21 business, when something isn't working for you, you  
22 work around the system. And, you tend to go to the  
23 people in BayRing -- or, excuse me, within FairPoint  
24 that you think can get the job done. And,

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[WITNESSES: Wilusz|Mullholand|Winchester|Tisdale]

1       unfortunately, that circumvents processes, and it  
2       doesn't help anybody. But, right now, that's really  
3       the most effective route that we have, is to go back to  
4       the people that -- our SPOCs, for instance, or people  
5       that work with the SPOCs that we've been allowed to  
6       communicate directly with that we now are the people  
7       that can get the job done.

8   A.   (Mullholand) May I also answer that?

9   Q.   If there's something else to add beyond that,  
10       certainly.

11   A.   (Mullholand) I think there is. BayRing and segTEL,  
12       while we're both CLECs, we do different lines of  
13       business. And, one of segTEL's lines of business is to  
14       order and maintain dark fiber UNEs that we get from  
15       FairPoint. FairPoint unbundles a dark fiber pair and  
16       segTEL buys that from them. As I mentioned in my  
17       testimony on Page -- starting on Page 11, segTEL has  
18       had issues with -- issues with that fiber sometimes  
19       being delivered in a non-working capacity. You know,  
20       you go to plug things into it and the fiber isn't  
21       working. In the past, we were able to put that in as a  
22       trouble ticket. "We have a circuit that has been  
23       delivered in non-working order." Recently, FairPoint  
24       has made that the responsibility of a single person.

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[WITNESSES: Wilusz|Mullholand|Winchester|Tisdale]

1 And, so, now, if we want to troubleshoot fiber that's  
2 been delivered to us in non-working order, we have to  
3 go through Richard Sweeney, a single FairPoint employee  
4 to get that done and to set up a vendor meet to go over  
5 that issue with that fiber. I detail that in my  
6 testimony. But I wanted to point out that we have been  
7 working in that system. And, what we've discovered is  
8 that we set up vendor meets, we show up, and FairPoint  
9 isn't there because the word hasn't gotten out. And,  
10 so, what we've seen is that often, when things are  
11 changed to better enhance FairPoint's ability to do  
12 what it needs to do, it's at a serious cost to the  
13 CLEC. And, we've seen that with dark fiber, in  
14 particular, but there are other examples as well.

15 CMSR. IGNATIUS: I have no other  
16 questions. Thank you.

17 CHAIRMAN GETZ: Okay. Is there anything  
18 further for this panel?

19 (No verbal response)

20 CHAIRMAN GETZ: Then, hearing nothing,  
21 then the witnesses are excused. Thank you.

22 WITNESS WILUSZ: Thank you.

23 WITNESS MULLHOLAND: Thank you.

24 CHAIRMAN GETZ: Mr. McHugh, I guess it's

[WITNESSES: Bailey|Lisciandro]

1 your option, whether you want to call -- recall Mr. Murtha  
2 to respond to this Exhibit 2 from segTEL or to rest on  
3 your offer of proof?

4 MR. McHUGH: Let's rest on the offer of  
5 proof, Mr. Chairman, not drag it out.

6 CHAIRMAN GETZ: Thank you. Then, we'll  
7 turn to Mr. Roth. Your witnesses ready to proceed?

8 (Whereupon **Kathryn M. Bailey** and  
9 **John Lisciandro** were duly sworn and  
10 cautioned by the Court Reporter.)

11 MR. ROTH: Mr. Chairman, I wanted to  
12 start off this afternoon in particular with the testimony  
13 of Ms. Bailey, with a slight departure from usual  
14 practice, in that there have been a number of questions  
15 raised by various parties about how the CAPEX numbers work  
16 as outlined in Paragraph 2.5 of the Regulatory Settlement.

17 So, in addition to making Ms. Bailey  
18 available for cross-examination, I thought it would be  
19 helpful to give her an opportunity, with the chalk on the  
20 whiteboard over there to explain how 2.5 and the numbers  
21 work. I've already consulted with Mr. McHugh and  
22 Mr. Judd, but unfortunately not everybody. We've been  
23 working on this this morning and this afternoon. And,  
24 they have agreed that it would be acceptable to have Ms.

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1 Bailey explain and present the numbers on the chalk.

2 If necessary, and if the Commission  
3 desires, we can have the chalk either printed by that  
4 nifty device on it, assuming it works, or have Ms. Bailey  
5 reproduce it in a typewritten spreadsheet that can then be  
6 admitted or included in the record and distributed to the  
7 parties. But, for the time being, I think we would be  
8 happy to proceed simply with the chalk.

9 CHAIRMAN GETZ: Well, is there any  
10 objection to proceeding in that manner?

11 (No verbal response)

12 CHAIRMAN GETZ: And, I think we were  
13 going to get into this more likely than not anyways. But,  
14 I believe, last I knew, this machine was still working.  
15 So, I think we should print that at an opportunity and  
16 then we'll make that Staff Advocate 3, I believe.

17 (The chalk drawing, as described, was  
18 herewith marked as **Exhibit Staff**  
19 **Advocate-3** for identification.)

20 MR. ROTH: Okay. Thank you. So, I'll  
21 actually start by introducing Mr. Lisciandro. Have they  
22 been sworn in by Mr. Patnaude?

23 MR. PATNAUDE: Yes.

24 MR. ROTH: Okay. I'm sorry.

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[WITNESSES: Bailey|Lisciandro]

1 KATHRYN M. BAILEY, SWORN

2 JOHN F. LISCIANDRO, SWORN

3 DIRECT EXAMINATION

4 BY MR. ROTH:

5 Q. Mr. Lisciandro, would you state your name and your  
6 association for the record and the reporter please.

7 A. (Lisciandro) Sure. My name is John F. Lisciandro. I'm  
8 working with the Staff Advocates. And, I work at  
9 Deloitte & Touche.

10 Q. Okay. And, are you the same John Lisciandro that filed  
11 testimony on March 5th and March 8th in this docket?

12 A. (Lisciandro) Yes.

13 Q. Okay. And, is your testimony as you presented it true  
14 and correct as far as you know, to the best of your  
15 knowledge?

16 A. (Lisciandro) Yes.

17 Q. And, do you affirm and adopt that testimony today?

18 A. (Lisciandro) I do.

19 Q. And, what was the purpose of making your testimony in  
20 this case?

21 A. (Lisciandro) The purpose of the testimony was to review  
22 the assumptions made by FairPoint in their business  
23 plan that they have submitted.

24 Q. And, since you filed that testimony, a number of other

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[WITNESSES: Bailey|Lisciandro]

1 items have come into existence, I guess, for want of a  
2 better way to put it, including revised financial  
3 statements for the first quarters of 2009, if I'm not  
4 mistaken?

5 A. (Witness Lisciandro nodding affirmatively).

6 Q. And, amendments to the Credit Agreement, and perhaps  
7 other information that you may have learned about the  
8 Company's performance?

9 A. (Lisciandro) Yes.

10 Q. And, have you reviewed that information?

11 A. (Lisciandro) I have.

12 Q. And, does it -- does anything in there change any of  
13 your conclusions or analysis in any way that you would  
14 care to put on the record at this point?

15 A. (Lisciandro) Sure, a few things. First, the senior  
16 debt covenant that was discussed yesterday by  
17 FairPoint, the elimination of that debt covenant,  
18 turning it into more of an incurrence test, is a  
19 benefit to FairPoint. I think it enables them to have  
20 a little bit more cushion in terms of their plan. So,  
21 without that test, basically, what an incurrence test  
22 is, is that covenant only comes into play under certain  
23 events. So, for example, if they were to acquire or  
24 want to acquire a company two years from now, they

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[WITNESSES: Bailey|Lisciandro]

1 would then check that covenant to see if the Company  
2 was still in, you know, still meeting that covenant  
3 even with the acquisition.

4 So, this covenant just is not used  
5 unless there is a predetermined or specified event that  
6 would trigger them having to look at it. And, so, that  
7 provides them additional cushion, because now you're  
8 only looking at their debt covenant, as well as the  
9 interest coverage covenant. So, that's one favorable  
10 piece.

11 As well as adding the additional items  
12 to the EBITDAR, that will help them as well, in terms  
13 of establishing a little more cushion in their Plan,  
14 versus the covenant.

15 I think, as well, looking at -- looking  
16 at the restated financials, we have been told that the  
17 revenue would change about 2 to 3 percent. It did  
18 change 2.8 percent, I believe it was. So, it was right  
19 on target with what they -- FairPoint had told us. So,  
20 you know, that was already expected when I filed my  
21 testimony, and nothing has changed there.

22 So, at this point, those are the key --  
23 the key bits of information that have come through.

24 Q. Okay. Thank you. Ms. Bailey, can you give your name

[WITNESSES: Bailey|Lisciandro]

1 for the record please.

2 A. (Bailey) Yes. My name is Kathryn Bailey.

3 Q. And, your affiliation, why you're here?

4 A. (Bailey) I'm the Director of Telecommunications, the  
5 Telecommunications Division at the Public Utilities  
6 Commission.

7 Q. And, why are you sitting up there and not over here at  
8 this table with your employees?

9 A. (Bailey) I was asked to help negotiate a regulatory  
10 settlement on behalf of the citizens of the State of  
11 New Hampshire. And, as a result, I was designated as a  
12 "Staff Advocate". And, the rest of my staff was  
13 designated -- was not designated as a "Staff Advocate".  
14 So, they're sitting at that table, and I'm sitting with  
15 Mr. Roth and Ms. Ross.

16 Q. I'm sorry for you.

17 A. (Bailey) Thank you. I accept your apology.

18 (Laughter.)

19 BY MR. ROTH:

20 Q. Now, are you the same Kathryn Bailey that filed  
21 testimony, being Staff Exhibit Number 1, on March 5th,  
22 2010?

23 A. (Bailey) I am.

24 Q. Okay. And, is your testimony true and correct, aside

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[WITNESSES: Bailey|Lisciandro]

1 from perhaps minor Scribner's errors and typos, as far  
2 as you know?

3 A. (Bailey) Yes. And, I'm not aware of any "minor  
4 Scribner's errors".

5 Q. Okay. And, do you affirm and adopt that testimony as  
6 your own at this time?

7 A. (Bailey) I do.

8 Q. All right. Now, if you wouldn't mind, perhaps you  
9 could spend a few minutes, and take your time, really,  
10 because we have an hour anyway, to go through the  
11 provisions of Section 2.5 of the Regulatory Settlement,  
12 with respect to the graphic over there on the board.

13 WITNESS BAILEY: Is it okay if I walk  
14 over to the board?

15 CHAIRMAN GETZ: Please.

16 **BY THE WITNESS:**

17 A. (Bailey) The purpose of my testimony was to show how  
18 the commitments that were made in the 2008 Agreement  
19 are maintained and, in some cases, slightly modified by  
20 the Regulatory Settlement. And, the purpose of this  
21 exhibit is to explain how the CAPEX and broadband  
22 financial commitments, as well as the \$50 million that  
23 Verizon left behind, which became \$65 million, are  
24 maintained in the Regulatory Settlement.

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[WITNESSES: Bailey|Lisciandro]

1                   So, for general purposes, the  
2           information in black comes from the 2008 Agreement,  
3           except for some of this column right here [indicating],  
4           that's labeled "OEC". So, pursuant to Paragraph 2.11  
5           in the 2008 Agreement, FairPoint committed to spending  
6           \$52 million in the first three years on capital  
7           expenditures. And, pursuant to Paragraph 2.1.3 in the  
8           2008 Agreement, they committed to spend an additional  
9           49 in the fourth year and the fifth year.

10                   Now, if you go back to the original  
11           financial model in the 07-011 case, that capital  
12           expenditure commitment consisted of \$5 million that was  
13           part of their broadband plan, \$5 million each year.  
14           So, the CAPEX of \$52 million, 47 million wasn't  
15           specified and 5 million was specified for broadband.  
16           Also, in the 2008 Agreement, at Paragraph 3.4,  
17           FairPoint committed to spending \$56.4 million on  
18           broadband deployment. And, part of that \$56.4 million  
19           was this \$25 million over the five years that was  
20           included in CAPEX.

21                   On top of that, they said they were  
22           going to spend 16.4 million in the first two years,  
23           where they were getting the core network in place and  
24           really investing, and that was part of an overall

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1 three-state project, and that was incremental to the  
2 CAPEX. And, then, in addition to that, during the  
3 course of negotiations, they committed to spending an  
4 additional 15 million on broadband, that was not  
5 included in the original cost model. So, for  
6 broadband, they had \$25 million in the CAPEX,  
7 16.4 million in the two-year plan, and they committed  
8 an additional 15 million. So, 25 and 15 is 40, and  
9 16.4 is 56.4. So, that's how you get the 56.4 million.

10 Now, in the Regulatory Settlement, this  
11 was all very confusing to everybody at the table. Some  
12 interpreted it that the 56.4 million was entirely  
13 incremental, and some interpreted that it was entirely  
14 included in this CAPEX of \$254 million, which is the  
15 sum of the five-year commitment. So, I thought I knew  
16 what it meant, so this is how we did it.

17 So, the CAPEX, plus the incremental  
18 broadband, is 254 million from the five-year  
19 commitment, plus the incremental broadband of 16.4 from  
20 this column [indicating], and 15 from this column  
21 [indicating], and that's where you get the 285.4  
22 million of total investment in CAPEX and broadband over  
23 the five-year life of the plan. And, so, in paragraph  
24 2.52 in the Regulatory Settlement, we memorialized that

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[WITNESSES: Bailey|Lisciandro]

1 number, so that there wasn't any dispute or question  
2 about it.

3 Now, let's look at what they had planned  
4 to spend and what they actually spent, and what they  
5 have left. To talk about the \$65 million that we've  
6 identified as the other expenditure commitment, which  
7 came from the \$50 million that Verizon left behind.  
8 And, in the 2008 Agreement, Section 2.5.3 specifies  
9 that "FairPoint shall use the amounts contributed  
10 pursuant [to the section that left the 50 million  
11 behind] to make capital and operating expenditures in  
12 excess of the minimum expenditures necessary to meet  
13 the requirements described in [the CAPEX section and  
14 the broadband section]." And, really, what that  
15 \$50 million was there for was an insurance plan, in  
16 case FairPoint inherited a network that wasn't in the  
17 shape that they thought it was in, and they needed more  
18 money to complete their broadband plan.

19 So, the CAPEX and the broadband that  
20 they planned to spend in the first two years, and I  
21 just added it for convenience, because we have a figure  
22 in the Regulatory Settlement that says how much they  
23 have spent so far, was 126.4 million. And, that's 52  
24 and 52, plus 16.4, plus 6 million; that comes out to

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[WITNESSES: Bailey|Lisciandro]

1 126.4. What they actually spent through the third  
2 quarter of the second year, and these are not on  
3 calendar years, because we closed on April of 2008.  
4 So, it's really, there's a lot of math involved. So,  
5 the first year was April 2008 to March 31st, 2009.  
6 And, then, this figure [indicating] is through the end  
7 of 2009. So, it's the first three quarters of the  
8 second year. So, this isn't even the first full two  
9 years. But they have spent more than 30 million over  
10 what they anticipated that they would need to spend.

11 One of the things that they had to do  
12 that they didn't expect was fortify the interoffice  
13 fiber network. In their -- can I ask Mr. McHugh if I  
14 can say -- this has to do with whether this is  
15 confidential or not. How much interoffice fiber was  
16 planned in the original broadband plan? Is that  
17 confidential?

18 MS. ROSS: Don't say it.

19 WITNESS BAILEY: Don't say it? All  
20 right.

21 **BY THE WITNESS:**

22 A. (Bailey) Okay. They built a lot more fiber than they  
23 originally planned in the plan that they gave us that  
24 was going to cost 56.4 million. So, one of the

[WITNESSES: Bailey|Lisciandro]

1 agreements that we made in the Regulatory Settlement  
2 was to credit, from the \$65 million, four and a half  
3 million for the excess money that they spent on  
4 interoffice fiber. So, that brings the remainder of  
5 the other expenditure commitment down to 60.5 million.

6 Now, if they have already spent  
7 157.6 million out of the 285.4, the remainder of that,  
8 divided by three years, is 42.6 million. So, they  
9 originally planned for, to get from 85 to 95 percent in  
10 the last three years, to spend 55, 52, and 52 million.  
11 And, I was worried that 42.6 million was too low. That  
12 that was not going to be enough for recurring  
13 maintenance, capital expenditures, and to get the  
14 broadband to where it needs to get to.

15 So, another agreement that we reached in  
16 the Regulatory Settlement was to reallocate \$10 million  
17 of this remaining 60.5 million into capital expenditure  
18 and broadband spending. So, if you take 10 million,  
19 this is, and divide it up by three years, you spend 3.4  
20 million in one year, 3.3 million in the next, and 3.3  
21 million in the next year, and that brings your annual  
22 remaining CAPEX closer to 45, 46 million, which is  
23 still a ways off of these numbers. And, then, it  
24 reduces each year by these amounts, the remaining other

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1 expenditure capital commitment.

2 So, when you take 10 million out of the  
3 60.5 million, and you reallocate it, so they have to  
4 spend it, but they have to spend it in maintenance.

5 And, so, we're asking you to approve that as it's okay  
6 to take it out of the 65 million and put it into  
7 recurring maintenance expense -- I'm sorry, recurring  
8 capital expense, then they'll have a little bit more  
9 money to spend on CAPEX every year.

10 And, then, the third thing that we did  
11 with the 65 million that we agreed to allow them to  
12 use, with the 65 million other expenditure commitment,  
13 is, if they build their own facilities to get to  
14 95 percent broadband availability, because they have  
15 already spent more than they said they were going to  
16 spend, we would allow them to use up to ten and a half  
17 million dollars from the insurance fund to get to the  
18 95 percent broadband availability. So, that leaves  
19 \$40 million in what used to be the restricted cash  
20 account that has to be spent on projects that increase  
21 broadband. There's an attachment to the Regulatory  
22 Settlement. That we also agreed, because we thought  
23 that, since we were in this case, we could show you the  
24 kind of projects that we're asking you to approve, so

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1       that they don't have to seek approval on if they're  
2       going to spend the remaining \$40 million. And, that's  
3       on Attachment 2 to my testimony. And, it includes  
4       expansion of fiber to the premises; fiber deployment  
5       and expansion of capacity, so that might be if they  
6       have to add more interoffice fiber; soft switch  
7       deployment, which is like routers that everybody who is  
8       changing to an IP network are deploying, and so it may  
9       be that that's the next generation of switching  
10      technology; and, then, new products and services for  
11      video, VoIP, and carrier Ethernet services, which are  
12      promoting this next generation network that they have  
13      built.

14                   I think that's it. Does that -- I think  
15      I've covered everything on this chart.

16                   MR. ROTH: Okay. Thank you. The  
17      witnesses are available for cross-examination.

18                   CHAIRMAN GETZ: Mr. McHugh? No  
19      questions?

20                   MR. McHUGH: None.

21                   CHAIRMAN GETZ: Ms. Hatfield.

22                   MS. HATFIELD: Thank you. Good  
23      afternoon, Mr. Lisciandro.

24                   WITNESS LISCIANDRO: Good afternoon.

**CROSS-EXAMINATION**

BY MS. HATFIELD:

Q. I'd like to ask you a question about the "Summary" to your testimony. So, it appears on the last two pages of your -- and I'm going to refer to the public version.

A. (Lisciandro) Okay.

Q. Do I understand your testimony to mean that you have tested the restructuring plan of FairPoint and the Regulatory Settlement, and it is your opinion that the Commission should approve it?

A. (Lisciandro) Yes.

MS. HATFIELD: Thank you. I have nothing further.

CHAIRMAN GETZ: Thank you. Mr. Kennan?

MR. KENNAN: Thank you, Mr. Chairman.

Good afternoon, Ms. Bailey, Mr. Lisciandro.

WITNESS LISCIANDRO: Good afternoon.

BY MR. KENNAN:

Q. Ms. Bailey, on Page 3 of your testimony, on Lines 2 to 5, you state that "With the exception of Section 2 in the 2008 Agreement, and the specific modifications included in the Regulatory Settlement, the remaining provisions in the 2008 Agreement are unchanged by the

[WITNESSES: Bailey|Lisciandro]

1 Regulatory Settlement." The 2008 Agreement is the  
2 Stipulation between the Staff and FairPoint in  
3 connection with the Verizon/FairPoint transaction, is  
4 that correct?

5 A. (Bailey) Correct.

6 Q. And, it imposes certain conditions on FairPoint as a  
7 result of the transfer?

8 A. (Bailey) It does.

9 Q. And, I take it it's the Staff Advocates' understanding  
10 that the Regulatory Settlement does not change any  
11 provision unless it's specifically changed?

12 A. (Bailey) That's my position.

13 Q. And, the Staff -- I'm sorry, the 2008 Agreement also  
14 incorporates by reference a Settlement Stipulation  
15 between FairPoint and a number of its wholesale  
16 customers, including my client, Otel Telekom, does it  
17 not?

18 A. (Bailey) It not only incorporates it, but it's an  
19 attachment to it. It's Exhibit 2.

20 Q. And, is it the Staff Advocates' understanding that the  
21 Regulatory Settlement does not change the CLEC  
22 Settlement, as I'll call it, in any way?

23 A. (Bailey) Yes, that's exactly my position. And, I heard  
24 criticism that "the CLECs were not involved in the

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[WITNESSES: Bailey|Lisciandro]

1 Regulatory Settlement process." And, it's my position  
2 that the reason they weren't involved is because  
3 nothing changed.

4 Q. So, for example, the provisions prohibiting certain  
5 rate increases remains in effect?

6 A. (Bailey) Yes.

7 Q. And, the prohibition against reclassifying wire centers  
8 remains in effect?

9 A. (Bailey) Yes.

10 Q. And, the provision making FairPoint subject to the PAP,  
11 Performance Assurance Plan, remains unchanged?

12 A. (Bailey) Yes.

13 Q. And, the 2008 Agreement also imposes additional  
14 conditions relative to wholesale services above and  
15 beyond the CLEC Settlement, doesn't it?

16 A. (Bailey) Yes.

17 Q. And, one of those is in Section 9.4, and requires  
18 FairPoint to conduct an audit of the PAP, is that  
19 right?

20 A. (Bailey) It requires -- FairPoint agreed to conduct an  
21 audit of its PAP, if the Commission ordered it to, yes.  
22 And, that provision is still in effect.

23 Q. You anticipated my next question. To Mr. Lisciandro  
24 please.

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[WITNESSES: Bailey|Lisciandro]

1 A. (Lisciandro) Yes.

2 Q. On pages 8 to 10 of your testimony please.

3 A. (Lisciandro) Okay.

4 Q. I take it here you're referring, when you say the  
5 "business plan", you're referring to the projections  
6 that are included in the Plan of Reorganization?

7 A. (Lisciandro) Yes.

8 Q. And, one of the projections is that access revenue  
9 would increase during the projection period?

10 A. (Lisciandro) Yes.

11 Q. And, the projection period is 2010 through 2013?

12 A. (Lisciandro) Yes.

13 Q. And, I note on Page 11, Lines 8 through 10, you make  
14 the remark that "Access revenue is forecasted...based  
15 on a percentage growth rate over the previous period  
16 rather than a more rigor" -- excuse me, "rigorous  
17 customer specific approach." Would you please explain  
18 what you mean by a "more rigorous customer specific  
19 approach"?

20 A. (Lisciandro) Sure. A "more rigorous approach" would  
21 take into account, you know, additional -- we would  
22 look at the market size, take into account additional  
23 customers that are available, the number of lines,  
24 rates, things of that nature, to determine how you

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1 would get from one point to another. So, if you had a  
2 set customer base, how would you increase that revenue  
3 for that particular customer base, looking at all the  
4 different qualitative factors that come into play.

5 Q. So, specifically, I thought I just heard you say that  
6 "the projections do not take into account any change in  
7 rates"?

8 A. (Lisciandro) Right. They do not.

9 Q. And, do you have the Staff Advocates' responses to the  
10 data requests with you?

11 A. (Lisciandro) I do.

12 Q. In fact, you elaborated on the point we were just  
13 discussing in response to several data requests from my  
14 client, Otel Telekom. For example, I'd refer you to  
15 Otel:Staff Advocate-12, which has been marked as "Otel  
16 Exhibit 9" for identification.

17 A. (Lisciandro) Okay.

18 Q. And, without either reading your response myself or  
19 having you read it, am I correct that what you were  
20 explaining in response, Subsection (b), was what you  
21 were just talking about? That FairPoint did not, in  
22 making its projections, look into such specific factors  
23 as rates or number of lines or number of customers?

24 A. (Lisciandro) Yes, that's correct. Not in the

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[WITNESSES: Bailey|Lisciandro]

1 information they provided to us.

2 Q. And, similarly, in response to Otel:Staff Advocate-13  
3 which has been marked as "Otel Exhibit 10" for  
4 identification, again, here you're reiterating, as I  
5 take it, just that the projections just used a  
6 percentage year-over-year growth factor to show that --  
7 to suggest that access revenues would increase?

8 A. (Lisciandro) Yes.

9 Q. So, for example, in anything that you saw in the  
10 financial projection -- oh, by the way, let me ask, did  
11 you look at materials other than what's in the Plan of  
12 Reorganization and the disclosure statement to the Plan  
13 of Reorganization as you did your analysis here?

14 A. (Lisciandro) Can you be more specific in terms of  
15 "materials"?

16 Q. Did you look at any other financial information, either  
17 provided by the Company or otherwise, in coming to your  
18 conclusions here?

19 A. (Lisciandro) I looked at peer group information as  
20 well. And, there were a few -- a few presentations  
21 made by FairPoint to us that included some financial  
22 information as well.

23 Q. So, in any of the materials you looked at, did you, for  
24 example, see anything in FairPoint's analysis that said

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[WITNESSES: Bailey|Lisciandro]

1 "we're going to reclassify all the wire centers we can  
2 and convert the UNE transport in those wire centers to  
3 Special Access and thereby increase revenues"? Was  
4 there any specific plan like that suggested in any of  
5 the materials that you looked at or information you  
6 heard?

7 A. (Lisciandro) No. Nothing that I saw.

8 Q. Would you please look at Page 14 of your testimony.

9 A. (Lisciandro) Okay.

10 Q. And, this part of your testimony, as I understand it,  
11 you did some modeling of what FairPoint's credit  
12 ratings might be over the Plan projection period, is  
13 that correct?

14 A. (Lisciandro) Correct.

15 Q. Now, what is a "credit rating" and what does it do  
16 please?

17 A. (Lisciandro) A "credit rating" is a third party view  
18 of, really, the stability of the company, based on  
19 various factors, various -- so, similar to the  
20 covenants that are placed here for this credit  
21 agreement, credit agencies will look at certain  
22 financial metrics and rate the Company in terms of its  
23 viability going forward at any particular point in  
24 time.

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[WITNESSES: Bailey|Lisciandro]

1 Q. And, does the credit rating affect the interest rate  
2 that a company might have to pay if it were to seek to  
3 borrow money?

4 A. (Lisciandro) Yes.

5 Q. And, in this particular case, if FairPoint were to look  
6 to borrow money, its credit rating might affect the  
7 interest rate that it would have to pay?

8 A. (Lisciandro) Yes. In the future, yes.

9 Q. And, that would, in turn, affect FairPoint's interest  
10 expense?

11 A. (Lisciandro) To the extent that they were entering into  
12 a new Credit Agreement? Yes.

13 Q. Are you suggesting that their interest rate is fixed  
14 under the credit facilities that they have now?

15 A. (Lisciandro) I thought you were asking me if they -- I  
16 thought you had said "if they entered into a new Credit  
17 Agreement."

18 Q. Yes, that would affect the interest rate. But I'm --

19 A. (Lisciandro) No, it's not fixed right now.

20 Q. It is not fixed right now?

21 A. (Lisciandro) Right.

22 Q. So that, over time, even with the credit facilities  
23 that they have now, their interest rate and, therefore,  
24 interest expense could change, if their credit rating

[WITNESSES: Bailey|Lisciandro]

1 changed?

2 A. (Lisciandro) I don't believe their credit rating  
3 impacts their current interest rate.

4 Q. So, the credit rating would have no effect on their --  
5 well, maybe I'm lost here. Does the interest rate that  
6 FairPoint has to pay on its existing debt vary or is it  
7 fixed?

8 A. (Lisciandro) It is varied in that it's tied to the  
9 LIBOR rate. So, to the extent that the LIBOR rate  
10 changes, then their interest rate will change.

11 Q. I see. But its credit rating does not affect that?

12 A. (Lisciandro) I believe it does not.

13 Q. Thank you. That's why I was confused. So, I take it  
14 that FairPoint's interest expense on a going forward  
15 basis could change based on changes in the LIBOR rate?

16 A. (Lisciandro) It could.

17 Q. Does FairPoint's credit -- does FairPoint plan to pay  
18 down its existing debt over the life of the Plan  
19 projection period?

20 A. (Lisciandro) There are some payments in there over each  
21 of the years, and then there's the final lump-sum  
22 payment at the end of the term of the loan.

23 Q. And, as FairPoint makes those payments, does its  
24 interest expense go down, because it has paid off part

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[WITNESSES: Bailey|Lisciandro]

1 of the loan?

2 A. (Lisciandro) I don't recall if that's the case or not.

3 Q. In doing your financial analysis, you performed some  
4 sensitivity analyses, is that right?

5 A. (Lisciandro) That's correct.

6 Q. And, among other things, you varied the Plan  
7 projections regarding access revenues?

8 A. (Lisciandro) That's correct.

9 Q. But that sensitivity analysis did not consider specific  
10 factors, such as access rates, did it?

11 A. (Lisciandro) Correct.

12 Q. You just reduced the FairPoint's projected  
13 year-over-year growth rates and then that formed the  
14 basis of your sensitivity analysis?

15 A. (Lisciandro) Yes.

16 Q. Coming to your conclusions, getting to the end.

17 A. (Lisciandro) Okay.

18 Q. Am I correct that, even after your adjustments in your  
19 sensitivity analysis, you believe that FairPoint will  
20 make its loan covenants?

21 A. (Lisciandro) Yes.

22 Q. And, am I correct that your conclusion is there would  
23 have to be even further declines in revenues before the  
24 covenant -- any covenant defaults occur?

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[WITNESSES: Bailey|Liscandro]

1 A. (Liscandro) Yes. Further declines than the declines  
2 that I have put into my sensitivity analysis.

3 Q. Further declines from even your bottom --

4 A. (Liscandro) From my declines, yes.

5 Q. -- bottom sensitivity analysis. Were you here when Ms.  
6 Hood and Mr. Newitt and Mr. Allieri were testifying?

7 A. (Liscandro) Yes.

8 Q. And, do you recall that they suggested that the Plan  
9 projections would give FairPoint the financial  
10 resources, such that there would be no adverse affect  
11 upon the rates, terms and conditions of service in New  
12 Hampshire?

13 A. (Liscandro) Yes.

14 Q. Do you challenge that statement in any way?

15 A. (Liscandro) No.

16 MR. KENNAN: Nothing further. Thank  
17 you, Mr. Chairman.

18 CHAIRMAN GETZ: Thank you. Mr. Shoer.

19 MR. SHOER: Thank you, Mr. Chairman.

20 BY MR. SHOER:

21 Q. Just picking up a few questions on what Mr. Kennan was  
22 discussing, Mr. Liscandro. In your sensitivity runs,  
23 I believe we asked a question to the Staff, it was  
24 Staff Advocate Question Number 6. Do you have that

[WITNESSES: Bailey|Liscandro]

1 available? Staff Advocate-6?

2 A. (Liscandro) Yes, I have it.

3 Q. That was a question that asked you to change some of  
4 your assumptions. And, we asked "If the take rates for  
5 FairPoint's next generation network [were] 20 percent  
6 less than expected, [we asked for what your opinion was  
7 of] the impact of the projections?" And, similarly, we  
8 asked for "50 percent less than" and what your  
9 projection would be. Am I correct that in your answer  
10 you discuss what your opinion would be in the event  
11 that there was a 20 percent reduction in revenues?

12 CHAIRMAN GETZ: Do you have the exhibit  
13 number?

14 MR. SHOER: It's Exhibit Number 30, Mr.  
15 Chairman.

16 CHAIRMAN GETZ: So, this is BayRing-30?  
17 Okay.

18 MR. SHOER: Yes, BayRing-30.

19 **BY THE WITNESS:**

20 A. (Liscandro) The question that was asked was whether  
21 the "take rates for their next generation network were  
22 reduced to 20 percent."

23 BY MR. SHOER:

24 Q. Yes.

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[WITNESSES: Bailey|Lisciandro]

1 A. (Lisciandro) And, that is -- that question, the next  
2 generation network provides products across a number of  
3 different revenue categories.

4 Q. Uh-huh.

5 A. (Lisciandro) So, I simply looked at the one revenue  
6 category that has, I believe, the most direct  
7 correlation to the next generation network, which would  
8 be the data. And, showed that I had done a 20 percent  
9 reduction in that particular category, and that they  
10 still passed their covenants.

11 Q. And that they still passed the covenants?

12 A. (Lisciandro) Yes.

13 Q. Okay. What about 50 percent, which was the second part  
14 of that question?

15 A. (Lisciandro) Yes, I have not run that.

16 Q. You did not run that?

17 A. (Lisciandro) No.

18 Q. Okay. Is there any particular reason?

19 A. (Lisciandro) No.

20 Q. Just didn't. Just didn't run it, okay. Do you have an  
21 opinion of what the -- if they would meet their  
22 financial covenants, if the projections were 50 percent  
23 less than expected? Are you capable of making that?

24 A. (Lisciandro) No. I think I would have to run the

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1 numbers.

2 Q. Okay. Now, in the sensitivity analyses that you ran,  
3 did you -- did you also combine the impact of lower  
4 than expected revenues and higher than expected costs  
5 in any of your sensitivity analyses?

6 A. (Lisciandro) The sensitivity analysis I ran just  
7 reduced revenue, but maintained costs as planned.

8 Q. You made no changes to the costs?

9 A. (Lisciandro) No changes.

10 Q. Okay. And, am I correct that in several points in your  
11 testimony you indicated that "if the revenue  
12 projections were lower than what were anticipated, it  
13 would be reasonable to expect that management would  
14 reduce its -- reduce operating expenses"?

15 A. (Lisciandro) Correct.

16 Q. And, in the event that -- well, first, let me ask, as  
17 to the question of running your sensitivity analysis  
18 with lower than expected revenues, which you did do,  
19 correct?

20 A. (Lisciandro) Yes.

21 Q. But you did not take into account any potential for  
22 higher than expected costs than what were provided to  
23 you?

24 A. (Lisciandro) Correct.

[WITNESSES: Bailey|Lisciandro]

1 Q. And, could you explain why you did not run any of those  
2 types of sensitivity analyses?

3 A. (Lisciandro) Sure. First, when -- a reduction in  
4 revenue would obviously have a reduction in expenses  
5 that are variable, as Mr. Newitt talked about  
6 yesterday, variable versus fixed. So, in terms of the  
7 variable component, I've actually kept that in there,  
8 which would be a more conservative approach. I have  
9 not taken those expenses out. Assuming revenue was  
10 actually down, those expenses would automatically  
11 disappear. For the remainder of the expenses, I left  
12 as is, knowing that I had left those other expenses in  
13 as my conservative approach. Also, looking at their  
14 margins, they are below industry margins, peer margins.  
15 So, I think their expense levels seemed adequate to run  
16 the business. So, that's the reason I left it in as  
17 is.

18 Q. If it turned out that their -- that their expected  
19 costs, or, I should say, if the costs of the Company  
20 were to go higher than what they expected, would that  
21 impact your results or your conclusions?

22 A. (Lisciandro) It would be an alternative scenario that I  
23 would have to run to determine whether there would be  
24 an impact.

[WITNESSES: Bailey|Lisciandro]

1 MR. SHOER: Thank you.

2 CHAIRMAN GETZ: Ms. Foley?

3 MS. FOLEY: No questions.

4 CHAIRMAN GETZ: Ms. Bragdon?

5 MS. BRAGDON: No questions.

6 CHAIRMAN GETZ: And, Ms. Cole?

7 MS. COLE: Yes. One second please.

8 Thank you.

9 BY MS. COLE:

10 Q. Ms. Bailey, do you believe that FairPoint's retail and  
11 wholesale operations are currently in parity with each  
12 other?

13 A. (Bailey) To give you a quantitative answer to that  
14 question, I would have to look at data, which I have  
15 not done in preparation for this proceeding. So, I  
16 don't know the answer to that question now, because I  
17 didn't really consider that issue part of this  
18 proceeding.

19 Q. Thank you. Do you believe that the Settlement will  
20 have the effect of improving FairPoint's retail  
21 business -- services, rather?

22 A. (Bailey) I think that getting this company out of  
23 bankruptcy as quickly as possible will have benefits  
24 for all customers. I don't deny that there are

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1 operational issues that still need to be addressed.

2 And, I would expect that they be addressed in another  
3 proceeding.

4 Q. So, I assume the answer would be the same if I asked  
5 you "do you believe that the Settlement Agreement will  
6 have the effect of improving FairPoint's wholesale  
7 business?"

8 A. (Bailey) Yes, my answer would be the same.

9 MS. COLE: Thank you. No further  
10 questions.

11 CHAIRMAN GETZ: Thank you. Ms. Geiger?

12 MS. GEIGER: No thank you, Mr. Chairman.  
13 No questions.

14 CHAIRMAN GETZ: Mr. Linsider, did you  
15 have questions for this panel -- Mr. Linder?

16 MR. LINDER: No.

17 CHAIRMAN GETZ: That's twice I've called  
18 you "Mr. Linsider". Let's move on then. Mr. Judd.

19 MR. JUDD: Thank you, Mr. Chairman.

20 BY MR. JUDD:

21 Q. Mr. Liscandro, in your testimony, you state that "the  
22 growth projections used by FairPoint are above industry  
23 projections." Is that a fair summary?

24 A. (Liscandro) Yes.

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1 Q. And, you also said that you compared that to a peer  
2 group of other telephone companies?

3 A. (Lisciandro) Yes.

4 Q. Can you tell us now who those -- which other companies  
5 you used for your comparison? Some of them?

6 A. (Lisciandro) I believe it was in the testimony, I want  
7 to see if it was redacted or not. Actually, it was in  
8 one of the questions.

9 Q. If it's already been responded to in a data request, if  
10 it's an exhibit, if you can just reference that, that  
11 would be fine.

12 A. (Lisciandro) Yes, I don't know what exhibit this is.  
13 It's the One Communications, CRC questions -- it's the  
14 One Communications, CRC, and BayRing Communications  
15 questions, ADV-1.

16 Q. Thank you. We'll be able to find it from that  
17 reference. Thank you very much. Based -- you've  
18 stated earlier, in response to some questions from  
19 Mr. Roth, that you became aware of additional  
20 information since you prepared your report, is that  
21 correct?

22 A. (Lisciandro) Correct.

23 Q. Did you rerun your sensitivity analysis including that  
24 information?

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1 A. (Lisciandro) I did not rerun the analysis. The  
2 analysis is what it is, a sensitivity analysis. I  
3 reviewed that information to make a determination as to  
4 whether it would have changed my conclusions. And, I  
5 determined that it would not.

6 Q. Ms. Bailey.

7 A. (Bailey) Mr. Judd.

8 Q. When you negotiated the Regulatory Settlement, that was  
9 before the Credit Agreement was finalized by FairPoint,  
10 isn't that correct?

11 A. (Bailey) Correct.

12 Q. Once you -- I assume you've reviewed the Credit  
13 Agreement since it was filed on I believe it was  
14 April 23rd?

15 A. (Bailey) No, I have not.

16 Q. Are you aware that in the Credit Agreement it contains  
17 limitations on CAPEX?

18 A. (Bailey) No, that's Mr. Lisciandro's department.

19 Q. Well, now. Mr. Lisciandro, did you --

20 A. (Lisciandro) Yes.

21 Q. Are you aware of the limitations?

22 A. (Lisciandro) I am aware, yes.

23 Q. Would that change your view at all about whether the  
24 Company will be able to manage and meet its build-out

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1 obligations?

2 A. (Lisciandro) No. There is sufficient additional  
3 cushion in the commitments that are in the Credit  
4 Agreement that allow them to meet their obligations.

5 Q. You've heard -- you've each been here for most of the  
6 testimony. You have heard some concerns about the  
7 go-forward and the Commission's ability to review  
8 actions by the Company. Do -- I guess I'll ask you  
9 individually. Mr. Lisciandro, would you have any  
10 recommendations about benchmarks or a matrix that the  
11 Commission should use when monitoring the progress of  
12 this company post Effective Date?

13 A. (Lisciandro) Not at this time. I'd have to think about  
14 that.

15 Q. Same question to you. Ms. Bailey, have you any  
16 recommendations?

17 A. (Bailey) No. I don't have any recommendations to make,  
18 other than to state that monitoring compliance with the  
19 Regulatory Settlement will be an ongoing obligation of  
20 the Telecommunications Division. And, that's the kind  
21 of work we do every day.

22 Q. And, you have confidence in the ability of that part of  
23 the PUC, is that correct?

24 A. (Bailey) I absolutely have confidence in that part of

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1 the PUC.

2 Q. Ms. Bailey, concerning Section 2.6 of the Regulatory  
3 Settlement, and this is the issue of how the Company  
4 meets the final 8 percent of its build-out obligation.  
5 If the Company chooses to use resell facilities to meet  
6 that obligation, what is your intent in negotiating  
7 that for how the Commission would confirm that those  
8 assets will be placed?

9 A. (Bailey) Well, I had the model in mind that we use on a  
10 routine basis at the Commission. And, that is, if, at  
11 the time that FairPoint reported on 95 percent  
12 availability, part of it included a resold option, that  
13 we would meet with the Company and we would sit down,  
14 and we would rigorously go through the assumptions and  
15 the numbers involved in getting to the 95 percent  
16 availability. We basically make them prove it to us.

17 Q. Regarding Section 4.8, do you agree with Mr. Nixon that  
18 a promise to make investment, future investment, is  
19 sufficient to permit the Company to pay dividends under  
20 that provision?

21 A. (Bailey) Yes, for a number of reasons. Dividend  
22 restrictions by the Commission are a very sensitive  
23 regulatory tool, that are used very infrequently by the  
24 Commission, to -- because of the effect that they can

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1 have on the market. And, we certainly don't want to  
2 negatively affect the market. So, the Commission very  
3 rarely uses those obligations -- I mean, those  
4 consequences. I think that, combined with the  
5 regulatory oversight that the Commission will have, by  
6 requiring FairPoint to propose a project that, for  
7 additional broadband build-out, will be greater than if  
8 FairPoint had paid a penalty to the Department of  
9 Resources and Economic Development, who then would  
10 decide how the money gets used for the benefit of  
11 ratepayers. So, I think that this option gives you  
12 more regulatory consideration over how that money is  
13 actually spent than in the old agreement.

14 Q. Was it -- I'm sorry, did I interrupt you?

15 A. (Bailey) No, I had another thought, but I'll think of  
16 it in a minute.

17 Q. Okay. Was it your understanding and your intent that,  
18 if this section were triggered, that the Commission  
19 would undertake to confirm that in some fashion that  
20 committed cash was restricted and designated for the  
21 build-out obligation?

22 A. (Bailey) I don't believe that this Regulatory  
23 Settlement prohibits the Commission from doing that.  
24 What it does require is FairPoint to offer a plan that

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1 has to be approved by the Commission. So, if, at that  
2 time, the Commission determined that the money should  
3 be somehow set aside and guarantied and restricted and  
4 not used for dividends, I think that that's still in  
5 the Commission's tool box.

6 MR. JUDD: Thank you. I have nothing  
7 further.

8 CHAIRMAN GETZ: Okay. Thank you.  
9 Commissioner Below.

10 CMSR. BELOW: Thank you.

11 BY CMSR. BELOW:

12 Q. Ms. Bailey, I think in your -- the conclusion to your  
13 prefiled written testimony, you've observed that "The  
14 events that have followed the Commission's approval of  
15 the transfer of Verizon's assets to FairPoint [were]  
16 very disappointing." And, you expressed hope that the  
17 reorganization will give them an opportunity to  
18 "complete the commitments" that were undertaken at the  
19 time of that transfer. I guess two questions. One,  
20 what do you think the consequences would be of the  
21 Commission not approving the Regulatory Settlement, in  
22 terms of -- compared with approving it, in terms of  
23 their progress in terms of getting back on track to  
24 their original commitments?

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1 A. (Bailey) I think it would slow it down considerably.  
2 And, I have no idea how much it would slow it down.  
3 But I think one of the goals in -- of our team was to  
4 preserve the commitments in the 2008 Agreement, and  
5 reach an agreement with the Company so that the  
6 bankruptcy proceeding wouldn't take as long as it would  
7 if we had to go fight a Holy War. And, I think that,  
8 if the Commission did not approve the Settlement  
9 Agreement, then all of these issues, and all of the  
10 issues in the 2008 Agreement, would probably be fought  
11 at the Bankruptcy Court.

12 Q. And, do you feel that -- was there a particular reason  
13 not to engage the wholesale providers, the CLECs, in  
14 the settlement discussion?

15 A. (Bailey) I don't think there was a particular thought  
16 to keep them out of it. I think, well, what my  
17 thinking was, is that the goal was to preserve the  
18 commitments of the 2008 Agreement. And, when we had  
19 the Company's commitment to preserve all the issues  
20 that affected the CLECs that were included in the 2008  
21 Agreement, then there really were no issues that we  
22 were -- there were no remaining issues.

23 The point of the Regulatory Settlement  
24 was not to get more than what we had in the 2008

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1 Agreement. If we need to regulate and enforce  
2 provisions of the 2008 Agreement, and if things haven't  
3 worked out, then we need to do some determined  
4 regulation after we get through this bankruptcy  
5 proceeding.

6 Q. And, in that regard, I presume that you had a chance to  
7 review the testimony of various wholesale providers,  
8 the prefiled written testimony?

9 A. (Bailey) I did.

10 Q. And, a lot of the issues that they raise have been  
11 various issues ongoing since the Cutover. Do you feel  
12 that the Company, from your perspective, seems to be on  
13 track and have a commitment to continuing to work on  
14 resolving those issues? And, do you feel that  
15 approving the Regulatory Settlement will enable the  
16 Commission itself to get back on track, in terms of  
17 helping facilitate the resolution of those issues?

18 A. (Bailey) Yes. Very well stated. I think that the  
19 issues that the CLECs have raised are legitimate. They  
20 need to be investigated. And, they need to be perhaps  
21 adjudicated. But we need to get through this  
22 bankruptcy proceeding, and then do that.

23 CMSR. BELOW: Thank you. That's all.

24 CHAIRMAN GETZ: Commissioner Ignatius.

[WITNESSES: Bailey|Lisciandro]

1 CMSR. IGNATIUS: Thank you.

2 BY CMSR. IGNATIUS:

3 Q. Ms. Bailey, just building on what you had just  
4 responded to Commissioner Below. Do you see an  
5 opportunity outside of this proceeding for more  
6 communication between the CLECs and FairPoint that  
7 would be fruitful?

8 A. (Bailey) Well, yes. And, I think that that's one of  
9 the things that we've already begun, by conducting the  
10 phone calls between the CLECs and Liberty, and  
11 producing that list, that I believe was marked as an  
12 exhibit, the Liberty list of a hundred and however many  
13 issues that the CLECs believe are still open. And, the  
14 next part of that investigation, which is independent  
15 of this bankruptcy proceeding, is to hear from  
16 FairPoint what they think has been resolved. And,  
17 then, if there are disagreements, which I presume there  
18 will be, we will take it as far as we can while the  
19 bankruptcy proceeding is ongoing. And, once the  
20 bankruptcy proceeding is completed, if we can't resolve  
21 the issues, we will certainly bring it to your  
22 attention.

23 Q. In negotiating the Regulatory Settlement and the  
24 provisions about the authority of the state president,

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1 was it your understanding that resolution of wholesale  
2 disputes would be within the state president's  
3 authority?

4 A. (Bailey) I don't think so. I think that the state  
5 president is willing to be involved and help fix  
6 issues, to the extent that she has that authority.  
7 And, I feel comfortable calling her and asking her for  
8 assistance. But I think that that -- well, it's my  
9 understanding that that responsibility rests in another  
10 department.

11 Q. If there are New Hampshire specific issues, though, if  
12 the state president is bypassed, does she ever know  
13 that they are particular to our state that need extra  
14 attention?

15 A. (Bailey) Well, usually, the way communication flows  
16 from the Staff to FairPoint, is either through the  
17 Regulatory Director, Mr. Shea, who reports directly to  
18 the State President, or it's sent to the State  
19 President, and she moves it forward through the  
20 Company. So, I think that she would be aware of it.  
21 The issues that we're dealing with are not New  
22 Hampshire specific, they're all three states. I think,  
23 if it was a state specific issue, I may -- I would  
24 probably make sure that she got the information.

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1 Q. I guess my point is, if it's a wholesale matter, it  
2 doesn't mean it follows some completely different track  
3 necessarily?

4 A. (Bailey) No. And, in fact, I know that she at least  
5 received a courtesy copy of the letter that we sent.  
6 And, it may have even been addressed to her, I can't  
7 remember. But it was either addressed to the State  
8 President or courtesy copied to her.

9 Q. On your description of investment commitments and  
10 amounts spent, which hasn't -- I don't think has been  
11 marked as an exhibit, but I found it very helpful, so I  
12 hope it is. You describe the reductions in the "OEC"  
13 category, sort of whittling that down. Is the end  
14 result that, when you take that final 10.5 million, if  
15 needed, for broadband, if I've got that right, that is  
16 the end result, you're in about the \$40 million level?

17 A. (Bailey) Yes.

18 Q. And, in your view, is that a sufficient amount, by  
19 putting more and more onto the broadband side, which we  
20 all want to see, do we create a new problem by not  
21 having enough available on the other needed "capital  
22 expenditures" category?

23 A. (Bailey) Well, I think, by reallocating 10 million to  
24 the recurring maintenance, that gets you fairly close



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1 to the planned CAPEX and broadband amounts for the  
2 third, fourth, and fifth year. If FairPoint takes  
3 advantage of the additional 10 and a half million  
4 dollars to build out to the most remote customers to  
5 get to 95 percent, rather than reselling, then I think  
6 it's pretty close to what we had anticipated going  
7 forward in year three, four, and five, and they have  
8 already spent more money up front.

9 Q. Let me ask you about the "spending money up front". Is  
10 it a question of timing of the payments, that the total  
11 may be not significantly different, but when the money  
12 is spent was the issue, and that there's been a  
13 front-end loading of it, so there's a little less  
14 needed in the coming years? Or, was the problem that  
15 the initial phase was far more expensive than  
16 anticipated or took longer, somehow incurred a level of  
17 expenditure not anticipated? And, so, it's not simply  
18 a matter of front-end loading, but that a lot has been  
19 spent at the front end, but that doesn't mean that  
20 there's less to do in the later stages?

21 A. (Bailey) I think a little bit of both. I think they  
22 obviously had to spend money on interoffice fiber that  
23 they didn't anticipate. But, by spending that money  
24 now, it could reduce maintenance expense or recurring

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1 maintenance capital in the future. I can't quantify  
2 that. Does that answer your question?

3 Q. It does. With your understanding of the engineering  
4 and the work that's been done and the work that's still  
5 needed to be done, are you comfortable that the amounts  
6 laid out on the chart you created will be sufficient to  
7 reach the goals?

8 A. (Bailey) Well, based on the information that they have  
9 provided, and if they spend the ten and a half million  
10 dollars, yes.

11 Q. And, do you have a concern about the delay in reaching  
12 the first April 2010 benchmark, and the request to  
13 extend that to the end of this year, that, by  
14 stretching out the time on that, if that were approved,  
15 would that make it difficult to reach their final goals  
16 by 2013?

17 A. (Bailey) No, I don't think that would have an impact.

18 Q. Have you thought about the process that might be  
19 involved in the pre-approval, both the categories of  
20 broadband investments that are identified in a very  
21 cursory way in your attachment to the Regulatory  
22 Settlement, and the process that might be involved for  
23 things beyond that list of items?

24 A. (Bailey) Well, if you approve the Regulatory Settlement

1 and that attachment, then you've given the pre-approval  
2 for those kinds of investments for the \$40 million.

3 Q. Let's stick with that first. What would you anticipate  
4 the Company would do as it makes investments? Would it  
5 be part of routine reporting that's already done? Does  
6 some new reporting have to be created to identify and  
7 track those investments?

8 A. (Bailey) I would expect that it would be done through  
9 reporting and questioning. I'm just looking in the  
10 2008 Agreement to see if there was any requirement to  
11 report that. I think, in the 2008 Agreement, it said  
12 that "FairPoint shall, from time to time, develop and  
13 present for such review and approval as the Commission  
14 determines appropriate, additions or amendments as may  
15 prove necessary to assure the use in New Hampshire of  
16 all the amounts contributed under [that] section."  
17 Now, this paragraph is in Section 2, and Section 2 has  
18 been wholly replaced, superseded by the new Regulatory  
19 Settlement, and that language is not in there. But I  
20 would expect the Company to report. And, I think that,  
21 as a matter of regulatory oversight, if there was an  
22 issue, the Commission will have the authority to deal  
23 with it.

24 Q. So, outside of this proceeding, there could be a

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1 development of a reporting protocol and agreed upon  
2 formatting and timing of reports on those investments?

3 A. (Bailey) Yes.

4 Q. And, then, for the items that are beyond the lists that  
5 were attached to the Regulatory Settlement, other kinds  
6 of investments, have you thought about the process that  
7 might be involved there? For example, would it be a  
8 docket that would opened or would there be some other  
9 way that we will review and scrutinize the  
10 appropriateness of the investment?

11 A. (Bailey) In the 2008 Agreement, it again relied on the  
12 Commission to determine the process as it deemed  
13 appropriate. I'm not sure that we covered that detail  
14 in the Regulatory Settlement. If I could just have a  
15 minute to look through it?

16 Q. Of course.

17 A. (Bailey) I don't think it's addressed. I think  
18 Paragraph 2.5.5 in the Regulatory Settlement talks  
19 about the use of the \$40 million. And, I guess your  
20 question goes to "how do we verify that they have  
21 complied with that?" And, so, I think it would be a  
22 compliance proceeding. And, again, I don't think the  
23 Regulatory Settlement has taken away any of our routine  
24 regulatory tools.

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1 CMSR. IGNATIUS: Thank you. No other  
2 questions.

3 CHAIRMAN GETZ: Mr. Roth, any redirect?

4 MR. ROTH: Yes. One question.

5 **REDIRECT EXAMINATION**

6 BY MR. ROTH:

7 Q. Kate -- or, Ms. Bailey, excuse me, we've become very  
8 familiar. Ms. Bailey, would you look at the Regulatory  
9 Settlement, Paragraph 3.

10 A. (Bailey) Yes.

11 Q. Do you recall a moment ago, in answer to Commissioner  
12 Ignatius's question about the process for reviewing  
13 proposals, and you said "Paragraph 2 of the 2008  
14 Agreement provided a process" of some sort, correct?

15 A. (Bailey) Correct.

16 Q. And, would you read Paragraph 3.1 of the Regulatory  
17 Settlement.

18 A. (Bailey) "The Financial Conditions set forth in  
19 Section 2 of the 2008 Settlement Agreement have been  
20 replaced by the terms of this Regulatory Settlement,  
21 satisfied, or have been otherwise rendered moot due to  
22 the deleveraging achieved through the Chapter 11  
23 process."

24 Q. Would you like to rephrase your answer to Commissioner

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1 Ignatius?

2 A. (Bailey) Yes. Thank you, Mr. Roth. So, Section 2,  
3 only the financial conditions have been replaced. So,  
4 I presume that the language in the paragraph that I was  
5 reading, that says the Commission could "determine the  
6 appropriate process" for this kind of determination  
7 would still exist.

8 MR. ROTH: Thank you. That's all I  
9 have.

10 CHAIRMAN GETZ: Okay. Then, that's  
11 everything for this panel. So, the witnesses are excused.  
12 Thank you.

13 WITNESS LISCIANDRO: Thank you.

14 CHAIRMAN GETZ: Anything that we need to  
15 address further today?

16 MS. BRAGDON: Yes.

17 CHAIRMAN GETZ: Ms. Bragdon.

18 MS. BRAGDON: I know this is a little  
19 out of order, but I spoke with Mr. McHugh during the  
20 break. Is there any possibility CRC, and Ms. Foley is  
21 going to make a similar request, that we could move our  
22 exhibits in at this time, since we will not have any  
23 questions for Staff, Non-Advocate Staff tomorrow?

24 CHAIRMAN GETZ: Well, we can -- and, Mr.

1 Shoer?

2 MR. SHOER: May I join in that request.

3 CHAIRMAN GETZ: Right. Well, let's see  
4 then. So, basically, are there any other takers on that  
5 proposal?

6 MR. KENNAN: I guess I'll throw my hat  
7 in, too. Although, I believe I'll be back tomorrow,  
8 Mr. Chairman.

9 CHAIRMAN GETZ: Okay. So, then, we have  
10 a - let's see the best way to phrase this. So, then, the  
11 CRC and One Comm and BayRing and --

12 MR. KENNAN: Otel.

13 CHAIRMAN GETZ: -- Otel would like to  
14 move their exhibits into evidence. Is there any objection  
15 to admitting them?

16 MS. FOLEY: I did just want to make one  
17 clarifying statement, if I could, with regard to the One  
18 Communications' exhibits. What's been marked as "OC-23"  
19 are comments One Communications filed with the New  
20 Hampshire PUC in Docket DT 07-011, and what's been marked  
21 as OC-24 are comments that One Communications filed with  
22 the Federal Communications Commission. Both of those  
23 documents are in the nature of briefs in that they contain  
24 arguments of counsel. We are seeking to have them

1 admitted for the purpose of referring to them in our  
2 brief, to show that we've made these arguments in the  
3 dockets noted at the times they were made, not necessarily  
4 for the truth of any factual assertions within them.

5 CHAIRMAN GETZ: Okay. Thank you. Well,  
6 then, the critical issue is the next one. Is there any  
7 objections to the parties' motion to admit those exhibits  
8 into evidence?

9 MR. McHUGH: No objection, Mr. Chairman,  
10 from FairPoint. But, before you release them, I want to  
11 make sure everybody, who's not going to be here tomorrow,  
12 stipulates for the record that the FairPoint exhibits are  
13 so admitted without objection. You don't have to do that  
14 until tomorrow, but I don't want them to have objections  
15 after they leave.

16 MS. BRAGDON: No objection from CRC.

17 MS. FOLEY: No objection.

18 MR. SHOER: No. Fair request. That's a  
19 fair request. No objection from BayRing.

20 MR. KENNAN: None from Otel.

21 CHAIRMAN GETZ: Okay. Thank you then.

22 MR. ROTH: Mr. Chairman, the admission  
23 of the chalk as an exhibit is outstanding. And, I would  
24 ask that it be admitted. And, --



1                   CHAIRMAN GETZ: Well, it's premature to  
2 admit it. I think earlier I identified it as "Staff  
3 Advocate 3" for identification.

4                   MR. JUDD: May I address that request?

5                   CHAIRMAN GETZ: Well, --

6                   MR. JUDD: Not to have it admitted, but  
7 the exhibit itself.

8                   CHAIRMAN GETZ: Yes.

9                   MR. JUDD: I was going to suggest that  
10 the Commission accept Mr. Roth's offer of putting Ms.  
11 Bailey to work tonight to produce that in a different  
12 format. My concern is --

13                   MR. ROTH: I don't recall making that  
14 offer.

15                   MR. JUDD: Well, I believe that you did.  
16 But, putting that aside --

17                   CHAIRMAN GETZ: Well, let's --

18                   MR. JUDD: If I could finish my --

19                   CHAIRMAN GETZ: No. Please.

20                   MR. JUDD: Okay.

21                   CHAIRMAN GETZ: I think what I had said  
22 earlier was that the last we knew this machine was working  
23 and we can just print it, and it would be Staff Advocate  
24 Number 3. Is there a problem with that?

1 MR. JUDD: My concern was the clarity of  
2 it, Mr. Chairman. With her testimony, it is very clear,  
3 and I think it's a very helpful exhibit. My concern is,  
4 as a stand-alone document, it might not have the same  
5 clarity. And, I was attempting to help with the quality  
6 of the record in advocating that, and I'll make an  
7 example, that she referred to different colors and whatnot  
8 on the exhibit. I was simply looking for clarity. I make  
9 know objection. And, again, I think it's very helpful  
10 information, and she brought great clarity to something  
11 that was confusing.

12 CHAIRMAN GETZ: Okay. Well, I think  
13 what we will do, since we have a whole nother day ahead of  
14 us, we'll print this tonight, see how it comes out. And,  
15 my benefit, I take your point about the colors in her  
16 description, though, she did mention columns and column  
17 headings. But let's take a run at printing that tonight.  
18 And, if we need to --

19 MR. JUDD: Thank you.

20 CHAIRMAN GETZ: -- correct the record  
21 tomorrow, we'll do that. Getting back to the motion to  
22 enter the CLEC exhibits -- Ms. Geiger?

23 MS. GEIGER: Mr. Chairman, thank you. I  
24 expect to be here tomorrow and can wait till then to move

1 my exhibits into the record. But, for the sake of  
2 administrative convenience, if you want to do all the CLEC  
3 exhibits now, that's fine with me.

4 CHAIRMAN GETZ: And, segTEL?

5 MS. MULLHOLAND: My attorney has  
6 departed, but it's okay with segTEL as well.

7 CHAIRMAN GETZ: And, the same issue,  
8 Mr. McHugh, you don't object, as long as they don't object  
9 to yours? And, I'm seeing nodding heads from Ms. Geiger  
10 and --

11 MS. GEIGER: Yes.

12 MS. MULLHOLAND: No objection from  
13 segTEL.

14 CHAIRMAN GETZ: -- segTEL as well.

15 (Chairman and Commissioners conferring.)

16 CHAIRMAN GETZ: Okay. So, we will grant  
17 the motions to admit into evidence all of the various CLEC  
18 exhibits that have been set forth on the documents that  
19 have noted the exhibits that were listed for  
20 identification.

21 MS. BRAGDON: Thank you.

22 CHAIRMAN GETZ: And, is there anything  
23 else that I've forgotten, because we were jumping around  
24 there for a moment?

(No verbal response)

CHAIRMAN GETZ: Okay. Then, we will start tomorrow morning at 9:00 with the Non-Staff Advocate panel. And, we will adjourn for today. Thank you, everyone.

(Whereupon the hearing was adjourned at 5:13 p.m., and the hearing resume on May 26, 2010, commencing at 9:00 a.m.)