

1 STATE OF NEW HAMPSHIRE

2 PUBLIC UTILITIES COMMISSION

3
4 **October 31, 2007 - 9:05 a.m.**
5 Concord, New Hampshire

Day VIII

6
7 RE: DT 07-011
8 VERIZON NEW ENGLAND, ET AL:
9 Transfer of Assets to FairPoint
10 Communications, Inc.

NHPUC NOV07'07 PM 1:59

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12 **PRESENT:** Chairman Thomas B. Getz, Presiding
13 Commissioner Graham J. Morrison
14 Commissioner Clifton C. Below

15 Jody O'Marra, Clerk

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17 **APPEARANCES:** **Reptg. FairPoint Communications, Inc.:**
18 Frederick J. Coolbroth, Esq. (Devine....)
19 Patrick McHugh, Esq. (Devine, Millimet..)
20 Kevin M. Baum, Esq. (Devine, Millimet...)

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22 **Reptg. Verizon New England, et al:**
23 Victor D. Del Vecchio, Esq.
24 Sarah B. Knowlton, Esq. (McLane, Graf...)

**Reptg. New England Cable & Telecomm. Assn.
and Comcast Phone of N.H., LLC:**
Alan D. Mandl, Esq. (Smith & Duggan)

Reptg. One Communications:
Ted Price, Esq.

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

**Reptg. Communication Workers of America,
IBEW Locals 2320, 2326 & 2327, and
IBEW System Council T-6:**
Scott Rubin, Esq.

Reptg. Public Service Co. of New Hampshire:
Gerald M. Eaton, Esq.

Reptg. Unutil Energy Systems:
Gary M. Epler, Esq.

Reptg. the City of Portsmouth:
Suzanne Woodland, Esq., Asst. City Attorney

Reptg. Residential Ratepayers:
Meredith Hatfield, Esq., Consumer Advocate
Rorie Hollenberg, Esq.
Kenneth E. Traum, Asst. Consumer Advocate
Office of Consumer Advocate

Reptg. PUC Staff:
Lynn Fabrizio, Esq.

P R O C E E D I N G S

1
2 CHAIRMAN GETZ: Okay. Good morning,
3 everyone. We're back on the record in docket DT 07-011.
4 Can we begin with appearances for the record.

5 MR. MCHUGH: Good morning, Mr. Chairman,
6 Commissioner Below, Commissioner Morrison. Patrick
7 McHugh, from Devine, Millimet & Branch, on behalf of
8 FairPoint Communications, Inc. With me today is Fred
9 Coolbroth and Kevin Baum, Devine, Millimet. And, at
10 counsel table is Peter Nixon from FairPoint and Michael
11 Brown from FairPoint.

12 CHAIRMAN GETZ: Good morning.

13 CMSR. MORRISON: Good morning.

14 CMSR. BELOW: Good morning.

15 MR. DEL VECCHIO: Good morning, Mr.
16 Chairman, Commissioners. Victor Del Vecchio and Sarah
17 Knowlton, representing Verizon. And, with us today are
18 Sheila Gorman, Shawn Nestor, and Alan Cort.

19 MS. KNOWLTON: Good morning.

20 CHAIRMAN GETZ: Good morning.

21 CMSR. MORRISON: Good morning.

22 CMSR. BELOW: Good morning.

23 MR. EPLER: Gary Epler, on behalf of
24 Unitil.

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CHAIRMAN GETZ: Good morning.

CMSR. MORRISON: Good morning.

CMSR. BELOW: Good morning.

MR. EATON: Good morning. My name is
Gerald Eaton, representing Public Service Company of New
Hampshire.

CHAIRMAN GETZ: Good morning.

CMSR. MORRISON: Good morning.

CMSR. BELOW: Good morning.

MS. WOODLAND: Suzanne Woodland,
Assistant City Attorney, for the City of Portsmouth.

CHAIRMAN GETZ: Good morning.

CMSR. MORRISON: Good morning.

CMSR. BELOW: Good morning.

MR. MANDL: Good morning, Commissioners.
Alan Mandl, for the New England Cable and
Telecommunications Association and Comcast Phone of New
Hampshire.

CHAIRMAN GETZ: Good morning.

CMSR. MORRISON: Good morning.

CMSR. BELOW: Good morning.

MR. PRICE: Good morning. Ted Price,
representing One Communications.

CHAIRMAN GETZ: Good morning.

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1 CMSR. MORRISON: Good morning.

2 CMSR. BELOW: Good morning.

3 MR. RUBIN: Good morning. Scott Rubin,
4 representing the International Brotherhood of Electrical
5 Workers and the Communications Workers of America. With
6 me at the table is our consultant, Randy Barber, and, from
7 IBEW, Robert Erickson.

8 CHAIRMAN GETZ: Good morning.

9 CMSR. MORRISON: Good morning.

10 CMSR. BELOW: Good morning.

11 MS. HATFIELD: Good morning,
12 Commissioners. Meredith Hatfield, for the Office of
13 Consumer Advocate, on behalf of residential ratepayers.
14 And, with me I have Rorie Hollenberg, Susan Baldwin, and
15 Ken Traum.

16 CHAIRMAN GETZ: Good morning.

17 CMSR. MORRISON: Good morning.

18 CMSR. BELOW: Good morning.

19 MS. FABRIZIO: Good morning,
20 Commissioners. Lynn Fabrizio, on behalf of Staff. With
21 me today are John Antonuk of Liberty Consulting, and Kate
22 Bailey, David Goyette of Staff.

23 CHAIRMAN GETZ: Good morning.

24 CMSR. MORRISON: Good morning.

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1 CMSR. BELOW: Good morning.

2 CHAIRMAN GETZ: I understand the first
3 order of business is to complete the examination of
4 Mr. Brown. Is there anything we should address before we
5 take that matter up?

6 MR. MCHUGH: Yes, Mr. Commissioner, just
7 so everybody's understanding would be, the plan that was
8 filed the other day during the hearings, it was then
9 marked as "FairPoint Exhibit 59", with a public version, a
10 confidential version, and a highly confidential version.
11 To the extent there is any discussion or testimony
12 concerning the sort of wire center RT line specific
13 information, that's Verizon's -- presently Verizon's
14 highly confidential information, we just need to go into a
15 highly confidential session, and ask folks to be mindful
16 of that.

17 MS. HATFIELD: Mr. Chairman, can I just
18 inquire of Mr. McHugh? Because I only have "FairPoint
19 Exhibit 59HC", so I'm not aware, and it's not designated
20 what would be public and what would be confidential. So,
21 if, maybe by page, he could just tell us which one,
22 because maybe our questions could be public or
23 confidential.

24 MR. MCHUGH: I believe what was handed

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1 out, if you see the exhibit stickers, while the first
2 cover is noted as "HC", underneath the first two pages are
3 public, and so designated, following that would be the
4 confidential information. And, then, following that one
5 page, which is confidential, but the remainder is all
6 noted as "59HC", for highly confidential.

7 MS. HATFIELD: Thank you very much.

8 MR. MCHUGH: Certainly.

9 MS. FABRIZIO: Mr. Chairman, on a
10 related note, Staff filed "Staff Exhibit 60C", and it's my
11 current understanding now, after talking with Mr. McHugh,
12 that that should actually be classified as "highly
13 confidential", with the exception of the first two pages,
14 and that holds for Staff 51 Highly Confidential. My
15 understanding is that the two pages that actually
16 articulate the broadband plan are public. Whereas, the
17 attachments to that two-page plan in each of the exhibits
18 are highly confidential.

19 MS. HATFIELD: I think, with the
20 exception of the first page, after the narrative, it's
21 confidential, is that correct?

22 MR. MCHUGH: That's right. The budget
23 information, without putting it on the screen, is
24 confidential. It's all of the line-based information that

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1 is highly confidential, Mr. Chairman. And, we'll work
2 with the parties to get that corrected for the record.

3 CHAIRMAN GETZ: Okay. Thank you.

4 Ms. Woodland, did --

5 MS. WOODLAND: I'm not sure if this is
6 the correct time to bring it up, but it's my understanding
7 that none of the parties have any interest in
8 cross-examining the scheduled witnesses from Portsmouth
9 for this afternoon. In which case, I just wanted to
10 clarify that that was okay and they did not need to appear
11 later on this afternoon. Is this the proper venue or
12 time?

13 CHAIRMAN GETZ: Yes, that was my
14 understanding. Is there anyone that needs to, speak now
15 please?

16 (No verbal response)

17 CHAIRMAN GETZ: So, I think it's fair to
18 say that your witnesses do not need to appear.

19 MS. WOODLAND: Thank you.

20 CHAIRMAN GETZ: Though, I'm not sure
21 we're going to get through everything we've got on the
22 schedule for today, but we're going to try.

23 MS. WOODLAND: Thank you.

24 CHAIRMAN GETZ: I guess the thing that

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1 -- do we know for a fact, Ms. Fabrizio, about Ms. Griffin,
2 and BayRing seeking to cross-examine Ms. Griffin from the
3 Town of Hanover?

4 MS. FABRIZIO: Yes. It's actually Scott
5 Sawyer's client segTel wishes to cross-examine
6 Ms. Griffin.

7 CHAIRMAN GETZ: Okay. So, both sides
8 are aware that --

9 MS. FABRIZIO: Yes.

10 CHAIRMAN GETZ: -- they're on the list,
11 though there's a fair chance we won't get to them today?

12 MS. FABRIZIO: Yes.

13 CHAIRMAN GETZ: All right. Anything
14 else?

15 (No verbal response)

16 CHAIRMAN GETZ: Then, recall Mr. Brown
17 please.

18 MR. MCHUGH: Certainly.

19 (Whereupon **Michael Brown** was recalled to
20 the stand, having been previously
21 sworn.)

22 MR. MCHUGH: Good morning, Mr. Brown.

23 WITNESS BROWN: Good morning.

24 MR. MCHUGH: Having been recalled to the

1 stand, you understand you're still under oath, sir?

2 WITNESS BROWN: I do.

3 MR. MCHUGH: Attorney Hatfield.

4 CHAIRMAN GETZ: Well, let's try, I want
5 to make sure I understand first, we know Ms. Hatfield had
6 questions. Is there anyone else that's going to have
7 questions?

8 MS. FABRIZIO: Staff.

9 CHAIRMAN GETZ: Ms. Fabrizio. And, that
10 appears to be it. So, Ms. Hatfield.

11 MS. HATFIELD: Thank you very much.
12 Good morning, Mr. Brown.

13 WITNESS BROWN: Good morning.

14 MS. HATFIELD: Thank you for coming
15 back. I am going to try to stay within the public
16 materials. But, if at any time you need to refer to
17 confidential or highly confidential, please just let me
18 know and we can go into that session.

19 WITNESS BROWN: Okay.

20 **MICHAEL BROWN, Previously sworn**

21 **CROSS-EXAMINATION (resumed)**

22 BY MS. HATFIELD:

23 Q. A few days ago you provided us with a more recent
24 version of the FairPoint broadband plan, is that

1 correct?

2 A. That's correct.

3 Q. And, the copy that we are going to refer to is marked
4 as "FairPoint Exhibit 59", and it has public,
5 confidential, and highly confidential versions, is that
6 correct?

7 A. That is my understanding, yes.

8 Q. And, the date I have for that is that it was provided
9 to the parties on October 29th. Is that your
10 recollection?

11 A. That is my recollection.

12 Q. Turning to the first page of that plan on that exhibit,
13 there isn't a date on that document. Do you happen to
14 know when that document was created?

15 A. Now you're testing my memory. If I'm not mistaken, it
16 was sometime around the first week of August.

17 Q. There's also been marked "Staff Exhibit 60C", which is
18 the prior version of FairPoint's broadband plan. Do
19 you have that with you?

20 A. I do.

21 Q. Do you know when that last plan was developed?

22 A. This plan was developed on September -- I mean, not
23 September, July 24th, is when I provided it to our
24 counsel.

1 Q. So, that plan was on July 24th, and then the follow-up
2 was shortly thereafter, the first week of August?

3 A. My recollection is, we met with Verizon the first week
4 of August, and then I revised the plan after that
5 meeting.

6 Q. And, if you would look at the newly revised plan, going
7 back to 59, Exhibit 59 now, on the first page, the
8 first paragraph describes the budget and the details of
9 the plan. And, I'm wondering if you can direct your
10 attention about midway through that paragraph, there's
11 a sentence that begins "Within 12 to 18 months".

12 A. Okay. Could I request a copy of that plan? I do not
13 have that exhibit, 59.

14 MR. McHUGH: Fifty-nine?

15 WITNESS BROWN: I have 60, but I do not
16 have 59.

17 (Atty. McHugh handing document to the
18 witness.)

19 **BY THE WITNESS:**

20 A. Okay. I have it now.

21 BY MS. HATFIELD:

22 Q. Okay. So, if you go to the first page, about halfway
23 down through that first paragraph there's a sentence
24 that begins with "within 12 to 18 months"?

1 A. Yes.

2 Q. Could you read that sentence for me please.

3 A. "Within 12 to 18 months, this will bring the broadband
4 addressability rate from its present 72 percent to
5 approximately 75 percent, and within 24 months from
6 closing to approximately 83 percent."

7 Q. And, then, if you would turn to Exhibit 60, which is
8 the previous plan, there is a similar sentence about
9 the same place in that first paragraph, that also
10 starts with "within 12 to 18 months". Can you read
11 that sentence?

12 A. I can. "Within 12 to 18 months, this will bring the
13 broadband addressability rate from its present 63
14 percent to approximately 75 percent, and within 24
15 months from closing to approximately 80 percent."

16 Q. And, then, if -- I don't know if you have your
17 testimony, your rebuttal testimony before you, --

18 A. I do.

19 Q. -- but, on Page 28 of that testimony, on Line 5, you,
20 along with Mr. Harrington and Mr. Smee, state that
21 Farrington -- excuse me, "FairPoint proposes to
22 increase the percentage of broadband-qualified lines in
23 the State of New Hampshire to approximately 71 percent
24 within 24 months of the closing of the merger." And,

1 up just above that, you state that "At present,
2 Verizon's DSL deployment rate is approximately
3 61 percent." So, I'm wondering if you could help me
4 understand, the new revised plan that you read first
5 uses the figure of a present number of "72 percent".
6 And, if you could explain how the present
7 addressability rate has increased from either 61 or 63
8 up to 72 percent?

9 A. I can. And, it's somewhat of an apples-to-oranges
10 comparison, because Verizon, their terminology that
11 they were using and what we were using was somewhat
12 different. The numbers that I was provided from
13 Verizon initially were total numbers of access lines
14 per the digital loop carrier locations and also per the
15 central offices. Subsequent to that, I was provided a
16 list of unqualified loops, loops that they had done a
17 test on that were certified to have load coils that
18 would be beyond 18,000 feet. So, when we had that
19 information, we factored that into the model, which
20 took the number down by several percentage points.
21 And, so, now we were looking at, when we were talking
22 about the book-ended approach, we have qualified lines,
23 which have been pretested by Verizon. They stop at
24 18,000 feet. Our intention is to use other

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1 technologies, such as Smartcoil and doubler
2 technologies, to be able to extend that broadband
3 service out further. And, so, the 61 percent is what
4 they are advertising is qualified today, which has been
5 pretested to be able to provide broadband services, and
6 then we did not have that number first, so now we've
7 factored those numbers into our model as well. And,
8 that's why we are now looking at the qualified rate of
9 being 71, but that's taking into consideration we
10 wouldn't be able to do any other lines. We feel like
11 we will be able to pick up several of those lines.
12 And, so, that's the reason we say we will go somewhere
13 in the book end from 71 percent to 83 percent.
14 Eighty-three (83) percent of the access lines will have
15 equipment available to them to be able to provide
16 broadband service. And, that's how we define the
17 addressability.

18 Q. So, maybe it's just because it's first thing in the
19 morning, but I'm just having trouble understanding.
20 So, maybe you can help me. So, today, according to
21 Verizon, that 61 percent of their lines are addressable
22 for DSL. But is it -- is what you're saying that, on,
23 basically, at the date of close, FairPoint is going to
24 consider that that number is 72 percent or that you're

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1 going to take some action within 12 to 18 months to
2 bring 61 up to 72?

3 A. If I could clarify on that. When I say that "Verizon
4 has 61 percent", it is qualified, not addressable.
5 Seventy-one (71) percent is addressable. And, so, if
6 you could imagine you've got the overall number of
7 access lines that you're working with, and I'll just
8 use round numbers for illustrative purposes, we have
9 100,000 access lines. Then, we were provided
10 information that said "I had 11,000 access lines that
11 were unqualified loops." So, we subtracted that out of
12 the equation and said "okay, those are unqualified."

13 But the difference in the definition is,
14 once again, a "qualified loop" means it has been
15 pretested to be able to support broadband services by
16 the Verizon definition. "Addressable" means the
17 equipment is in place that can address that line to be
18 able to provide broadband service. And, that means
19 additional conditioning may be required for that line,
20 but yet there is equipment there. And, that's
21 something that engineers use a lot, because what we
22 want to do is try and -- let's, first of all, get the
23 equipment out in the field to be able to support
24 broadband to the majority of the customers. Because

1 the majority of customers at any location, once you
2 have the equipment in place, will be able to receive
3 broadband.

4 Q. So, 61 percent of customers can actually call and order
5 broadband, and 72 percent are reachable with just a few
6 more steps?

7 A. Yes, ma'am.

8 Q. And, in the newest version of the broadband plan, you
9 say "within 24 months from closing, you'll reach
10 83 percent." So, should we take that as a modification
11 of your testimony, so that what FairPoint's proposing
12 is to reach 83 percent in 24 months?

13 A. The plan provides addressability for 83 percent of the
14 customers. The qualified loops, if we just used
15 Verizon's definition today, we would be at 71. And,
16 so, we know that we will be able to fit in between that
17 range somewhere. Our goal is to reach the 80 percent
18 mark. Because the majority of customers tend to be
19 very close to the central offices or to the digital
20 loop carrier location. Once you get past 22,000 feet,
21 you've got fewer customers out there. There's a lot of
22 the customers that are between 18,000 and 22,000 feet.

23 MS. HATFIELD: Mr. Chairman, I think
24 that completes my public questions.

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1 CHAIRMAN GETZ: Ms. Fabrizio.

2 MS. FABRIZIO: Thank you, Mr. Chairman.

3 Good morning, Mr. Brown.

4 WITNESS BROWN: Good morning.

5 **CROSS-EXAMINATION**

6 BY MS. FABRIZIO:

7 Q. Could you please refer to Page 10 of Michael
8 Harrington's direct testimony. Do you have that before
9 you?

10 A. I do not.

11 Q. Let me put it on the screen. Could you read the
12 highlighted sentence please.

13 A. "The latest data I have reviewed shows that Verizon has
14 63 percent of its lines in New Hampshire qualified to
15 provide DSL."

16 Q. So, you agree that he's pointing to the percent of
17 Verizon's lines that are DSL qualified as 63 percent,
18 is that --

19 A. That appears to be, yes.

20 Q. And, now, I'd like to refer you to FairPoint's first
21 broadband plan, the first version. And, as I
22 understand it, this page is public. This was marked
23 originally as "Exhibit Staff 51". This plan indicates
24 that 63 percent of Verizon's lines are presently

1 broadband addressable. Do you agree?

2 A. I agree.

3 Q. And, could you explain to us why the DSL qualified and
4 DSL addressable lines have the same percentage in these
5 two documents?

6 A. This document was done before we had the communication
7 with Verizon and understood that they counted things
8 one way and that we counted things another way.

9 Q. Okay.

10 A. And, so, that's one of the reasons we had to go back
11 and revise it, because we were trying to reconcile some
12 of those numbers and having difficulty being able to
13 reconcile that.

14 Q. Okay. Thank you. Now, I'd like to refer you to your
15 rebuttal testimony, on Page 28, Line 5. Do you have
16 that before you?

17 A. I do not have that in front of me.

18 Q. I'm sorry, I don't have a loose page. Here we go.
19 Let's see. So, Page 28, Line 5. Would you read the
20 sentence beginning "FairPoint proposes" there please.
21 Oh, I'm sorry. The first sentence, start reading your
22 response "At present".

23 A. "At present, Verizon's DSL deployment rate - meaning
24 the percentage of access lines which are

1 broadband-qualified - in the State of New Hampshire is
2 approximately 61 percent."

3 Q. So, the number here you agree is DSL qualified
4 "61 percent", correct?

5 A. Yes.

6 Q. And, now, I'm going to turn to the current plan, marked
7 as "FairPoint Exhibit 59P". Do you agree that this
8 plan, in particular, the highlighted phrase there,
9 states "The present addressability rate is 72 percent"?

10 A. I do.

11 Q. Could you please explain how the DSL addressable rate
12 went from 63 percent to 72 percent, while the DSL
13 qualified rate went from 63 to 61 percent?

14 A. Okay. Whenever I wrote that, I tried to make sure that
15 we were comparing apples to apples, because there was
16 some misunderstanding of how we were counting the
17 lines. And, so, in order to make it the same
18 comparison so we would be able to tell, I used the
19 addressability numbers. And, so, when you look at
20 Verizon's numbers, their addressability, as far as the
21 ability to address a cable pair with broadband service
22 without additional conditioning, is 72 percent. When
23 they factor in the number of lines that they have
24 tested, that were long loops, had long bridged taps

1 which could have made the loops longer, had load coils,
2 then that brought that number down. That's -- The
3 qualified number is the ones that had been pretested.
4 We did not have that information in the first
5 rendition. So, in order to provide an apples-to-apples
6 comparison, I moved their number up to what our
7 definition of addressable is, which is 72 percent.

8 MS. FABRIZIO: Thank you. Mr. Chairman,
9 that completes my questions.

10 MR. MCHUGH: I just have, in public, a
11 few redirect, Mr. Chairman.

12 CHAIRMAN GETZ: Do you have any
13 questions?

14 CMSR. MORRISON: No.

15 CMSR. BELOW: Yes.

16 **EXAMINATION BY CMSR. BELOW**

17 BY CMSR. BELOW:

18 Q. To clarify one thing, you've used both the numbers
19 "71 percent addressable" and "72 percent addressable"
20 this morning. Which is the better number?

21 A. Well, it was 71.6 percent.

22 Q. Okay. To be precise.

23 A. I've been accused of being so.

24 Q. Okay. And, so, the additional 57,799 access lines

1 which you mention in the new broadband plan, those
2 would be additional lines that are addressable or
3 qualified?

4 A. Actually, those will be qualified. I tried to be
5 conservative in the numbers on that, to make sure that
6 I provided the numbers that were the -- what I would
7 call the "worst case scenario".

8 Q. Okay. And, if you hit that mark of the near 58,000
9 lines, what would that mean in terms of the
10 percentages? Where would that be in your range for
11 addressable and qualified?

12 A. That would be on the low range, the 71 percent.

13 Q. Wait a minute. 71 percent.

14 A. The 57,000 number, that number signifies the --

15 Q. Okay.

16 A. -- it reduces the overall number by the unqualified
17 loops. We know that we will be able to qualify a great
18 number of those loops with additional conditioning.
19 And, so, I use the 57,000 number as the low end of the
20 spectrum.

21 Q. Is that mainly coming from the new COs that have MSAN
22 and/or IP/MPLS routers?

23 A. The majority of that number comes from the digital loop
24 carrier locations.

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1 Q. Okay. That you take MSAN out to?

2 A. Yes, sir.

3 Q. So, do you have an equivalent set of numbers for
4 qualified lines that are parallel to the present rate
5 of 72 percent addressable to approximately 75 percent,
6 to 83 percent? Do you have a parallel set of numbers
7 for your goals for qualified lines?

8 A. Well, once again, the 57,000 number would be what is
9 qualified today. We would go beyond that point by
10 conditioning some of the lines by putting in Smartcoil
11 technology to increase that number above the 57,000.

12 Q. Wait a second. You said that's the number that would
13 be "qualified today". I don't understand that
14 statement because --

15 A. Okay. If I could. The 57,000 is, whenever we finish
16 this project, and put in all the equipment that we
17 have, we will reach a minimum of 57,000 additional
18 customers that are qualified today. With additional
19 capacity -- additional conditioning of the line, we
20 will go above that 57,000 number.

21 Q. But you still said that are "qualified today"?

22 A. By the qualification standards that Verizon uses today
23 is what I'm making a reference to. They are not
24 qualified today, because they have no equipment in

1 place today. But, using the standards that Verizon
2 uses today, without any additional conditioning, any
3 removal of bridged taps or anything, then that number
4 would remain at 57,000.

5 Q. Okay. I think I'm starting to get it. What would that
6 represent in terms of the increase of the current
7 number of qualified lines at 61 percent, that would
8 represent what percentage of lines that are qualified,
9 as opposed to addressable?

10 A. I think now I'm actually getting confused. I'm not too
11 sure if I quite understood the question.

12 Q. Well, I think you've said two things. Right now, your
13 understanding is that the portion of the total lines
14 that are qualified, that is pretested by Verizon to be
15 DSL ready, is 61 percent?

16 A. Correct.

17 Q. But the actual portion that is addressable right now,
18 today, is about 72 percent?

19 A. Yes, sir.

20 Q. Okay. And, you're saying you will, within the first 18
21 to 24 months after close, get at least an additional
22 57,000 access lines qualified?

23 A. Yes, sir.

24 Q. And, that's without -- pretty much without

conditioning, that's qualified sort of under Verizon's
2 current criteria, which is typically within 18,000 feet
3 of the CO or where the MSAN will be, correct?

4 A. Yes, sir.

5 Q. Okay. So, I guess what I'm asking is, what would that
6 represent in terms of an increase from 61 percent
7 qualified, to what would that be, approximately 70, 71,
8 72 percent qualified, if you picked up another 57 or
9 58,000?

10 A. Okay, there's about 12 -- I don't know if this gets
11 into confidential or not. I'm talking about the
12 percentage of loaded loops within the existing plan.

13 MR. NIXON: It's public.

14 WITNESS BROWN: It is public? Okay.

15 **BY THE WITNESS:**

16 A. There's 12 percent of the access lines today are loaded
17 or long loops. And, so, it would be an increase of
18 we're thinking somewhere around 8 to 10 percent above
19 that 71 percent, which gets us to the 80 percent goal
20 that we have. So, I can't tell the number of access
21 lines that that is right off, but it would be somewhere
22 around 40,000 access lines.

23 BY CMSR. BELOW:

24 Q. Over and above the 57,000?

1 A. Yes, sir.

2 Q. Okay. So, it sounds like, roughly speaking, that the
3 57, 58,000 would raise the number of qualified lines
4 from about 61 to somewhere in the low 70 percent range.
5 And, if you got to your whole target of 80, that would
6 represent another 40,000 lines plus?

7 A. Yes, sir.

8 CMSR. BELOW: Okay. Thank you.

9 CHAIRMAN GETZ: Mr. McHugh.

10 MR. MCHUGH: I think now we're all set
11 on that then.

12 **REDIRECT EXAMINATION**

13 BY MR. MCHUGH:

14 Q. So, just to -- I think I wanted to clarify the record,
15 Mr. Brown. The testimony of the panel of you, with
16 Mr. Harrington and Mr. Smee, is dated Monday,
17 September 10. Do you recall that, Mr. Brown?

18 A. September 10th? I'll do my best to recall.

19 Q. Let me ask you this way. Do you know, did you deliver
20 to my office the final broadband plan, which we have
21 now marked as "Exhibit 59", the day the testimony was
22 due?

23 A. Yes, sir.

24 MR. MCHUGH: Okay. There we go. Thank

1 you, Mr. Chairman.

2 CHAIRMAN GETZ: Okay. Now, Ms.
3 Hatfield, you had some confidential and some highly
4 confidential questions or --

5 MS. HATFIELD: I think, at this point,
6 the OCA is okay with the public questions that have been
7 answered.

8 CHAIRMAN GETZ: Okay. Anything
9 additional, Ms. Fabrizio?

10 MS. FABRIZIO: No.

11 MR. MCHUGH: All set, Mr. Chairman.

12 CHAIRMAN GETZ: Okay. Then, you're
13 excused. Thank you, Mr. Brown. And, if we can recall Mr.
14 Hybsch and Mr. Meissner.

15 (Whereupon **Robert T. Hybsch** and **Thomas**
16 **P. Meissner** were recalled to the stand,
17 having been previously sworn.)

18 CHAIRMAN GETZ: Ms. Knowlton, if we can
19 wait a second.

20 (Short pause.)

21 CHAIRMAN GETZ: Ms. Knowlton, please.

22 MS. KNOWLTON: Thank you. Good morning,
23 Mr. Meissner and Mr. Hybsch.

24 WITNESS HYBSCH: Good morning.

1 WITNESS MEISSNER: Good morning.

2 MS. KNOWLTON: I'd like to remind you
3 that you're still under oath.

4 **ROBERT T. HYBSCH, Previously sworn**

5 **THOMAS P. MEISSNER, Previously sworn**

6 **CROSS-EXAMINATION (resumed)**

7 BY MS. KNOWLTON:

8 Q. Mr. Hybsch, I'd like to start with you. You may have
9 up on the stand with you a document that I've marked as
10 "Verizon Exhibit 26". Do you have that in front of
11 you?

12 A. (Hybsch) I have a document you handed me this morning,
13 but there's no exhibit number on it.

14 Q. It may not say "26" on it. Okay. Is that the Joint
15 Ownership Agreement between New England Telephone &
16 Telegraph and Public Service Company of New Hampshire,
17 dated "October 15th, 1976"?

18 A. (Hybsch) That's what it states, but I don't agree with
19 it. That that is the original document.

20 Q. You don't agree that this is not a copy of the
21 original?

22 A. (Hybsch) That is correct. I don't agree.

23 Q. What --

24 MS. KNOWLTON: Well, first, let me just

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1 indicate to the Commission, I've given copies of this
2 document to the court reporter. There should be
3 sufficient copies for the Commissioners. And, I've shown
4 this to PSNH's counsel. The document that was marked as
5 "PSNH Exhibit 5" yesterday was called a "Joint Use
6 Agreement". And, it goes by the same date as this Joint
7 Ownership Agreement. It's my understanding that the poles
8 in New Hampshire are jointly owned by Unitil and Verizon,
9 and that the dispute arises under the Joint Ownership
10 Agreement, not the Joint Use Agreement. Though, I would
11 note that the provisions are largely identical, including
12 the IOPs that are attached to the agreement.

13 BY MS. KNOWLTON:

14 Q. Mr. Hybsch, can you tell me what -- is something
15 missing from this copy?

16 A. (Hybsch) Yes.

17 Q. If there is, what is incorrect about this, because I
18 want to get the correct version on the record?

19 A. (Hybsch) The document that you handed me this morning I
20 quickly reviewed, and the font and size of the text and
21 the cover page is different than the original document
22 that we have. And, there is a cited difference between
23 "Joint Use Agreement" and "Joint Ownership Agreement",
24 and Article 22 of both agreements stipulates the

1 differences.

2 And, those being, "joint ownership"
3 would be we would share half interest in the pole.
4 Where "joint use" would be one or the other party could
5 elect to solely own the pole and allow the other party
6 joint use of that pole for an annual rental fee.

7 MS. KNOWLTON: I'd like to make a record
8 request then to PSNH for the version -- their version of
9 the Joint Ownership Agreement that they have with Verizon.
10 I think it's -- it's my intention to get the correct
11 version in the record here. This is -- What I have
12 offered as "Verizon 26" is what Verizon has in its files
13 as the Joint Ownership Agreement.

14 CHAIRMAN GETZ: Mr. Eaton, can you
15 clarify?

16 MR. EATON: The differences that I see
17 appear on the first page of the agreement, in the -- in
18 Exhibit NYNEX -- I mean, Verizon 26, the date has been
19 stamped in, and, in our agreement, it is typed in with the
20 same type. And, also, in Exhibit Verizon 26, the word
21 "ownership" has been written in, in the first "whereas"
22 clause, and the word "use" has been crossed out twice in
23 that clause, that's not been initialed by the people who
24 signed the agreement. I think they're -- I think they're

1 probably identical. And, if counsel could tell me what
2 the importance is, this -- Mr. Hybsch operates under the
3 Joint Use Agreement. That's the copy he has with him and
4 that's what he keeps on his desk every day, and that's how
5 he operates. I don't think there's any difference at all.
6 I don't know why we need to make a big -- what I've
7 provided to the Commission, in PSNH Exhibit 5, is the
8 agreement that we operate under, and I don't think this is
9 a big point. But, if counsel could tell me where the
10 differences are and why is that material?

11 MS. KNOWLTON: To respond, I mean,
12 Mr. Hybsch, on Page 2, Line 23, of his testimony filed in
13 this case refers to the "Joint Ownership Agreement". And,
14 I do think, I don't want to make a mountain out of a mole
15 hill, but I do think it's important that the Commission
16 have the correct agreement in front of it. Certainly,
17 PSNH is here today asking for the Commission to make a
18 judgment about claims for money under an agreement. And,
19 if we can't even agree which agreement is in effect, I
20 think that's highly problematic.

21 So, I'd like to get a copy of what PSNH
22 referred to, so that we can, at a minimum, take a look at
23 that.

24 CHAIRMAN GETZ: And, Mr. Eaton, that

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1 would be neither your Exhibit 5 or your Exhibit 9 that
2 we're talking about? I'm trying to find your --

3 MR. EATON: Exhibit 5 and Exhibit 9 are
4 the agreements that we operate under. If Mr. Hybsch
5 called it a "Joint Ownership Agreement", that may be a
6 misnomer in his testimony. But, given that I pointed out
7 the only -- and Mr. Hybsch pointed out the only
8 differences between these two documents are the font, the
9 cover, and those items I mentioned on the first page of
10 the agreement, I think we're dealing with the same
11 document. And, it is a mole hill.

12 MR. DEL VECCHIO: Excuse me, Mr.
13 Chairman, perhaps I can assist. Mole hill or not, I think
14 Verizon would like to see what PSNH has with respect to
15 its Joint Ownership Agreement. I think, as the Commission
16 is aware, joint ownership in this state and elsewhere
17 generally operates under the principle that, to the extent
18 two utility providers wish to own a pole together, it is
19 joint ownership. To the extent one party wishes to own a
20 pole, and the other party simply wishes to use a pole,
21 that's often referred as "joint use". That's why there
22 are two separate documents. And, what we'd like, and I
23 don't disagree with Mr. Eaton's comment, because I spoke
24 with him earlier, they're essentially identical. But just

1 to ensure that they are, in fact, identical, because we
2 haven't gone through word-for-word, we'd like to see what
3 their Joint Ownership Agreement is.

4 CHAIRMAN GETZ: All right. I think the
5 most efficient way of dealing with this is certainly not
6 through cross-examination and through argument. And, I
7 want to take a look at these documents that I have so far
8 and compare them. I would suggest that we take about 10
9 minutes, and we make sure that we're on the same page.
10 And, that Verizon be able to see what the document is that
11 Mr. Hybsch is relying on, so we get this, I guess it
12 sounds like -- is there agreement that it's a "mole hill"?
13 Maybe not.

14 MR. DEL VECCHIO: It may or may not be,
15 unless we can see the document, which is why we have
16 requested a record request.

17 MS. KNOWLTON: I guess the one thing I'm
18 not clear on is, I believe we have -- Mr. Eaton gave us
19 yesterday, correct, PSNH 5, which is the Joint Use
20 Agreement. But, to the extent that there's a Joint
21 Ownership Agreement, which is what Mr. Hybsch's testimony
22 refers to, I don't know that he has that with him here
23 today and available for use to look at.

24 CHAIRMAN GETZ: Well, I understand from

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1 Mr. Eaton, I was taking it that there may be a language
2 issue here, in reference to "joint use" and "joint
3 ownership", maybe have used interchangeably. But I still
4 think the best way to do it, let's take 10 or 15 minutes
5 and sit down, Verizon and PSNH, and make sure we can know
6 what documents we're looking at. I'm going to take a look
7 at these three documents we have so far. If there's a
8 fourth, then, you know, please let me know what it is and
9 let's get that in the record as well. So, let's take a
10 brief recess here.

11 (Recess taken at 9:45 a.m. and the
12 hearing reconvened at 10:10 a.m.)

13 CHAIRMAN GETZ: Okay. We're back on the
14 record. Ms. Knowlton, do you have anything to report?

15 MS. KNOWLTON: I do. Thank you for the
16 opportunity to clarify the issue. We did review both
17 agreements. And, there are some slight differences
18 between our copies. But, for purposes of our examination
19 today, we've agreed to rely on what has been marked for
20 identification as "Verizon Exhibit 26", the Joint
21 Ownership Agreement. And, PSNH is going to check its
22 records to see whether, in response to our record request,
23 whether it has a Joint Ownership Agreement in its files of
24 the same date.

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1 CHAIRMAN GETZ: Okay. Mr. McHugh.

2 MR. MCHUGH: Yes, Mr. Chairman, one
3 matter. Mr. Nixon had a couple of items he had to attend
4 to. So, just so the Commission knows, he's actually next
5 door, and would be available if, for whatever reason, if
6 you need him during this process.

7 MR. DEL VECCHIO: Does he know anything
8 on tree-trimming?

9 CHAIRMAN GETZ: Ms. Knowlton.

10 MS. KNOWLTON: Thank you.

11 BY MS. KNOWLTON:

12 Q. Mr. Hybsch, PSNH's claim here is that Verizon owes it
13 \$506,000 for tree-trimming services in 2006, correct?

14 A. (Hybsch) Yes.

15 Q. But you didn't provide any invoices or other
16 documentary evidence with your testimony to support
17 that claim for \$506,000, did you?

18 A. (Hybsch) No, there were no invoices provided.

19 Q. And, that's because PSNH never invoiced Verizon for
20 \$506,000, right?

21 A. (Hybsch) That's correct.

22 Q. You only invoiced Verizon for \$16,714.92, for which
23 Verizon paid \$15,141.99?

24 A. (Hybsch) That was accurate at the time of my testimony.

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1 Since that time, Verizon has paid the remaining balance
2 of that \$16,000 in invoices.

3 Q. I believe that you testified yesterday that PSNH's
4 tree-trimming expense was the subject of consideration
5 during PSNH's last rate case?

6 A. (Hybsch) Yes, that's correct.

7 Q. And, the \$506,000 that you're here seeking today was
8 not, in fact, calculated by PSNH, was it?

9 A. (Hybsch) No, it was not.

10 Q. That was calculated by the Commission Staff, right?

11 A. (Hybsch) Correct.

12 Q. And it's Mr. Mullen?

13 A. (Hybsch) Yes.

14 Q. And, you provided in a response to a data request,
15 which has been marked as "PSNH 4P", Mr. Mullen's
16 calculation?

17 A. (Hybsch) That's correct.

18 Q. Do you have that in front of you?

19 A. (Hybsch) Yes, I do.

20 Q. If you would take a look at, under, on Page 1, under
21 response, Paragraph (b)?

22 A. (Hybsch) Paragraph (b)?

23 Q. "B" as in "boy".

24 A. (Hybsch) Yes.

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1 Q. Now, Mr. Mullen indicates at the end of the page, and
2 I'm just going to read from this, that "the maximum
3 amount of additional revenue from Verizon for 2006
4 maintenance trimming is slightly more than \$1 million.
5 It is quite likely, however, that the maximum amount is
6 not the correct amount. Therefore, for purposes of
7 this adjustment, I have cut the amount in half and
8 included \$506,000 as an estimate for the amount of
9 revenue", and then he puts in "(Adjustment Number 13)."
10 Do you know how Mr. Mullen arrived at that half amount?
11 Why he halved that number to get to 506,000?

12 A. (Hybsch) I do not.

13 Q. And, that number that PSNH agreed to was part of the
14 give-and-take of a settlement in that rate case, right?

15 A. (Hybsch) That's my understanding.

16 Q. And, Verizon was not a party to that settlement?

17 A. (Hybsch) Not that I'm aware of.

18 Q. Now, if PSNH doesn't get that \$506,000 from Verizon,
19 there's no one that you can recover it from, because,
20 in that rate case, you agreed not to seek recovery from
21 your customers, right?

22 A. (Hybsch) That's my understanding.

23 Q. So, that would become an expense to your shareholders?

24 A. (Hybsch) Correct.

1 Q. And, because this can't be recovered from your
2 customers, there's no harm to the public that would be
3 caused by the inability to recover that amount, right?

4 A. (Hybsch) I'm not certain to that effect.

5 Q. Okay. But wouldn't that be then essentially a private
6 dispute between the PSNH shareholders and Verizon?

7 A. (Hybsch) I'm not certain, because I don't know the
8 methodology and why it was halved. I don't know if it
9 was halved because Staff felt that half the loss would
10 be borne by the shareholders and the other half would
11 be borne by customers. Which, in that particular case,
12 if we did recover the 506,000, half would be returned
13 to shareholders and half would be returned to
14 customers.

15 Q. But there's nothing -- well, let me ask you, is there
16 anything in the settlement in that case that stipulates
17 that?

18 A. (Hybsch) I'm not aware of it.

19 Q. Mr. Meissner, you testified yesterday afternoon that
20 Unitil also was not allowed to recover in its rate case
21 any amounts that you're seeking here in this docket,
22 right?

23 A. (Meissner) That is correct.

24 Q. So, that also would be an expense to your shareholders?

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1 A. (Meissner) That is correct.

2 Q. Your customers would not be losing any money if you
3 didn't recover that?

4 A. (Meissner) That is my understanding.

5 Q. Is it fair to say that that's a private dispute between
6 the Unutil shareholders and Verizon?

7 A. (Meissner) To my knowledge, yes.

8 Q. And, are you aware of any effort by Verizon to recover
9 that amount from its customers, should the Commission
10 require it to make any payment?

11 A. (Meissner) Am I aware? No.

12 Q. Mr. Hybsch, if PSNH believes that it has a valid claim
13 against Verizon, aren't their ways that PSNH could
14 attempt to enforce that claim?

15 A. (Hybsch) Yes. This is one of ways we're pursuing it,
16 today.

17 Q. Excuse me. And, would another way be to go to superior
18 court and file a claim against Verizon?

19 A. (Hybsch) I'm not certain to that. I would have to
20 check with counsel on that.

21 Q. Has PSNH filed any claims in court against Verizon?

22 A. (Hybsch) Not that I'm aware of.

23 Q. Mr. Hybsch, there isn't any provision in the Joint
24 Ownership Agreement, marked for identification as

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1 "Exhibit 26", that states that the PUC has jurisdiction
2 over any disputes arising under the Joint Ownership
3 Agreement, is there?

4 A. (Hybsch) Not that I'm aware of.

5 Q. Mr. Meissner, under the Unitil/Verizon agreement, there
6 isn't any such language, is there?

7 A. (Meissner) I'm not aware of language in the agreement.

8 Q. And, in the case, Mr. Meissner, of the Unitil and
9 Verizon agreement, there are Intercompany Operating
10 Procedures that are incorporated into it, right?

11 A. (Meissner) That is correct.

12 Q. And, Mr. Hybsch, the same is true for the PSNH/Verizon
13 agreement?

14 A. (Hybsch) Yes.

15 Q. And, in the case of the Unitil Joint Ownership
16 Agreement, there is an IOP called "Month Netly" --
17 excuse me, "Monthly Net Billing Procedure", that's IOP
18 Number 24, is that correct, Mr. Meissner?

19 A. (Meissner) Let me -- I believe so, but let me just
20 check to make sure that that's right.

21 Q. And, I believe that's attached as Page 73 to your
22 testimony.

23 A. (Meissner) Yes, that is IOP Number 24.

24 Q. And, there's a Section 4 within that IOP 24 called

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1 "Settlement of Disputed Bills", right?

2 A. (Meissner) Yes.

3 Q. And, is that the process that the two companies agree
4 to follow if they had a dispute about monthly billing
5 issues?

6 A. (Meissner) I mean, the Monthly Net Billing Procedure,
7 as I understand it, is primarily used for net billing
8 of poles. In other words, Verizon set some poles, we
9 set some poles, there's billing that goes back and
10 forth between the companies on each company's share of
11 the poles that are set, and that is billed on a net
12 basis under this procedure. That's my understanding of
13 how this procedure is used.

14 Q. And, under that Section 4, how are disputes resolved
15 between the companies?

16 A. (Meissner) I'm not aware that we've had any disputes on
17 net billing.

18 Q. Could you read the language of Section 4 into the
19 record please.

20 A. (Meissner) Which part, A or B?

21 Q. A.

22 A. (Meissner) "Deleted and/or adjusted items which cannot
23 be settled in accordance with Section 3, Part B, of the
24 Intercompany Operating Procedures shall be resolved by

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1 strict compliance with the Intercompany Operating
2 Procedures. Resolution of disputed items shall be made
3 by the second month following the month in which the
4 dispute arose."

5 Q. Then, if you could go on and read be B.

6 A. (Meissner) "Disputed items that cannot be resolved as
7 herein stated shall be referred to the power company
8 representative and the NYNEX staff manager for a final
9 and binding resolution."

10 Q. There's nothing in Section 4 that refers to resolution
11 of disputes regarding this IOP before the PUC, right?

12 A. (Meissner) There is not, nor is there anything in
13 Section 4 that relates to tree-trimming.

14 Q. All right. Mr. Hybsch, if you could look at the PSNH
15 MOU, there's a similar IOP on Monthly Net Billing, and
16 in your case I believe it's number 16, is that right?

17 A. (Hybsch) I'm confused by the question. In the MOU?

18 Q. In the PSNH/Verizon Joint Ownership Agreement, is there
19 an IOP attached to it that relates to "monthly net
20 billing"?

21 A. (Hybsch) Yes. IOP Number 16 is the net billing
22 procedure that we use on a monthly basis for the
23 installation and removal of poles, exclusively, and
24 anchors, that we do a net billing, because, similar to

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1 what Mr. Meissner testified, this is used exclusively
2 for that purpose. Historically, our maintenance
3 trimming has been billed outside of this process and
4 has not been in the net billing process.

5 Q. Right. And, I understand that it's a separate issue,
6 but there's also a Section 4, is there not, in that IOP
7 that deals with settlement of disputed bills?

8 A. (Hybsch) Yes, there is.

9 Q. And, there's nothing in that language that confers
10 jurisdiction upon the Public Utilities Commission to
11 consider and resolve disputes that arise under that
12 IOP, right?

13 A. (Hybsch) That's correct.

14 Q. If you could, and I'll stay with you, Mr. Hybsch, if
15 you could take a look at IOP Number 7, Joint
16 Tree-Trimming Agreement?

17 A. (Hybsch) Yes.

18 Q. That's the IOP that we're here about today, correct?

19 A. (Hybsch) That's correct.

20 Q. And, there's nothing in that IOP that confers any
21 jurisdiction on the Public Utilities Commission to
22 consider disputes about joint tree-trimming expense?

23 A. (Hybsch) I'm sorry, is that a question?

24 Q. Is that right? There's nothing in that IOP Number 7

1 that refers to the "Public Utilities Commission"
2 period?

3 A. (Hybsch) Yes. The IOPs are simply operating
4 procedures, and there's no reference in our IOPs, in
5 the operating procedures, about PUC jurisdiction.

6 Q. Right. But you certainly did see fit, in the case of
7 the Monthly Net Billing, to include a provision on how
8 you would resolve disputes among each other, right?

9 A. (Hybsch) On the net billing regarding joint
10 installation and removal of poles, yes.

11 Q. Right. And, there was nothing that would have
12 prohibited the company from including some language
13 either in the IOP or in the Joint Ownership Agreement
14 regarding how disputes will be resolved, right?

15 A. (Hybsch) I wasn't aware of what took place in 1976.

16 Q. Are you familiar -- I believe you're familiar with the
17 MOU that you're here supporting today between FairPoint
18 and PSNH, regarding the IOPs and the Joint Ownership
19 Agreement, correct?

20 A. (Hybsch) Yes, I am.

21 Q. And, in fact, my recollection from yesterday is that
22 you stated that the most important part of the MOU with
23 FairPoint is the dispute resolution provision, right?

24 A. (Hybsch) Absolutely.

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1 Q. And, that was important for you to include because it
2 wasn't -- it is not clear under the current Joint
3 Ownership Agreement or any of the IOPs that the Public
4 Utilities Commission has any jurisdiction over disputes
5 arising under those two documents, correct?

6 A. (Hybsch) Well, if I could answer that, our --

7 Q. Well, if you could actually just answer it "yes" or
8 "no", and then give your explanation, that would be
9 appropriate.

10 A. (Hybsch) Could you repeat your question, please.

11 Q. Sure. The reason that you felt that it was necessary
12 to -- well, let me step back. As I said, you stated
13 yesterday that the most important reason or most
14 important part of the MOU is the dispute resolution
15 provision. And, my question to you is, it's the most
16 important reason because it's not clear under the
17 current Joint Ownership Agreement and the attached IOPs
18 that this Commission has jurisdiction over any disputes
19 arising under them?

20 A. (Hybsch) I disagree.

21 Q. Okay. Tell me why.

22 A. (Hybsch) The reason I made that statement yesterday was
23 we are of the opinion that the PUC does have
24 jurisdiction over the Joint Operating Agreement and our

1 joint owner does not. So, what we think is important
2 is it solidifies, with a future partner, a common
3 understanding that doesn't exist today.

4 Q. So, there's a disagreement right now between Verizon
5 and PSNH about how the current Joint Ownership
6 Agreement and the IOPs that are attached to them should
7 be interpreted, right?

8 A. (Hybsch) Yes.

9 Q. And, you're asking this Commission to resolve that
10 dispute of contract interpretation, correct?

11 A. (Hybsch) In effect.

12 Q. Mr. Meissner, is that the case as well for Unitil?

13 MR. EPLER: Objection, your Honor,
14 Commissioners, on several points. First, Mr. Meissner is
15 not testifying here as a legal witness. He can give his
16 personal opinion on these matters, but just want it clear
17 that he's not a legal witness and doesn't have expertise.
18 Secondly, we will concede that the documents, the IOP and
19 the Joint Ownership Agreement do not have language
20 referencing jurisdiction of the Commission. The issue of
21 the Commission's jurisdiction is, you know, whether it has
22 jurisdiction or not is a matter of law. It is not
23 something that can be conferred by agreement of the
24 parties. So, whether the parties put in language or not

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1 would not change the legal situation. That's ultimately a
2 determination that this Commission will make, that we and
3 PSNH are asking the Commission to make, that we believe
4 you do have jurisdiction. Obviously, Verizon disagrees.

5 With respect to the MOU that we've
6 entered into with FairPoint, again, by that agreement and
7 the language in the agreement, we cannot confer
8 jurisdiction on you, if you do not have it. It is merely
9 an indication of an agreement of the parties that they
10 believe, in their understanding, that you have
11 jurisdiction over that particular matter, as was cited in
12 the MOU. But I don't see the reason for continuing with
13 this line of questioning.

14 CHAIRMAN GETZ: Well, actually, Ms.
15 Knowlton, I was getting to the point where it seems like
16 you're addressing the same issue from a variety of
17 directions at this point. And, I'm wondering why this
18 shouldn't be addressed in brief? And, what more can be
19 gleaned from these witnesses through cross-examination, in
20 terms of -- I don't know if you're looking for parol
21 evidence about what happened in 1976 or what the thinking
22 was behind the MOU. I think you may have exhausted the
23 facts on that issue, and this really should be addressed
24 in brief at this point.

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1 MS. KNOWLTON: We're certainly happy to
2 brief the issue. I don't have, you know, that maybe I
3 only have one other short line of questioning related to
4 the MOU. But Mr. Meissner did testify yesterday that, in
5 his opinion, the MOU was intended to, and these are his
6 words, "to actually clarify the jurisdiction with the
7 Commission in situations where the two parties disagree
8 that the Commission had jurisdiction." And I think that
9 is important to understand in light of the current -- the
10 language of the currently existing document. They have
11 modified it now. I think it does give us some indication
12 of what the parties understand the current agreement to
13 mean, as to the Commission's jurisdiction. And, I know
14 he's not a lawyer. I'm not asking him for a legal
15 conclusion. I'm just asking him for his own opinion,
16 since he has already testified to this.

17 CHAIRMAN GETZ: And, so, --

18 MS. KNOWLTON: So, I have one more
19 question about --

20 CHAIRMAN GETZ: To reaffirm what he said
21 previously?

22 MS. KNOWLTON: No, to ask him the same
23 question I just asked Mr. Hybsch. Which was, in his view
24 --

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1 CHAIRMAN GETZ: Well, let's proceed with
2 the understanding that it's not calling for a legal
3 conclusion, inasmuch as he's not an attorney.

4 MS. KNOWLTON: Okay.

5 BY MS. KNOWLTON:

6 Q. So, Mr. Meissner, you just heard me quote from your
7 testimony from yesterday. In your opinion, do you
8 believe that the current Joint Ownership Agreement and
9 attached IOPs are not clear as to whether the
10 Commission has jurisdiction over them?

11 A. (Meissner) Understanding that I'm not a legal expert,
12 as Gary said, I believe it's my understanding that
13 jurisdiction is a matter of law, and is not a matter
14 that's covered under the agreement.

15 Q. Okay. Mr. Hybsch, back to the \$506,000 claim for which
16 you seek payment from Verizon. PSNH never obtained
17 Verizon's consent to incur those costs, right?

18 A. (Hybsch) We did not.

19 Q. But, nonetheless, PSNH went ahead and incurred the
20 charges, because, in your company's view, the trimming
21 that you did benefited Verizon?

22 A. (Hybsch) That's correct, and as well as PSNH.

23 Q. And, that's your opinion?

24 A. (Hybsch) That is correct.

1 Q. And, has Verizon ever informed you that it was
2 benefited by the trimming?

3 A. (Hybsch) Yes. In effect, on response of Exchange of
4 Notices, 13 months after the fact, we've got several
5 responses that were submitted into evidence that
6 demonstrated statements to the effect that Verizon
7 would not participate, as the lines have already been
8 trimmed, and there's no need for them to participate.

9 Q. What evidence are you referring to?

10 A. (Hybsch) In my response to PSNH 4-P, the attachments,
11 Joint Ownership Agreement.

12 MR. EATON: It's been prefiled as
13 "Exhibit PSNH 8".

14 BY MS. KNOWLTON:

15 Q. Mr. Hybsch, do you have PSNH Exhibit 8P in front of
16 you?

17 A. (Hybsch) I do.

18 Q. Can you show me where in this document it indicates
19 that Verizon is benefited by the tree-trimming?

20 A. (Hybsch) On IOP Notice Number 06-1-90, it was sent and
21 responded to by Mary Feeney of Verizon. Their response
22 was "All work has been trimmed by PSNH" and "no Verizon
23 participation." And, that was signed 02/21/07,
24 approximately 13 months after the original EON was sent

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1 to Verizon.

2 Q. I still don't understand why that -- how that equates
3 to benefiting Verizon?

4 A. (Hybsch) Well, we're interpreting this, because Verizon
5 responded 13 months later, we had already done the
6 trimming. And, when they went out there, they said
7 "because you've already trimmed our facilities, there's
8 no reason for us to participate in the trimming."

9 Q. That's your interpretation?

10 A. (Hybsch) Yes, it is.

11 Q. Okay. That may not be Verizon's?

12 A. (Hybsch) I would love to know theirs.

13 Q. And, the claim that you make is because you didn't seek
14 or obtain -- well, strike that. The claim that you
15 make, because you didn't obtain Verizon's consent to do
16 the trimming, is based on your "notion of fairness",
17 right?

18 A. (Hybsch) I don't know if I would use those words.

19 Q. I think you did. If you could look at PSNH 4-P,
20 Page 2, Paragraph c. If you could read Paragraph c out
21 loud please.

22 A. (Hybsch) "PSNH is not claiming that PSNH obtained
23 Verizon's consent to pay for \$506,000 in 2006
24 maintenance trimming expense incurred by PSNH. See the

1 preceding response to 2a and 2b, above. PSNH is
2 claiming that the maintenance trimming done by PSNH in
3 2006, which Verizon refused to participate in,
4 benefited Verizon's jointly owned customers and its
5 facilities, such that the Commission should, in the
6 interests of fairness and the public good, require
7 Verizon to reimburse PSNH for a portion of that expense
8 as a condition of the approval of the merger sought by
9 Verizon."

10 Q. So, it's out of fairness, not based on the explicit
11 language of the contract, right?

12 CHAIRMAN GETZ: So, you're making a
13 distinction between an equitable right and a legal right,
14 is that where we are?

15 MS. KNOWLTON: Right. I mean, they're
16 making a claim, a contract claim here. And, that's my
17 question to him, is there's no language in the contract
18 that I have that indicates that. They have not invoiced
19 the Company. They didn't obtain their agreement. And,
20 so, they're now seeking payment apparently out of a notion
21 of fairness.

22 CHAIRMAN GETZ: Okay. I understand your
23 argument. Let's proceed.

24 BY MS. KNOWLTON:

1 Q. And, Mr. Meissner, you're here asking the Commission to
2 rule on a contract claim, aren't you?

3 MR. EPLER: Again, objection. Calls for
4 a legal conclusion.

5 BY MS. KNOWLTON:

6 Q. Based on your layperson's understanding, if you could
7 answer that question.

8 A. (Meissner) Based on my layperson's understanding, I
9 think we're here seeking Commission's understanding of
10 Verizon's obligation, under good utility practice, to
11 have a need to trim their lines, and to benefit from
12 the trimming that we perform, which then, I think,
13 relates to the contractual claim that you're talking
14 about.

15 Q. And, those -- And, is it your opinion that those
16 obligations arise out of the Joint Ownership Agreement
17 and the IOPs that are attached thereto?

18 A. (Meissner) I think those obligations arise out of
19 Verizon's obligation as a telecommunication company and
20 is good utility practice.

21 Q. So, are you saying that it's not under the Joint -- the
22 obligation for payment is not stemming out of that
23 Joint Ownership Agreement, it's because they're a
24 utility generally speaking?

1 A. (Meissner) I think the Joint -- I mean, the IOP
2 specifies a definite method of allocating the cost of
3 trimming that's stated in the first section of the IOP.
4 And, those costs are allocated 75/25 in the case of
5 maintenance trimming.

6 CHAIRMAN GETZ: Ms. Knowlton, this
7 inquiry is becoming repetitious and cumulative. Is this
8 the last -- you said you had one last line of inquiry, is
9 this it?

10 MS. KNOWLTON: Let me just -- may I have
11 just a minute to look at my outline?

12 (Short pause.)

13 MS. KNOWLTON: Thank you. I'll conclude
14 my cross-examination.

15 CHAIRMAN GETZ: Thank you.

16 **EXAMINATION BY CMSR. BELOW**

17 BY CMSR. BELOW:

18 Q. Mr. Meissner, on Page 9 of your prefiled testimony, at
19 Line 16, you stated that "We no longer enjoy a
20 cooperative working relationship with our joint
21 ownership partner." That seems to imply that you once
22 did enjoy a cooperative working relationship. How long
23 has it been since you feel that Unitil enjoyed a
24 cooperative working relationship with Verizon?

1 A. (Meissner) I'm not sure that I can answer at what point
2 it was cooperative. All I can say is, certainly,
3 since, over the last seven or eight years, I think the
4 relationship between our companies has declined, and
5 has gotten worse. And, even in recent years, since the
6 opening of the other docket, it's continued to get
7 worse.

8 Q. So, maybe a decade or more ago it was --

9 A. (Meissner) I think that's reasonable to assume, yes.

10 Q. Okay. Has Unitil or PSNH ever had to litigate
11 provisions of the Intercompany Operating Agreement?

12 A. (Hybsch) Not that I'm aware of.

13 A. (Meissner) Not to my knowledge.

14 Q. Have you ever, other than the generic investigation
15 into poles, have you ever had to bring complaints to
16 the Commission with regard to the Joint Ownership
17 Agreements or Joint Use Agreements?

18 A. (Meissner) I'm not aware of any formal complaints that
19 have been made to the Commission.

20 A. (Hybsch) I am not either.

21 Q. Okay. On Page 17 of Mr. Meissner's testimony, at Line
22 17, you stated "Unitil crews often wait an extended
23 period of time before a Verizon crew arrives to set the
24 pole." Is that true?

1 A. (Meissner) That is correct.

2 Q. And, does that result in an additional cost to Unitil?

3 A. (Meissner) It does. If our crews are on premium pay,
4 then, yes, we're paying them for that time that they're
5 standing by on site.

6 Q. And, those costs are recovered through distribution
7 rates, is that correct?

8 A. (Meissner) That would be correct.

9 Q. And, I think you went onto say that, in contrast, in
10 your maintenance area, your crews "arrive on the scene
11 promptly, fully prepared to set a pole and proceed with
12 repairs." And, would that imply that Verizon crews,
13 when they arrive, probably have typically shorter wait
14 times when they're arriving in a Unitil maintenance
15 area?

16 A. (Meissner) I didn't understand the last part of the
17 question related to Verizon.

18 Q. Would their crews typically have a shorter wait period
19 to work on their lines when they arrive at an emergency
20 response in a Unitil maintenance area, compared to
21 Unitil crews in Verizon maintenance areas?

22 A. (Meissner) I think, regardless of maintenance area,
23 when Verizon arrives on scene, the electric crew would
24 always be there ready to undertake repairs?

1 Q. And, does that tend to be PSNH's experience, too?

2 A. (Hybsch) Yes. Our experience is that, on average, our
3 crews arrive in less than an hour. And, typically, on
4 average, Verizon crews, I believe, in the last pole
5 docket, was two hours and 20 minutes on average they
6 respond.

7 Q. And, in Article 9 of the Joint Ownership Agreement, at
8 least in Unitil's version, and I think it's similar in
9 the other one, it states that "The work of
10 installation, replacement, relocation or removal of new
11 or existing jointly owned poles and anchors shall be
12 divided equitably between the parties." Is that
13 correct?

14 A. (Meissner) That is correct.

15 Q. Would you feel that the additional burden that's placed
16 on Unitil ratepayers through the wait periods, waiting
17 for a Verizon crew to set poles in their maintenance
18 areas, creates a unfair burden that violates the spirit
19 of Article 9?

20 A. (Meissner) I think it certainly isn't in the spirit of
21 Article 9, aside from the economic burden that results,
22 I think our other concern has been simply the delay in
23 restoration of service to customers and potentially the
24 delay in securing the scene in the case of a matter of

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public safety.

Q. And, generally, is it your understanding that the intent of the second sentence in Article 9, "the division of this work shall be by the establishment of maintenance areas in which one party or the other is assigned the responsibility for such work." Is that the notion that the work is equitably divided between the parties for the maintenance activities?

A. (Meissner) Yes, that is correct.

Q. And, PSNH's understanding?

A. (Hybsch) Same with PSNH.

Q. Okay. When we look at IOP 17 in Unitil's agreement, and there's the maintenance trimming discussion in 1A, it refers to Attachment Number 1, which is a diagram entitled "Maintenance Trimming", is that correct?

A. (Meissner) That is correct.

Q. And, there is a similar diagram in PSNH's agreement, correct?

A. (Hybsch) Correct.

Q. And, that seems to suggest what the standard would be for maintenance trimming that's to be done on a joint basis, when both companies have a need. Is there any indication in this diagram as to a different trimming, based on the lines on the pole or is it just based on

1 the pole, distance from the pole?

2 A. (Meissner) It is just based on the distance from the
3 pole.

4 Q. And, what does it call for? Trimming the tree line,
5 the vegetation line, back to 8 feet from roughly the
6 center line of the pole?

7 A. (Meissner) Correct.

8 Q. And, then, it describes the division of trimming costs
9 at 75 percent electric/25 percent NYNEX, right?

10 A. (Meissner) Yes.

11 A. (Hybsch) Correct.

12 Q. Is it your understanding, when Verizon does do
13 trimming, that they trim back 8 feet from the pole?

14 A. (Meissner) I'm not aware that Verizon does any
15 trimming, other than construction trimming for the
16 running of the new cable.

17 Q. Okay. Is it your understanding that New Hampshire law
18 requires every utility to furnish facilities that are
19 reasonably safe and adequate?

20 A. (Hybsch) Yes, it is.

21 A. (Meissner) I'm not a legal expert, but, yes, that would
22 be my understanding.

23 Q. Is it your feeling that some degree of regular
24 tree-trimming or maintenance trimming is part of the

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1 requirement to provide safe and adequate facilities?

2 A. (Meissner) Yes.

3 A. (Hybsch) Yes, it is.

4 Q. What's the danger if the trees aren't trimmed back from
5 power or telephone lines?

6 A. (Meissner) I think there's multiple dangers. I mean,
7 one in particular is during times of storm. That's
8 when trees tend to come down, and they can take down
9 the facilities of both parties, into the public way.
10 That would be one danger.

11 Q. Does the fact that the electric line is above the
12 telecom line tend to provide some protection to the
13 telecom or lines below the electric line?

14 A. (Meissner) To the extent that branches or trees fall
15 from above, that's correct. They can hit the electric
16 lines first.

17 Q. But they can take out all the lines?

18 A. (Meissner) They can break the pole, and then take
19 everything down.

20 Q. Okay. In the IOP 17, there's a discussion about
21 "trimming agreements to be performed via the Exchange
22 of Notice." Have you -- Do you remember the last time
23 that you received a proposed tree-trimming plan from
24 Verizon in their maintenance areas?

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1 A. (Meissner) As far as I know, we have never received
2 such a plan.

3 Q. Okay.

4 MR. EATON: Mr. Hybsch, could you answer
5 the question, too, please.

6 **BY THE WITNESS:**

7 A. (Hybsch) Yes. Early in my career, this would be in the
8 late '70s, early '80s, Verizon routinely had a
9 maintenance trimming plan, because originally they ran
10 a maintenance trimming plan in their maintenance area
11 and we ran one in ours. I think at the time it may
12 have been New England Telephone. But it has been more
13 than a decade since Verizon has submitted a maintenance
14 trimming plan for their maintenance area to PSNH.

15 BY CMSR. BELOW:

16 Q. Okay. I think you both provided testimony with regard
17 to inspection practices that you were -- that you
18 provide, operate under the inter-operating procedures,
19 to inspect poles that are more than 20 years age at
20 intervals of not less than ten years, once every ten
21 years, is that correct?

22 A. (Meissner) Correct for Unitil.

23 A. (Hybsch) Yes.

24 Q. And, do you provide documentation, written

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documentation of those pole inspections?

2 A. (Meissner) We document all our inspections, yes.

3 A. (Hybsch) Yes, we do as well.

4 Q. And, is it your understanding that Verizon does not

5 have a systematic inspection program?

6 A. (Meissner) That is my understanding.

7 A. (Hybsch) That is mine as well.

8 Q. That they only inspect when their crew is going to work
9 at a pole?

10 A. (Meissner) That's what we were told.

11 A. (Hybsch) Yes.

12 Q. Right. And, I think you cited the safety rules from
13 the National Electric --

14 A. (Meissner) -- Safety Code.

15 Q. -- Safety Code, okay. Which calls for lines and
16 equipment to be inspected at such intervals as
17 experience has shown to be necessary. Is it your
18 understanding that the specified reinspection interval
19 in the IOP Number 16 is a representation of what the
20 parties have agreed is the necessary interval, once
21 every ten years for poles more than twenty years old?

22 A. (Meissner) We interpret that provision of the IOP is,
23 yes, meeting the intent of the National Electric Safety
24 Code, meaning that those are the inspection intervals

1 that would be prudent for our service area.

2 A. (Hybsch) We have similar provisions in our IOP.

3 Q. Do you think it would be unreasonable for the
4 Commission to impose a condition on Verizon's
5 discontinuance of their franchise and service in New
6 Hampshire for them to provide documentation that all
7 the poles in their maintenance area have been inspected
8 within the past ten years if they're more than 20 years
9 old?

10 A. (Meissner) Do I think that's unreasonable? No.

11 A. (Hybsch) I don't have an opinion on that.

12 Q. Okay. I think you both provided testimony concerning
13 the number of double poles that are still out there.
14 Providing some data from DM 05-172, and a concern that
15 it could be as many as 7,000 double poles, is that
16 correct?

17 A. (Meissner) To my knowledge, yes, that's a number that's
18 been stated.

19 Q. And, does the agreement, the Joint Ownership Agreement,
20 through IOP Number 13, in Unitil's case, call for each
21 company to transfer its facilities within 60 days,
22 unless otherwise agreed?

23 A. (Meissner) That's the intent of IOP Number 13.

24 A. (Hybsch) We have a similar IOP as well with 60 days.

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- 1 Q. Do you know if Unitil or PSNH have agreed to extended
2 periods for such transfers beyond 60 days?
- 3 A. (Meissner) We have not agreed, nor has there really
4 been a request for our agreement.
- 5 Q. Okay. And, is it your understanding a vast number of
6 these 5,000 to 7,000 double poles are more than 60 days
7 out from transfer, from -- well, beyond the 60 day
8 requirement of IOP number 13?
- 9 A. (Meissner) Within our service area, yes, the vast
10 majority of the poles that are outstanding are beyond
11 the 60 days.
- 12 A. (Hybsch) And, the same in PSNH's service territory.
- 13 Q. Do you think this is part of the, you know, the
14 requirement for safe and reasonable and adequate
15 facilities that action be taken to carry out such
16 transfers on a timely basis?
- 17 A. (Hybsch) Yes, I do.
- 18 A. (Meissner) Yes.
- 19 Q. Then, do you think it would be unreasonable for the
20 Commission to make as a condition of Verizon
21 discontinuing its franchise and service in New
22 Hampshire that it get current on its double pole
23 transfers and reduce the number to within, you know,
24 under 60 days?

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1 A. (Meissner) I'm not sure I have an opinion on that, only
2 because it would be difficult to accomplish.

3 Q. That would take quite a while.

4 A. (Meissner) Yes.

5 Q. Which is why you've agreed with FairPoint to take that
6 action over the course of approximately 42 months from
7 close?

8 A. (Meissner) Correct.

9 A. (Hybsch) That's correct.

10 Q. Or that they would take that action.

11 A. (Witness Hybsch nodding)

12 A. (Witness Meissner nodding)

13 Q. Okay. And, then maintain it generally within the 60
14 day requirement, correct?

15 A. (Meissner) Yes.

16 A. (Hybsch) Yes.

17 CMSR. BELOW: Okay. I think that's all.

18 Thank you.

19 CHAIRMAN GETZ: Redirect, Mr. Epler?

20 Mr. Eaton?

21 MR. EPLER: Mr. Chairman, during the
22 break, I circulated and provided the parties copies of
23 several documents that I intend to introduce. I believe
24 they were provided to the Commission. There should be

1 four documents.

2 CHAIRMAN GETZ: All right. We have
3 them.

4 MR. EPLER: Okay. Thank you.

5 MS. KNOWLTON: I'd state an objection to
6 at least one of the exhibits that are offered by Mr.
7 Epler.

8 CHAIRMAN GETZ: Let's see. We have
9 looks like five documents, is that correct, Mr. Epler?

10 MR. EPLER: There should be four. And,
11 the first one would be a letter from Unitil dated
12 October 18th, to Troy F. McDonald.

13 CHAIRMAN GETZ: Okay. It looks like I
14 just had two copies of that. All right.

15 MR. EPLER: And, the second document are
16 several letters, again, from Unitil to Verizon. The third
17 document is a copy of a e-mail message. That's the third
18 document. And, the fourth document is several pages of a
19 schedule.

20 CHAIRMAN GETZ: And, which one are you
21 objecting to, Ms. Knowlton?

22 MS. KNOWLTON: I'm objecting to the last
23 one, the "Maintenance Trimming Summary". It's a three or
24 four-page document. You know, I asked Mr. Meissner

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1 yesterday on cross-examination whether or not he included
2 any documentary evidence, including invoices or the like,
3 in support of their claim in his testimony, and he did
4 not. In fact, he testified he could have if they had it.
5 You know, I really think this is trial-by-ambush today for
6 Unutil to show up with some spreadsheets showing amounts
7 that they claim are due or in substantiation of their
8 amounts that they claim are due. We have had no discovery
9 on this. It refers to Unutil records. There's a column
10 on I think every page called "Unutil records". I have no
11 idea what records those are and what the basis of them
12 would be. Essentially, I think Unutil is now trying to --

13 CHAIRMAN GETZ: Well, I understand your
14 argument. So, how is this properly within redirect, Mr.
15 Epler?

16 MR. EPLER: Basically, because there was
17 cross-examination yesterday on Mr. Meissner's testimony,
18 at Page 28, and on whether or not he had performed
19 calculations and recalculated the amounts. It was also
20 provided on direct, my direct with him, asked if he had
21 provided -- if he had any changes to his testimony, he
22 referred to this section, and said that "recently we've
23 gotten new information from Verizon", and in terms of
24 amounts paid or to be paid, and, as a result, he had not

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1 yet performed calculations. I mean, I would like to be
2 able to at least lay a foundation for this.

3 CHAIRMAN GETZ: Well, I want to
4 understand first what we're talking about.

5 MR. EPLER: Okay.

6 CHAIRMAN GETZ: Whether this has purely
7 updated the numbers or if it's additional invoices and
8 constitute supplemental testimony?

9 MR. EPLER: Yes. And, I can run through
10 this now, if you would like, and show you that it is
11 purely updated.

12 CHAIRMAN GETZ: Ms. Knowlton, do you
13 disagree with that characterization, that this is purely
14 an update of what I guess, for Unitil, had been the
15 \$300,000 number?

16 MS. KNOWLTON: I'm not -- I mean, we
17 just got this. Honestly, I'm not sure exactly what it is.
18 If it's the bringing forward of that \$340,000 number,
19 based on amounts that had been invoiced and amounts that
20 had been paid, I absolutely object to this. I mean, I
21 think this is a moving target. It is impossible for
22 Verizon to defend itself against this claim, when the
23 number is changing, you know, the day of the hearing.
24 And, we have no opportunity to take discovery on this.

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1 And, I think this is exactly evidence of why this is the
2 wrong forum at the wrong time to be litigating this claim.

3 MR. EPLER: If I could respond?

4 CHAIRMAN GETZ: Please.

5 MR. EPLER: Mr. Chairman, the reason the
6 number has changed, two reasons. One is that we have
7 recently received a number of payments from Verizon.
8 Those were received after the submission of Mr. Meissner's
9 testimony. Second, there's also been passage of time.
10 And, I -- And, so, there have been additional invoices
11 submitted for 2007. In Mr. Meissner's testimony, he does
12 ask for payments of amounts outstanding for 2007. So,
13 it's merely an update for those amounts. If we would be
14 allowed to proceed on this, and hold the exhibit subject
15 to a determination, you will see that actually the dispute
16 is very, very narrow. That this is based on material
17 we've received from Verizon since Mr. Meissner submitted
18 his testimony, and it tracks their information that they
19 provided extremely --

20 CHAIRMAN GETZ: Well, let me address it
21 this way. It seems to me Mr. Meissner addressed these
22 issues in a qualitative sense, and so that's on the
23 record, and in terms of further invoices and additional
24 payments since his testimony. And, I guess what you're

1 seeking to do here is quantify those positions he's
2 taking.

3 At the same time, Verizon hasn't had a
4 chance to review these numbers. And, I don't think it
5 adds anything particularly probative to the decision we're
6 required to make. And, accordingly, I don't think it's
7 necessary to enter this into the record. If we make a
8 decision in the favor of the electric companies on this
9 issue, and we want to update it, then we can pursue that
10 elsewhere. I'm not going to allow this particular exhibit
11 at this time.

12 MR. EPLER: Okay. Thank you.

13 **REDIRECT EXAMINATION**

14 BY MR. EPLER:

15 Q. Mr. Meissner, do you recall yesterday some questions
16 regarding an October 4th letter from Mr. Troy McDonald
17 of Verizon?

18 A. (Meissner) Yes, I do.

19 Q. And, is it correct that Unitil responded to that letter
20 on October 18th?

21 A. (Meissner) Yes, that's correct.

22 Q. And, do you have before you a copy of a letter from
23 Unitil, actually signed by Robert A. Conner, dated
24 October 18th, to Mr. Troy McDonald?

1 A. (Meissner) Yes, I do.

2 Q. And in that letter does Mr. Conner first acknowledge
3 that, if Unitil made an error, that we will correct
4 those errors, correct our internal procedures, to
5 ensure that it doesn't occur again?

6 A. (Meissner) He did, yes.

7 Q. And, that he also points out that some of the errors
8 that were raised by Verizon were quite minor, and then
9 goes on to state that one of the difficulties was that
10 Unitil had provided information regarding its planned
11 trimming in advance and had not heard back from anyone
12 at Verizon?

13 A. (Meissner) That is correct.

14 Q. And, indeed, as a result of that letter, the
15 October 4th letter from Verizon, and also the
16 October -- the November 18th letter from Verizon, did
17 Unitil undertake additional field audits of the areas
18 that were trimmed that were -- the areas that were
19 raised in those letters and make a redetermination of
20 the amounts that should be billed --

21 A. (Meissner) Yes.

22 Q. -- for those?

23 A. (Meissner) Yes, we did.

24 Q. Okay. And, then, subsequent to that, on January 10th,

1 did Unitil provide corrected bills to Verizon?

2 A. (Meissner) Yes, we did.

3 Q. And, you have before you a series of letters to Verizon
4 from Dale Nudd, indicating the original bill and a
5 corrected bill, as a result of those field audits?

6 A. (Meissner) Yes.

7 MR. EPLER: Mr. Chairman, I would like
8 the October 18th letter marked as "Unitil Exhibit Number
9 3"?

10 CHAIRMAN GETZ: It's so marked.
11 (The document, as described, was
12 herewith marked as **Unitil Exhibit 3** for
13 identification.)

14 MR. EPLER: And, the packet of
15 January 10th letters from Unitil marked as "Unitil Exhibit
16 Number 4"?

17 CHAIRMAN GETZ: That will be so marked.
18 (The document, as described, was
19 herewith marked as **Unitil Exhibit 4** for
20 identification.)

21 BY MR. EPLER:

22 Q. And Mr. Meissner, in your calculations of the amounts
23 owed by Verizon for trimming, is that based on the
24 corrected bill amounts that are indicated in what has

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1 been marked as "Exhibit Unitil Exhibit 4"?

2 A. (Meissner) Yes, it's based on the adjusted bill
3 amounts.

4 Q. And, there was also a discussion yesterday with respect
5 to a January 13th letter from Verizon, is that correct?

6 A. (Meissner) Yes, I recall that.

7 Q. And, do you have before you a copy of an e-mail,
8 actually, it's -- well, a copy of an e-mail from
9 Mr. Troy McDonald, to Bob Conner, dated Monday,
10 January 16th, 2006?

11 A. (Meissner) I do, yes.

12 Q. And, in that e-mail, does Mr. McDonald state to
13 "disregard the letter and data I sent to you", is that
14 correct?

15 A. (Meissner) That is correct.

16 Q. And, it's your understanding that the letter he's
17 referring to is the January 13th letter?

18 A. (Meissner) Yes.

19 Q. And, is it your understanding that what had happened,
20 the sequence of events that caused Mr. McDonald to send
21 this e-mail, was that, at the time he wrote the
22 January 13th letter, he did not have before him certain
23 Exchange of Notice provisions and other associated
24 material that had been provided to Verizon earlier, and

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1 so his calculations were incorrect?

2 A. (Meissner) That is correct. He only had the Exchange
3 of Notice memos since he started his position in
4 February of 2005.

5 Q. And, subsequent to that, there had been some
6 communication between Verizon and Unitil, and he
7 realized that Verizon did indeed have those materials?

8 A. (Meissner) He did realize that, yes.

9 Q. And, that was what caused him to ask us to disregard
10 that letter?

11 A. (Meissner) Correct.

12 Q. And, were the specific issues raised in that letter
13 ever raised again by Verizon, to your knowledge?

14 A. (Meissner) No. To my knowledge, we have not received
15 any further communication.

16 Q. Now, in terms of the calculations that appear on Page
17 28 of your testimony, the amounts that Unitil claims
18 are owed by Verizon for trimming activity, you're the
19 Chief Operating Officer of Unitil, is that correct?

20 A. (Meissner) That's correct.

21 Q. And, do you have direct line responsibility for
22 operations people who actually provide the Exchange of
23 Notice provisions to Verizon and the associated
24 materials?

1 A. (Meissner) I do, yes.

2 Q. And, so, they report directly to you?

3 A. (Meissner) They do.

4 Q. And, in preparing this information, were you in contact
5 with those individuals within Unitil, and were you also
6 in contact with other individuals in Unitil who are
7 responsible for collections and billings?

8 A. (Meissner) Yes, I was.

9 Q. And, did you request of those individuals to review
10 invoices and receipts and provide you with the most
11 up-to-date information on the status of these
12 particular accounts?

13 A. (Meissner) I did, as of July 11th, yes.

14 Q. And, so, your calculations are based on a direct review
15 of the status of the invoices at that time?

16 A. (Meissner) Correct.

17 MR. EPLER: If I could take a moment,
18 Mr. Chairman? I'm just reviewing my notes.

19 CHAIRMAN GETZ: Mr. Eaton, will you be
20 having redirect as well?

21 MR. EATON: Yes, I will.

22 BY MR. EPLER:

23 Q. Regarding the resolutions of disputes and the
24 resolution of dispute sections in the Joint Ownership

1 Agreement and the IOP, is it correct that there have
2 been a number of attempts to resolve these issues at
3 many levels within both companies, both in terms of
4 field personnel, what I would consider middle
5 management personnel, and including meetings between
6 senior officers of both companies?

7 A. (Meissner) Yes, all of those.

8 Q. And, all of those attempts have not resulted in
9 resolution of this dispute?

10 A. (Meissner) They did not.

11 Q. And, there was also a discussion yesterday, and you
12 were asked whether or not Unitil had ever received any
13 indications from Verizon whether it had agreed with
14 Unitil's interpretation of the IOP that it was
15 obligated to pay 25 percent of all trimming. Is it
16 correct that the Joint Ownership Agreement and IOP
17 cover both Unitil's New Hampshire operations and
18 Massachusetts operations?

19 A. (Meissner) Yes, that is correct.

20 Q. And, is it also correct that, in the recent past,
21 meaning years up to and possibly including 2000, 2001,
22 that Verizon was reimbursing Unitil for its trimming,
23 for all maintenance trimming activities in
24 Massachusetts?

1 MS. KNOWLTON: Objection. Any issues
2 relating to Massachusetts have no relevance whatsoever to
3 this proceeding. Verizon's operations in Massachusetts
4 are not before this Commission as part of the transfer of
5 its assets.

6 MR. EPLER: Mr. Chairman, I believe the
7 door was opened on this one. This, the Joint Ownership
8 Agreement and the IOP, cover, as you can see, cover both
9 Unutil's New Hampshire and Massachusetts operating
10 companies. And, thus, I think the -- how this matter was
11 dealt with by Verizon Massachusetts is directly applicable
12 and relevant here. Because, as my question to Mr.
13 Meissner sought to elicit, it gave an indication to Unutil
14 as to how Verizon interpreted this agreement. So, I think
15 it's directly relevant. I am not claiming that any
16 amounts or any activities in Massachusetts are relevant
17 here, and we're not pursuing that. But, in terms of our
18 company's understanding of how Verizon looked at this
19 agreement, and also as an indication of how Verizon
20 interpreted this agreement, I think that Verizon's
21 performance during that time period is relevant.

22 CHAIRMAN GETZ: Well, my recollection is
23 he's basically already testified to this, hasn't he? Is
24 that, with respect to the treatment of I assume it's the

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1 Fitchburg Gas & Electric --

2 MR. EPLER: Yes, I believe it's
3 something that I raised in oral argument on Friday. But
4 --

5 CHAIRMAN GETZ: Okay. I guess I thought
6 I knew somebody said it once already, but maybe it was in
7 oral argument. Ms. Knowlton.

8 MS. KNOWLTON: There's nothing in Mr.
9 Meissner's testimony about Massachusetts. To my knowledge
10 there's no, you know, if he felt that that would be an apt
11 comparison, when he decided to write up his testimony and
12 submit it to the Commission, he could have waxed eloquent
13 about, you know, performance in Massachusetts versus New
14 Hampshire, and he didn't do that. I think the fact that
15 the contract itself applies to both jurisdictions doesn't
16 open the door to testimony about what's going on in
17 Massachusetts.

18 (Chairman and Commissioners conferring.)

19 CHAIRMAN GETZ: All right. We're going
20 to allow Mr. Meissner to answer this question. I think
21 there is at least a reasonable analogy here that there may
22 be some probative evidence that we can draw from this.
23 So, please continue.

24 BY MR. EPLER:

1 Q. Do you recall the question, Mr. Meissner?

2 A. (Meissner) Can you please restate the question?

3 Q. I'll see if I can restate the question. Well, I'll try
4 to restate it this way. Is it your understanding that,
5 under this same Joint Operating Agreement and IOPs,
6 that Verizon regularly reimbursed Fitchburg Gas &
7 Electric Light Company for trimming expenses up to the
8 period approximately the year 2000 and 2001?

9 A. (Meissner) Yes, that is correct.

10 Q. And, is it also your understanding or perhaps direct
11 recollection that that reimbursement by Verizon to
12 Unitil was raised with Verizon senior executives, and
13 shortly thereafter that reimbursement ended?

14 A. (Meissner) I don't know that it was raised with senior
15 executives, but it was raised with Verizon management.
16 And, then, yes, you're correct.

17 MR. EPLER: That's all I have. Thank
18 you.

19 CHAIRMAN GETZ: Thank you. Mr. Eaton.

20 MS. HATFIELD: Excuse me, Mr. Chairman.
21 Could I just raise, yesterday Unitil handed out Exhibits
22 that were numbered "3", "4" and "5". So, I just wanted to
23 clarify for the record, if they're intending to have those
24 admitted, I think the numbering for today need to be after

1 5.

2 MR. EPLER: Yes, I did hand out
3 material. And, at this time, I'm not intending to
4 introduce that material. But I did, at the time, I was
5 planning to, so I wanted to hand it out. That's one of
6 the dangers of handing materials ahead of time, because I
7 didn't use them.

8 CHAIRMAN GETZ: Thank you. Mr. Eaton.

9 MR. EATON: I have a single question
10 that is in the form of surrebuttal. It has to do with a
11 statement in Mr. Nestor's testimony that Mr. Hybsch can
12 update. And, if I could ask the question, then we could
13 see whether there is an objection.

14 **REDIRECT EXAMINATION**

15 BY MR. EATON:

16 Q. In Mr. Nestor's testimony, Mr. Hybsch, he states, at
17 Page 20 to 21, and I'll read that: "For instance,
18 there is no language regarding trimming in joint
19 agreements between PSNH and Union Telephone Company and
20 Bretton Woods Telephone Company, while TDS
21 Telecommunications and Dunbarton Telephone appear not
22 to participate in joint maintenance trimming." And,
23 that's on Page 20 and 21 of Mr. Nestor's testimony.
24 Can you update the Commission as to what has happened

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1 since that data response in docket number DM 05-172 was
2 entered?

3 MR. DEL VECCHIO: I would object, Mr.
4 Chairman, but only on the condition that, to the extent
5 this witness is going to be permitted to answer questions
6 that go beyond the scope of the cross-examination for
7 purposes of surrebuttal, then Verizon would ask that it be
8 permitted the rights which this Commission affords under
9 Puc 203.26, which is to begin and end the presentation of
10 evidence in a hearing, such that I may be able to ask
11 Mr. Nestor to respond to information provided by this
12 panel. With that understanding, in accordance with the
13 Commission's rules, I would not object.

14 CHAIRMAN GETZ: When you said "by this
15 panel", I'm sorry, you lost me at the very end. By this
16 panel here, with respect to this single issue, or are you
17 trying to --

18 MR. DEL VECCHIO: It might be --
19 Actually, it might be more broad, more broadly stated.
20 But, to the extent we're getting into issues here which
21 are in the nature of surrebuttal, Verizon would like to
22 have the same courtesy extended to it, particularly since
23 the Commission's rules permit the party that has the
24 burden of proof to begin the presentation in the hearing

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1 and to end that presentation. And, in the past, this
2 Commission has, in accordance with its rules, permitted
3 the petitioners to provide testimony in, if you will,
4 closure of an issue. And, that rule has not changed.

5 MR. EATON: And, that's why I'm bringing
6 it up now, rather than calling Mr. Hybsch to the stand
7 after Mr. Nestor testifies. And, it's simply updating
8 information that's in Mr. Nestor's testimony.

9 CHAIRMAN GETZ: Well, though, one other
10 alternative would have been a cross to say "are you aware
11 what's happened since your testimony has been -- your
12 testimony was submitted on September 10th?" But, for the
13 purposes of this single question, to the extent Mr. Hybsch
14 is aware of what's happened in this regard since
15 September 10th, I'm going to allow the question.

16 Mr. Del Vecchio, if you want to follow
17 up on this area, you will be allowed additional
18 opportunity to follow up on this area with testimony. But
19 it doesn't open the door to additional testimony on any
20 other issue that you would be inclined to provide
21 testimony on.

22 MR. DEL VECCHIO: Well, Mr. Chairman, I
23 would simply note that Verizon has rights under Puc
24 203.26, and we're reserving those rights. And, it depends

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1 on the testimony elicited now and the past seven days, as
2 to whether it would like to present evidence to close the
3 hearing. And, for the moment, the only area where I would
4 anticipate that may be the case, unfortunately, is
5 associated with this tree-trimming monetary dispute.

6 CHAIRMAN GETZ: Okay. Well, as I view
7 the rules, you had rebuttal testimony filed on
8 September 10th that was subsequent to the testimony of
9 this filed on August 1st. So, you've been afforded your
10 opportunities under our rules. To the extent we're
11 departing from it, it's in this single issue of allowing
12 testimony on what's happened since September 10th with
13 respect to these Union Telephone, Bretton Woods, and TDS
14 and Dunbarton Telephone Companies, and you'll be allowed
15 an opportunity to pursue that issue.

16 MR. DEL VECCHIO: Thank you, Mr.
17 Chairman. But I would just note that I think the rule
18 provides that, in hearings on petition, the Petitioner
19 shall have the opportunity to open and close any part of
20 the presentation. It doesn't relate solely to when the
21 filing of prefiled testimony occurred. And, also, I would
22 respectfully submit that our surrebuttal, if you would,
23 would be with respect to information provided by way of
24 redirect in this proceeding, and specifically with respect

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1 to the tree-trimming. Not necessarily with respect to
2 information that's already been set forth in the prefiled
3 testimony of the electric companies, but rather in
4 connection with evidence, either documentary or oral,
5 provided on redirect.

6 CHAIRMAN GETZ: I understand your
7 argument. And, I think we've already established that
8 this is beyond the ken of redirect. But we're going to
9 allow it and allow you an opportunity to respond.

10 Mr. Eaton.

11 BY MR. EATON:

12 Q. Mr. Hybsch, could you update the Commission on that
13 statement.

14 A. (Hybsch) Could you repeat the statement please.

15 Q. Mr. Nestor's testimony lists many companies, which your
16 data response in docket DM 05-172 stated that there
17 were no arrangements for joint maintenance trimming,
18 and they include those companies, including TDS
19 Communications.

20 A. (Hybsch) Yes. TDS Communications owns several
21 communication companies in New Hampshire that we have
22 joint ownership agreements with. And, at the time, we
23 did not have joint trimming arrangements with them.
24 But, in 2006, as a result of the pole docket, we

1 negotiated a agreement to participate in maintenance
2 trimming with the TDS Companies. Which, as I
3 understand today, they are -- we're trimming jointly
4 with them.

5 Q. There were several questions concerning --

6 CHAIRMAN GETZ: I thought you said you
7 had "a single question". Was that a single question on --

8 MR. EATON: I'm going to other matters
9 that were raised on cross.

10 CHAIRMAN GETZ: Okay.

11 MR. EATON: I am done with the
12 surrebuttal. It was that simple.

13 MR. DEL VECCHIO: Can I close my Nestor
14 book now?

15 MR. EATON: I think so.

16 BY MR. EATON:

17 Q. Attorney Knowlton questioned you a lot about "consent",
18 and whether you obtained consent to -- under the IOP,
19 for the maintenance trimming. Can I ask you a few
20 questions about how you obtain consent? On
21 January 20th of 2006, you sent out or Public Service
22 Company sent Verizon a number of Form 605 Exchange of
23 Notices, some examples of which that were returned are
24 in Exhibit PSNH 8, correct?

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1 A. (Hybsch) Yes.

2 Q. And, they were returned from various parts of Verizon,
3 and they agreed to trim 47 miles out of the 1,700 miles
4 that you requested consent, correct?

5 A. (Hybsch) Correct.

6 MS. KNOWLTON: I object. He's leading
7 the witness on redirect examination.

8 CHAIRMAN GETZ: Well, I think we've
9 addressed this issue before, that the technical rules of
10 evidence do not apply to proceedings before the PUC. And,
11 that's by statute and by rule. So, I'm going to allow the
12 method of interrogation. So, please proceed, Mr. Eaton.

13 BY MR. EATON:

14 Q. Could you explain the procedure for obtaining consent?

15 A. (Hybsch) Yes. As outlined in the Intercompany
16 Operating Procedure, we would send an Exchange of
17 Notice with our trimming plan to Verizon, and it would
18 be our hope and expectation, to be in compliance with
19 the IOP, that they would respond to that Exchange of
20 Notice within 30 business -- 30 days.

21 Q. And, did those Exchange of Notices say that "Verizon
22 had no need"?

23 A. (Hybsch) I am not aware that any of the Exchange of
24 Notices returned by Verizon had said they "did not have

1 a need."

2 Q. IOP 7 is attached to your testimony, is it not?

3 A. (Hybsch) Yes.

4 Q. Could you read the first paragraph of IOP 7.

5 A. (Hybsch) "The purpose of this Intercompany Operating
6 Procedure is to establish a definite method of
7 allocating the cost of trimming and any related basal
8 ground spraying of tree and brush stumps associated
9 with construction and maintenance of a joint pole
10 line."

11 Q. And, in paragraph 1a, that cost is allocated 75 percent
12 and 25 percent for maintenance trimming?

13 A. (Hybsch) That is correct.

14 Q. And, in paragraph b, for heavy storm work, it's
15 allocated 50/50?

16 A. (Hybsch) That is correct.

17 Q. And, removal of weakened or toppled trees and large
18 limbs which threaten both parties' plant is also
19 allocated on a 50/50 basis?

20 A. (Hybsch) That is correct.

21 Q. And, for construction trimming, if we look at
22 Attachment 2, it's allocated on a 60/40 basis?

23 A. (Hybsch) Correct.

24 Q. Why is that? Why are those differences there?

1 A. (Hybsch) I think the difference is there to represent
2 the benefit that both companies receive from the joint
3 maintenance trimming or the construction trimming or
4 the major storm damage trimming.

5 Q. When would a company not have a need for maintenance
6 trimming?

7 A. (Hybsch) A company would not have a need for
8 maintenance trimming if they purchased half interest in
9 a pole, and never affixed their facilities to that
10 pole. Which is, I wouldn't say "common", but it does
11 happen on occasion, where we might buy a half interest
12 in a pole, and it will be years before we actually
13 attach our facilities to it.

14 Q. So, you did not invoice Verizon for the maintenance
15 work, except for that that they -- that they agreed
16 through an Exchange of Notice, correct?

17 A. (Hybsch) That is correct.

18 Q. Do you think they responded in good faith to your
19 Exchange of Notices?

20 A. (Hybsch) Based on some of the responses taking 13
21 months, after follow-up calls, no, I do not.

22 Q. And, do you think for the 1,700 miles of line that you
23 trimmed in 2006, that 47 miles is a good faith
24 response, as far as a need for trimming from the

1 telephone company?

2 A. (Hybsch) I do not believe it's consistent with the
3 intent of the original IOP maintenance trimming.

4 Q. And, you stated, I think in a question from the
5 Commissioner, that Verizon used to present their own
6 trimming plan, hire their own contractors, and actually
7 trim lines in their service territory, correct?

8 A. (Hybsch) Yes, I think I qualified that, that I don't
9 think it was in Verizon's time period, but probably New
10 England Telephone's.

11 Q. Now, there were some questions concerning your
12 Attachment -- I'm sorry, your Exhibit 4, which is the
13 response to the data request. Do you have that in
14 front of you?

15 A. (Hybsch) Yes, I do.

16 Q. And, could you look at Page 2, and look at the
17 calculations. And, these are Mr. Mullen's
18 calculations, correct?

19 A. (Hybsch) That is correct.

20 Q. So, there are \$4 million of the cost of doing the 1,653
21 additional miles. And, what is the -- what is the next
22 line?

23 A. (Hybsch) The next line would be Verizon's share of
24 joint trimming costs, 25 percent, which I assume was

1 taken from the IOP Number 7.

2 Q. And, what was the maximum additional revenue from
3 Verizon's joint trimming?

4 A. (Hybsch) Well, 25 percent of the \$4 million would be
5 roughly \$1,013,000.

6 Q. And, Mr. Mullen took a midpoint?

7 A. (Hybsch) Yes, 50 percent midpoint.

8 Q. So, Mr. Mullen allocated 50 percent right away to
9 PSNH's customers? The 500 --

10 A. (Hybsch) I'm not sure I understand that question.

11 Q. Well, it was agreed that PSNH wouldn't recover
12 \$506,000, correct?

13 A. (Hybsch) That is correct.

14 Q. And, PSNH would recover \$506,000 in its rates from its
15 customers?

16 A. (Hybsch) Yes, I'm not sure that was the assumption that
17 was made, but I understand the math.

18 Q. So, customers are paying part of this, part of this
19 expense in their rates, correct? That they are not --
20 they are not paying \$506,000 that PSNH agreed to forgo,
21 but they're paying \$506,000 that Mr. Mullen allocated
22 to customers, correct?

23 A. (Hybsch) Yes.

24 Q. You had some questions about whether you've gone to

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1 court. And, I think Mr. Meissner described some
2 efforts that his company had done to try to resolve
3 this. Has PSNH done anything to try to resolve this
4 problem with Verizon?

5 A. (Hybsch) Yes, we have. For at least two, possibly well
6 into the third year, we had quarterly operational
7 meetings with Verizon management. And, looked --
8 trying to resolve a whole host of operating issues,
9 that a pretty good summary of that would be the current
10 MOU that we introduced into evidence with FairPoint.
11 One of the issues that we did get resolution on is
12 FairPoint agreeing to pay for their 50 percent share of
13 major storm damage, which Verizon has done over the
14 past two years that I know of. We've had very limited
15 response on removal of danger trees within the -- that
16 threatened both of our facilities. And, then, I was
17 advised by a vice president at Verizon, in late 2005,
18 to submit a trimming plan to Verizon, and we might be
19 treated differently this time with respect to positive
20 response in our Exchange of Notices.

21 Q. And, based upon that communication from the Verizon
22 officer, you submitted the Exchange of Notices on
23 January 20th, 2006?

24 A. (Hybsch) That is correct.

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1 Q. Given the experience with Verizon, would we have had to
2 go to court every year for the past 10 or 15 years in
3 order to enforce this agreement?

4 A. (Hybsch) I would hope we would not have to do that.
5 But we haven't gotten much of a response to date. So,
6 I don't -- I would hope that's not our only recourse of
7 action or recourse.

8 MR. EATON: Thank you. That's all I
9 have on redirect.

10 CHAIRMAN GETZ: All right. Then, I
11 believe that -- yes, Ms. Knowlton.

12 MS. KNOWLTON: I have some limited
13 recross to do.

14 CHAIRMAN GETZ: And, recross on -- which
15 topics do you think went beyond or introduced new
16 information that merits recross?

17 MS. KNOWLTON: Well, I believe so. I
18 mean, there was testimony regarding various issues about
19 emergency response time, downed poles, double poles, and I
20 want to clarify for the record that --

21 CHAIRMAN GETZ: So, this was in respect
22 to the redirect by Mr. --

23 MS. KNOWLTON: This is in follow-up to
24 many of Commissioner Below's questions. And, I want to

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1 clarify for the record that there are no claims for money
2 damages that are being made here --

3 CHAIRMAN GETZ: Okay. Well, let's try
4 to deal with one thing at a time. So, you're asking for
5 recross, not based on the redirect of either Mr. Epler or
6 Mr. Eaton, you're asking to follow up on questions from
7 Commissioner Below?

8 MS. KNOWLTON: On testimony from the
9 witnesses in response to those questions, yes.

10 CHAIRMAN GETZ: Okay. Mr. Epler.

11 MR. EPLER: I would object. I mean,
12 those questions by Commission Below were based on the
13 witnesses' direct testimony. It really didn't go beyond
14 the scope. The counsel for Verizon had an opportunity to
15 ask these witnesses questions on their direct testimony.
16 I don't think it's appropriate now to open this up to
17 additional questions on those subjects.

18 MS. KNOWLTON: Perhaps I could make this
19 --

20 CHAIRMAN GETZ: One moment please.

21 MS. KNOWLTON: Sorry.

22 (Chairman and Commissioners conferring.)

23 CHAIRMAN GETZ: All right. I look at
24 this issue purely as an issue of whether Commissioner

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1 Below, as a matter of discretion, would like additional
2 testimony with respect to this particular point. And, my
3 indication is that he has sufficient information on this
4 issue and does not require I guess what amounts to
5 recross. So, we're not going to allow recross on that
6 point. Was there another issue that you were seeking
7 recross on?

8 MS. KNOWLTON: No, I don't --

9 MR. DEL VECCHIO: I just would like to
10 note my objection for the record. This is the first time,
11 frankly, in any proceeding, and in this proceeding
12 particularly, where a company has not been allowed to ask
13 follow-up questions based on questions from the Bench.
14 And, I think it sets the wrong precedent. I think, given
15 the extent to which some of the questions went beyond the
16 issue in dispute raised by the electric companies, with
17 respect to the monetary damages, it's not fair to Verizon.
18 So, I just would like to note my strenuous objection to
19 the record.

20 CHAIRMAN GETZ: Your objection is noted.
21 I'm not sure if I agree with the premise on what past
22 practice in this or other proceedings has been. But we do
23 note your objection.

24 So, at this point then, I think that

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1 completes examination of these witnesses. You're excused.
2 Thank you, gentlemen. And, I think this is a time for
3 recess. We will recess till 12:00. We will resume with
4 Mr. Nestor. Our intent is to go about an hour, take a
5 lunch break from 1:00 to 2:00, and then try to get
6 somewhat close to what had been our hopes for a standard
7 schedule. Mr. Epler.

8 MR. EPLER: Just in terms of helping you
9 with your schedule, I had earlier indicated I had upwards
10 of two hours of cross-examination for Mr. Nestor. And, my
11 cross-examination will be substantially smaller than that
12 amount.

13 CHAIRMAN GETZ: Okay. Well, actually,
14 let me address one issue before we go. I don't know if
15 there's a preference among the parties. What I have on my
16 list is that both Unutil and PSNH seek to cross-examine
17 Mr. Nestor, which I take it will be with these issues, the
18 tree-trimming and maintenance issues. And, then, it's
19 indicated that Mr. Rubin, Ms. Hatfield and Ms. Fabrizio
20 also have cross-examination for Mr. Nestor, I take it will
21 be on the other issues in his testimony. Is that correct?

22 MR. RUBIN: Yes.

23 CHAIRMAN GETZ: It seems, just for
24 continuity of the discussions here, that we should start

1 with the electric companies, and then move onto the other
2 parties. Is that a reasonable approach?

3 (No verbal response)

4 CHAIRMAN GETZ: Okay. Let's take the
5 recess, and we will resume at noon. Thank you.

6 (Recess taken at 11:42 a.m.)

7 (Hearing reconvened at 12:06 p.m.)

8 CHAIRMAN GETZ: Please be seated. Okay.
9 We're back on the record in DT 07-011 with Mr. Nestor and
10 he appears ready to be sworn in.

11 **JOHN F. NESTOR, III, Sworn**

12 CHAIRMAN GETZ: Mr. Del Vecchio?

13 MR. DEL VECCHIO: Thank you, sir.

14 **DIRECT EXAMINATION**

15 BY MR. DEL VECCHIO:

16 Q. Good morning, Mr. Nestor.

17 A. Good morning.

18 Q. Good afternoon. Sorry.

19 A. Yeah, good afternoon.

20 Q. Could you, please, state your name and business address
21 for the record?

22 A. My name is John F. Nestor, the Third. My business
23 address is 900 Elm Street, Manchester, New Hampshire.

24 Q. And how, sir, are you employed?

1 A. I'm employed by Verizon as their vice-president for
2 state government relations.

3 Q. And what are your responsibilities in that capacity?

4 A. I am responsible for all matters -- regulatory matters,
5 legislative matters, and public-affairs media matters
6 for the state of New Hampshire.

7 Q. And did you submit prefiled rebuttal testimony on
8 September the 10th, 2007, which you corrected by an
9 errata filing on October 15th, 2007, marked for
10 identification as Verizon Exhibit 3P and 3C?

11 A. Yes, I did.

12 Q. And do you have any further corrections, revisions or
13 updates to that testimony?

14 A. No further corrections. And, at the risk of setting
15 off another firestorm, on page 22 of my testimony, in
16 footnote 24, I note that there's an additional \$21,966
17 in invoicing between July 2005 and January 2006 that
18 had not been processed for Unitil. It is my
19 understanding we paid those bills in September.

20 Q. And is your rebuttal testimony true and accurate, to
21 the best of your information and belief?

22 A. Yes.

23 Q. And do you adopt it as your sworn testimony in this
24 proceeding?

1 A. Yes, I do.

2 MR. DEL VECCHIO: Mr. Chairman, the
3 witness is available for cross.

4 CHAIRMAN GETZ: Okay. Thank you.

5 MR. EPLER: Mr. Chairman, as a
6 preliminary matter, I'd like to object to and move to
7 strike a portion of the witness's testimony on page 19,
8 starting with the second sentence on line 15 through the
9 end of line 8 on page 20. The reason for that objection
10 is based on the qualifications of the witness. I do not
11 believe the witness is qualified as an expert testimony --
12 to testify to the facts and conclusions that are stated in
13 that section. He does not indicate any engineering
14 background, engineering degrees, or other knowledge by
15 which he would be able to make that -- those conclusions.

16 CHAIRMAN GETZ: Response, Mr. Del
17 Vecchio ---

18 MR. DEL VECCHIO: Yes, Mr. Chairman.

19 CHAIRMAN GETZ: --- before I rule?

20 MR. DEL VECCHIO: The first, of course,
21 is something I think I heard not too long ago about
22 timeliness. This is the first we're hearing about this.
23 And although I am on the record and do believe that one
24 can object to the introduction of evidence at or prior to

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1 a hearing, I would submit that the petitioners -- that is,
2 in this instance, the electric companies -- do not
3 apparently hold that belief.

4 Secondly, I think the concern, if any,
5 voiced by Mr. Epler goes to the weight of the evidence,
6 not to whether it should be admissible.

7 And thirdly, if we were to apply that
8 standard, there would be some information that was
9 provided by the electric panel itself that should be
10 stricken, as to whether or not something constituted safe
11 and adequate service within the meaning of our statutes,
12 for example. So that argument would apply, at least in
13 equal force, to testimony we've heard from the panel.
14 And, frankly, it applied to many witnesses that have
15 testified through the course of these past eight days. I
16 don't think it's appropriate to apply it now, in the first
17 instance, with Mr. Nestor.

18 CHAIRMAN GETZ: Okay. Well, let me say
19 this, then. I think I agree with you, Mr. Del Vecchio,
20 that this objection largely goes to the weight of the
21 evidence. I'm going to deny the motion to exclude and
22 note that the witness appears to have a law degree and an
23 MBA, but does not appear to be an electrical engineer.
24 But we're going to allow the testimony.

Anything else before we turn to cross-examination? Mr. Epler, Mr. Eaton, who would like to go first?

CROSS EXAMINATION

BY MR. EATON:

Q. Good afternoon, Mr. Nestor.

A. Good afternoon, Mr. Eaton.

Q. Following up on your qualifications and experience, have you ever worked on outside plant?

A. Personally, no, I've not had an outside-plant job with the company. But the individuals who do do that are right on my floor and I talk to 'em pretty much daily.

Q. Did you ever supervise employees in outside plant directly?

A. No, not directly. I did have responsibility, at one time, for the consumer complaint group that directly interfaced with them, so...

Q. Have you ever done storm duty?

A. Not storm duty. Strike duty.

Q. Now, at page 20 of your testimony, you state that conditions sought by PSNH and Unitil are driven by electrical requirements and their need for reliability, not by any concern for reliability relating to telephone service or facilities.

1 A. Can you just give me a line cite?

2 Q. I'm sorry. It starts at line 4.

3 A. I have it.

4 Q. And did I read that correctly?

5 A. Other than relating to telephone services? Yes, you
6 read that correctly.

7 Q. And is it your testimony that Verizon had no need for
8 the 1653 miles of trimming that PSNH requested your
9 participation in 2006 but that you did not participate
10 in?

11 A. I'm sorry. Could you just rephrase the question for
12 me?

13 Q. When you evaluate an exchange of notice, your employees
14 do what?

15 A. My understanding is the process is that, when we get an
16 exchange of notice, it's filed with a central group who
17 would take that -- I guess I probably should step back
18 and give the full process, because it's a piece part of
19 the process.

20 When we get the exchange of notice, it
21 goes to a centralized group -- I believe, in Merrimack,
22 New Hampshire -- who would then take that notice and
23 what other information would come with it -- maps,
24 description of routes, whatever -- and then send that

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1 to a centralized location in Merrimack, New Hampshire,
2 who would then farm it out to outside-plant engineers,
3 who would then go out and survey, whatever, the routes,
4 then sign off on what they believe Verizon's -- meets
5 Verizon's needs or what Verizon's going to participate
6 in.

7 That notice goes back to the centralized
8 organization. I believe it's then passed on to the
9 electric company. Then, when the electric company
10 bills us, the bill, the notice, the records from the
11 contractors, I believe, or maps associated with it, are
12 all supposed to come back. That goes back out to the
13 engineer, and then the engineer is supposed to cross-
14 check that. And then, back to the centralized
15 organization for, I'll call it, report and
16 recordkeeping of the records. That's the process.

17 Q. Is the exchange of notice required to be returned to
18 PSNH within a particular timeframe?

19 A. I believe the IOPs have timeframes in them, yes. I'd
20 have to look at the specific ones, but there is that
21 arrangement. Either that or a -- I'll call it a notice
22 back -- that says we are not participating or whatever
23 types of things we've seen.

24 Q. But you said that two decisions could be made: One

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1 that you had no need; one that you're not going to
2 participate. Are those different?

3 A. They could be different. They could be the same. For
4 example, if we go out and we find that we're not on the
5 pole that you want to cut, we would not participate.
6 If we went out and found that, you know, we were on the
7 pole and we agreed that it, you know, was of a need to
8 us, we would participate. So it depends on what the
9 engineer in the field finds.

10 Q. So in those exchange of notices, if you said "We're not
11 going to participate," that means, for those miles of
12 lines, you didn't have -- you didn't have telephone
13 equipment attached to those poles.

14 A. No, that's not what I said. I said it could mean both.

15 Q. Does Verizon conduct maintenance trimming in its
16 service territory -- in its maintenance territory in
17 New Hampshire?

18 A. That, I don't know. I don't know. I don't know all
19 the specifics of our maintenance territories.

20 Q. Well, does Verizon prepare a trimming plan for the year
21 and submit it to PSNH to see if PSNH has a need for
22 trimming on those lines that Verizon is going to trim?

23 A. We may. I'm not -- I'm not a hundred percent familiar
24 with that process because, in preparing for this case,

1 I was looking at the issues surrounding the two
2 monetary amounts.

3 Q. So you can't testify as to whether Verizon has a need
4 for maintenance trimming.

5 A. In an individual situation, you mean?

6 Q. No. Generally speaking.

7 A. Well, generally speaking -- let me step back for a
8 minute.

9 My understanding with the open docket in
10 the pole docket, there is information that's been
11 placed into that docket surrounding this issue. I also
12 understand that -- and this is my view of, also, the
13 service quality -- is that you're coming forward and
14 asking the Commission to prejudge the issues by looking
15 at certain limited information.

16 Now, I understand, in the pole docket, a
17 lot of the questions you're asking me, there is
18 information in there. There is information dealing
19 with the disagreement on the safety inspections,
20 whatever you want to call it, including what you're
21 asking.

22 And basically, one of the problems
23 Verizon has had when I'm preparing my testimony, is
24 we've got an open pole docket that we don't know what

1 the issues are, based on the process. There's been no
2 findings. There's been no evidence in the case
3 formally taken.

4 And so, I was left to try to respond to
5 your specific interpretation of the contract and the
6 dollar amounts involved. But it's my understanding we
7 have an open docket that has not been defined with the
8 issues. Verizon hasn't had an opportunity ---

9 CHAIRMAN GETZ: Excuse me. It seems to
10 me you're arguing why you shouldn't be here. Let's try to
11 get back to the question about -- could we restate the
12 question, Mr. Eaton?

13 MR. EATON: It was a while ago.

14 BY MR. EATON:

15 Q. So you are not testifying here or you're not qualified
16 to testify here as to the need for making the trimming.

17 A. I don't make the determination on need. That's the
18 outside-plant engineers.

19 Q. On page 20, at line 18, you state, "In each instance,
20 both parties to the IOP recognized more than ten years
21 ago that their maintenance trimming needs would be
22 different."

23 Did I read that correctly?

24 A. Yeah.

1 Q. Why isn't the difference in maintenance trimming needs
2 reflected in the 75 percent/25 percent allocation under
3 IOP 7?

4 A. I don't have IOP 7 in front of me, but I do understand
5 that one of the rationales behind the 75/25 is because
6 of the fact that the electrical industry and the way
7 they maintain their plant and the public-safety issues
8 surrounding the electrical industries are different
9 than what they are in the telephone industry.

10 If a tree limb comes down on an electric
11 wire and causes an emergency, it's vastly different
12 than if a tree limb comes down and takes a telephone
13 wire down. There's a greater public-safety issue
14 related to an electric wire coming down than a
15 telephone. So that would indicate there would be a
16 need for more trimming by the electric. And I think
17 that split demonstrates why they're different, because
18 the electricians pay the 75 and Verizon pays the 25.

19 Q. So there's only hazardous conditions relating to
20 electric wires; correct?

21 A. No, no. Let's make sure we're talking the same thing.
22 We're talking maintenance trimming here. Hazards are
23 different things. There is such a thing as hazardous
24 trimming and other things.

1 My understanding is the dispute that's
2 put forth before this Commission has to deal with
3 maintenance trimming, not hazardous trimming.

4 Q. Does maintenance trimming reduce hazards in the future?

5 A. I have no way of answering that question in a -- in
6 that kind of vacuum. Do you want to give me a specific
7 situation, maybe or...?

8 Q. If you do maintenance trimming, is it -- is it more
9 likely that trees won't come down and hit utility
10 facilities, including lines and poles?

11 A. I mean, I'm not speaking, you know, knowing what the
12 issue of need is. But as a general proposition, as a
13 common layman, obviously, if a tree isn't there versus
14 it is there and it comes down, it's more likely than
15 not, you know, that it won't hit it.

16 Q. Do you have a copy of Exhibit 6P in front of you?

17 A. Actually, I do not, unless it's one of these two
18 documents that aren't marked.

19 Q. That's PSNH 6P. I'm sorry.

20 A. I have it.

21 Q. Okay. And were you in the room when Mr. Hybsch
22 described this document, where it came from?

23 A. Yes, I was.

24 Q. Okay. And there's a line -- there's three bullet

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1 points there. And one of them says "A tree or other
2 large object leaning on wires." And the next one says
3 "Any other hazardous conditions related to telephone
4 wires." And those are listed under "Hazardous
5 Conditions Outside Your Home."

6 So is this a -- is this a warning to
7 your customers?

8 A. No. What I understand this to be is this is -- this
9 would relate to a hazardous condition resulting -- I
10 don't know -- from a storm or anything like that or
11 relates to hazardous trimming, I guess. But we're
12 talking maintenance trimming.

13 Q. But didn't you just agree with me that maintenance
14 trimming would reduce the risk of hazardous conditions
15 during storms?

16 A. I said, as a layman, it may, yes.

17 MR. EATON: Again, Mr. Chairman, we have
18 a layman who is testifying about issues where we brought
19 the director of operations and the chief operating officer
20 of our company to testify on this issue.

21 CHAIRMAN GETZ: Okay. Now, you're
22 arguing.

23 MR. EATON: Well, no. I'm making the
24 same point that Mr. Epler was making, that we have a

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1 witness who -- who's saying ---

2 CHAIRMAN GETZ: Well, you can make these
3 points in your brief. Let's continue with the cross
4 examination.

5 MR. EATON: All right.

6 BY MR. EATON:

7 Q. In relation to that sentence I said about both
8 companies recognizing ten years ago that maintenance
9 trimming needs would be different, once you reviewed
10 the joint operating agreement -- I mean, the joint
11 ownership agreement and intercompany operating
12 procedures ---

13 A. I reviewed the joint -- both of those documents. I
14 particularly paid attention, I believe, it's to 17, IOP
15 17.

16 Q. IOP 7 for PSNH. I think it's ---

17 A. Seven for PSNH, that's correct.

18 Q. Yes. Seventeen ---

19 A. Those are the two documents.

20 CHAIRMAN GETZ: Gentlemen, we've got to
21 have one person speak at a time or else we're not going to
22 get this on the transcript.

23 A. Yes, thank you. Yes. Those are the documents I
24 reviewed. I reviewed all the documents and then read

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1 them. And I concentrated on 17 and 7, in your case.

2 Q. Did you see any amendment to the intercompany operating
3 procedures that reflected agreement by PSNH that
4 maintenance trimming needs are different?

5 A. If you can point me to some specific section you're
6 interested in...

7 Q. You state ---

8 A. I'm trying to remember. You know, there's a lot to the
9 agreements and I didn't really -- you know, I read
10 them.

11 Q. You state that more than ten years ago both parties to
12 the IOP recognized that their maintenance trimming
13 needs would be different. Is there any agreement by
14 the electric utilities that maintenance trimming needs
15 would be different from what was contained in IOP 7 for
16 PSNH and IOP 17 for Unitil?

17 A. Yeah. I think you can -- you can conclude that from
18 the -- in your case, IOP 7, Part A. And just let me
19 get it.

20 I mean, I quote part of it on page 20 of
21 my testimony on lines 9 through 17. I apologize. I'm
22 just trying to find my documents here.

23 I've found them. And the second part of
24 that sentence says, "When it is agreed that both

1 parties will benefit in such tree-trimming, the
2 division of cost will be 75 percent electric company
3 and 25 percent telephone," which is what we talked
4 about earlier as to why the electricians pick up a greater
5 percentage of the cost.

6 Q. What's the date that that IOP is effective, at the top
7 of that page?

8 A. Let me see. The one I have is dated 10/03/94.

9 Q. Right. So what happened ten years ago when the -- when
10 both parties recognized that their maintenance needs --
11 maintenance trimming needs would be different?

12 A. I'm sorry. I don't understand the question.

13 Q. The question is -- this agreement, this IOP, was
14 effective October 1994. Your testimony says ten years
15 ago the parties to this agreement recognized that their
16 maintenance trimmings needs would be different.

17 A. Okay.

18 MR. DEL VECCHIO: I object only to ---

19 A. And your question is...?

20 MR. DEL VECCHIO: Excuse me. I think
21 the testimony says "more than ten years ago," just to be
22 complete.

23 Q. So there's no separate agreement between the electric
24 companies and Verizon to operate under anything other

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1 | than 75/25 as a split?

2 | A. That's kind of a broad question. If you're asking me
3 | with respect to what governs maintenance trimming, it's
4 | this agreement that you've referenced, number 7.

5 | Q. Is there any other agreement that recognizes that your
6 | maintenance trimming needs would be different?

7 | A. I only vaguely remember having read through the
8 | agreements; that, you know, there was conditions --
9 | there was certain things, like in emergencies, that may
10 | be a 50/50 split. There's other provisions in other
11 | parts of IOPs. But the ones relating to maintenance
12 | trimming is the one I've got here.

13 | Q. Mr. Nestor, could you look at footnote 24 on page 22 of
14 | your testimony?

15 | A. I have it.

16 | Q. And it states that Verizon, the second line of that,
17 | "Between 2005 and 2007 to date, PSNH (sic) has paid
18 | \$566,933 in trimming invoices to PSNH."

19 | A. You've read that correctly.

20 | Q. Does that include construction trimming, heavy storms
21 | and hazardous trees?

22 | A. I don't know. I just brought the total dollar amount.
23 | I didn't get all the breakdown. But I believe it
24 | relates mostly to maintenance trimming, from what I

remember in the discussions.

2 Q. You don't have the discretion to say no to construction
3 trimming and maintenance trimming under IOP 7. There's
4 no language in that section of IOP 7 that allows you to
5 make the determination that you don't have a need.

6 A. I'm sorry. You say construction and maintenance?
They're two different sections.

8 Q. No, they're not.

9 A. Okay. Well, perhaps you can refer me to where you're
10 referring.

11 Q. I'm on IOP 7, 1B.

12 A. 1B. Okay.

13 Q. And several lines down, it says, "The parties agree to
14 a 50/50 basis for heavy storm work."

15 A. Okay. I see that.

16 Q. And removal of weakened or toppled trees and large
17 limbs which threaten both parties' plant will be
18 removed on a 50/50 basis.

19 A. I see that.

20 Q. And construction trimming, division of costs shall be
21 in accordance with Attachment 2. And Attachment 2
22 shows a 60/40 split between PSNH and NYNEX.

23 A. I see that.

24 Q. So isn't it -- given the fact that you don't have a way

1 of getting out of heavy storm work or construction
2 trimming or hazardous trees, that that 566,000 amount
3 could involve those trimming expenses, in addition to
4 maintenance trimming?

5 A. It's possible. I thought -- like I said, I testified
6 to what I remember the discussion about it was. But I
7 want to point out, maintenance trimming is governed by
8 1A. You keep saying we don't get out. We may have
9 disagreements on some of your interpretations of B, in
10 Part 2, "Construction," but I'm really focusing on 1A
11 here, because that was the dispute.

12 MR. EATON: Could I have a record
13 request that that \$566,000 number be broken down into
14 maintenance trimming, construction trimming, hazardous
15 trees, and heavy storms?

16 CHAIRMAN GETZ: Mr. Del Vecchio, can you
17 do that?

18 MR. DEL VECCHIO: We need to determine
19 that we have that breakdown, of course. But yes, we'll
20 look at that.

21 CHAIRMAN GETZ: Okay. We'll reserve, I
22 guess would it be...

23 MS. KNOWLTON: Twenty-eight.

24 CHAIRMAN GETZ: Verizon 28? Is that

1 what you're saying?

2 MS. KNOWLTON: Twenty-seven would be the
3 record request on the joint ownership agreement.

4 CHAIRMAN GETZ: Okay. That's fine.

5 Mr. Eaton?

6 BY MR. EATON:

7 Q. Mr. Nestor, you do have legal training; correct?

8 A. Correct. Well, sometimes, yes, correct.

9 Q. Is it your understanding that parties to an agreement
10 have an obligation to perform that agreement in good
11 faith?

12 A. Yes. Usually, if you sign a contract, yes, the parties
13 are going to agree that they're doing it in good faith.

14 Q. And so you have an obligation to process exchange of
15 notices, make a determination, and return that to PSNH
16 in good faith.

17 A. That's the process, as I understand it. I understand
18 there's been issues that were raised in the pole docket
19 about those breakdowns in those processes on both
20 sides.

21 Q. And if the Commission approves this petition and all
22 the things contemplated by FairPoint and Verizon are
23 accomplished, the pole docket goes away; isn't that
24 correct?

1 A. My understanding is the pole docket should go away in
2 light of what FairPoint has agreed to under the MOU.
3 They have addressed, specifically, the issues that were
4 raised.

5 And again, if we go back to the process
6 of the pole docket, the pole docket was opened, the
7 parties were going to have put in information, Staff
8 was going to write topic papers. My understanding is
9 two of them have been written, three have not. Those
10 topic papers would make recommendations to the
11 Commission as to what would be the issues that the
12 Commission would hear formal evidence on and formal
13 witnesses on.

14 Now, my understanding, there's been no
15 findings in that docket. There hasn't even been a
16 completion of the record. And one of the objections
17 I've had with trying to address this is, this is an
18 attempt to take pieces of the pole docket and put it in
19 here without a complete record. And the pole docket
20 isn't even completed.

21 Q. And will it be completed?

22 A. No. I would say -- I maintain there's no reason to
23 complete it, because I believe I heard the witnesses
24 for the Electric's testify that the issues that are at

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1 least being floated in the settlement -- the discussion
2 part, the Electricians are satisfied that those have been
3 addressed to their needs, unless I missed the
4 testimony. But that's what I understand.

5 But again, there was no finding. There
6 was no opportunity for Verizon or other parties to
7 debate the information that's out there. And instead
8 -- and I think FairPoint's approach is very reasonable.
9 Rather than litigate everything, let's -- we're going
10 to have different processes, different procedures,
11 we're going to do things differently than Verizon --
12 let's try to reach an arrangement that meets everyone's
13 needs. And they put that forth, which I understand the
14 Electricians and FairPoint has agreed to.

15 My only comment is, while in the
16 existing pole docket, there isn't evidence in the
17 record for what we're talking about today.

18 Q. Mr. Nestor, have you seen PSNH Exhibit 8P?

19 A. Again, probably. Unless it's one of the two things
20 I've got in here, I don't have it.

21 Q. Would you take a couple minutes to look that over?

22 A. Okay. I've done that.

23 Q. Okay. What are these documents?

24 A. These are joint ownership exchange of notice forms is

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1 what they look like for -- let's see. January 20th,
2 2006, all three dates, to Louise Guillemette, Mary
3 Feeney at Verizon, with return dates on the bottom, and
4 exchange of notice forms.

5 Q. And do you think these were completed by Verizon and
6 returned?

7 A. It says "Return to PSNH" on the bottom right-hand
8 corner. Well, excuse me, yeah, 2/22/07 for the first
9 two and 2/21/07 on the last document. That's what it
10 states. I assume these are, you know, good copies of
11 that.

12 Q. Does IOP 7 and the exchange of notice provisions also
13 in the IOP -- does that allow a 13-month reply period?

14 A. Again, I believe there are specific timeframes in
15 there. And I believe, in the pole docket, it's
16 testified that on both sides those processes are not
17 always -- you know, have been followed.

18 Q. What did Theresa Gagnon write on the first page of
19 Exhibit 8P?

20 A. Well, first of all, I don't know if that's Theresa
21 Gagnon's writing.

22 Q. All right. What ---

23 A. It states, "Complete in field. Verizon not
24 participating."

1 Q. So if Verizon doesn't get around to return the exchange
2 of notice, should PSNH wait on its tree-trimming plans
3 until Verizon decides to respond?

4 A. That's something PSNH is going to have to decide, what
5 they want to do, whether they want to call us up and,
6 you know, push it or whether they want to, you know,
7 move forward on their own without any reply from
8 Verizon.

9 But my understanding, you know, is --
10 this is exactly the point. There's been -- in the pole
11 docket, there has been conflicting information on both
12 sides for what little has been put in to date
13 addressing the very issues we're talking about. I've
14 got some of it in my exhibits to my testimony that
15 raise the differences and -- on both sides.

16 Q. We're not in the pole docket. We're here today talking
17 about this issue.

18 A. I'm sorry. What is the issue, so I'm clear?

19 Q. The issue I'm asking you is: Is this a good-faith
20 response to an exchange of notice on a tree-trimming
21 plan?

22 A. If you followed the regular process -- you know, I
23 can't comment whether it's good faith. I wasn't the
24 engineer. I didn't go out. I didn't look. And I

1 assume, when the engineer responds in this fashion,
2 they don't find a need or have a need or whatever under
3 Section 1A of the maintenance agreement.

4 Q. By the time this gets returned to PSNH, the trimming's
5 been done; correct?

6 A. I don't know. Is that a statement or a question?

7 Q. Thirteen months after the request is made -- and this
8 is the -- this is the plan for 2006. It's contemplated
9 that the parties will submit these plans. And the
10 response comes 13 months later. Is that a good-faith
11 response?

12 A. I mean, you're asking me to make a judgment, again.
13 Again, there's information that's in the pole docket,
14 not in the pole docket. You keep saying we don't want
15 to go to the pole docket, but that's where this is all
16 being litigated on both sides, as to how the parties
17 have not responded, have responded.

18 There's information in my exhibits that
19 say Unitil and others have been billing us 25 percent
20 no matter what, so do we need to even send the notice
21 back, because even when we send the notice back, we get
22 25 percent and tell them we're not participating. So
23 there's that disagreement-on-both-sides issue floating
24 around. And it's illustrated -- in my testimony, it's

1 illustrated. There's no doubt there's disagreement. I
2 mean, that's part of the problem here. You have
3 conflicting information.

4 Q. Can we talk about this docket?

5 A. My understanding of this docket is it relates to
6 monetary damages for 600,000, \$300,000.

7 Q. And PSNH followed the procedure in 2006 and sent you
8 exchange of notices?

9 A. I don't know.

10 Q. And you don't know whether Verizon responded to those
11 exchange of notices?

12 A. I don't know about that specific one. I mean, I've
13 seen -- I answered a data request that had various
14 exchange of notices that went back to the companies.

15 I saw it yesterday. It came up again.
16 I don't know if it's going to be used as an exhibit on
17 the other side or by you. So there have been responses
18 back, but I can't pick out a particular invoice and say
19 whether it did or didn't.

20 Q. Why did Verizon participate in 47 miles out of the
21 1700?

22 A. I'm assuming that it followed the process and that's
23 what the engineers found the need for.

24 Q. Does Verizon run any maintenance trimming programs?

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1 A. Again, I don't -- I don't remember, from my review of
2 the pole docket, whether we do or we don't.

3 Q. Do you operate any in Massachusetts?

4 A. I'm unfamiliar with what we do in Massachusetts.

5 Q. So you wouldn't know if that public announcement, which
6 PSNH introduced yesterday as Exhibit 7P -- you don't
7 know if Verizon actually does trimming outside of
8 Attorney Del Vecchio's house?

9 A. No. I don't have in front of me. I noted it didn't
10 have a date on it. And I would call to refer it to the
11 selectmen from Canton if you really want to know what's
12 going on there.

13 MR. DEL VECCHIO: Whatever was done was
14 well done.

15 MR. EATON: Thank you, Mr. Chairman.
16 That's all I have.

17 CHAIRMAN GETZ: Mr. Epler?

18 MR. EPLER: No questions.

19 CHAIRMAN GETZ: I think we're going to
20 go to the bench's questions on these issues and then we'll
21 probably be close to the lunch recess and then we'll go
22 back to, I guess, Mr. Rubin on other issues in
23 Mr. Nestor's testimony.

24 Do you have questions?

1 CMSR. MORRISON: Yeah.

2 CHAIRMAN GETZ: Okay. We'll turn to
3 Commissioner Morrison first.

4 **EXAMINATION BY CMSR. MORRISON**

5 BY CMSR. MORRISON:

6 Q. Mr. Nestor, I glanced briefly, once again, at the MOU
7 signed between FairPoint and PSNH. One of the
8 startling things I see in that MOU is that there are
9 approximately 7,000 double poles. How did that happen?

10 A. I don't know exactly how it all happened, Commissioner.
11 Over time, you know, poles -- poles -- there's a
12 process. Let me step back.

13 There's a process. The telephone
14 company is always the last one usually off the pole.
15 So that, if a pole has been set and an electric has
16 transferred wires or then cable and then the telephone
17 the last one, there's a notice process. I won't get
18 into all the details here.

19 Q. Why don't you get into the details. I'd like to know,
20 because I really want to understand this, because this
21 is extraordinary.

22 A. My understanding is that there's a notice process of
23 being notified, if it's at the Verizon pole, where the
24 electricians have to come off first, the other parties

1 come off, and then Verizon gets notified and they're
2 supposed to come off. Depending on who's set area it
3 is, there's rules. It's a very complex area and this
4 is a lot of what's in the pole docket.

5 Q. Let's stop with the pole docket, please. We've got --
6 I've got 7,000 poles ---

7 A. Mm-hmm.

8 Q. --- I've got FairPoint committing to clean up in 36
9 months. That's about 194 poles a month. That's a heck
10 of a legacy you've left them, isn't it?

11 A. In what way?

12 Q. The amount of -- the volume of work.

13 A. As far as -- as far as if you want to get rid of double
14 poles, yes. But there's also ---

15 Q. Well, there are -- double poles are not supposed to be
16 out there.

17 A. I don't know what that's based on. I've never heard
18 that.

19 Q. Okay.

20 A. I think -- in fact, I think -- I know you don't want to
21 hear about the pole docket, but I think there's a
22 disagreement as to what a double pole is, whether it is
23 a public-safety problem or not.

24 Q. Towns consider double poles problems. Is that a

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1 generally good statement?

2 A. I would say towns, as a general proposition, for the
3 esthetic reasons, don't prefer them. But just as towns
4 do not, for example, want to see, in many cases,
5 telephone wires going through towns even if they're not
6 on a double pole.

7 Q. How many double poles has Verizon removed in 2007?

8 A. I don't know, myself.

9 Q. I'd like that as a record request. And I'd also like
10 it for 2006, 2005, all the way back to 2000, because
11 this is abusive. This is a public utility being
12 abusive to the state.

13 Beyond that, if -- if -- how many poles
14 do your teams set on an average day?

15 A. On an average day?

16 Q. Yes.

17 A. I don't know how many they set on an average day. It
18 would be based on need and, you know, programs,
19 constructions, that kind of thing.

20 CMSR. MORRISON: I'd like that as a
21 record request, if someone could go back in maintenance
22 records for that same time period. And I'd like to see
23 how many poles are set on an average day. I've got to
24 believe your maintenance records show them. I now

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1 understand how there are 7,000 poles out there.

2 Everything is obfuscation.

3 I've got nothing else.

4 CHAIRMAN GETZ: And the exhibit numbers,
5 Mr. Del Vecchio, do you have those?

6 MR. DEL VECCHIO: Twenty-nine would be
7 the period of time associated with the number of double
8 poles, and 30 would be the number of poles set on an
9 average day, I believe it was, Commissioner Morrison?

10 CMSR. MORRISON: Yes.

11 CHAIRMAN GETZ: Thank you. Commissioner
12 Below?

13 **EXAMINATION BY CMSR. BELOW**

14 BY CMSR. BELOW:

15 Q. Okay. Mr. Nestor, would you agree that New Hampshire
16 law requires every public utility to furnish facilities
17 that are reasonably safe and adequate?

18 A. Yes. That's my understanding.

19 Q. Okay. Looking at Verizon Exhibit 26, the joint
20 ownership agreement between New England Telephone and
21 Telegraph and Public Service Company of New Hampshire
22 -- do you have that?

23 A. I don't. Is there a specific ---

24 CMSR. BELOW: Can we provide a copy to

the witness, someone? Verizon Exhibit 26.

2 A. I have it.

3 MR. DEL VECCHIO: Would you object, sir,
4 if I stand up there?

5 Q. If you turn to page 2, Article 5...

6 A. "Construction Standards," that paragraph?

7 Q. Yes.

8 A. Okay. I have it.

9 Q. Would you agree that that requires the maintenance of
10 all poles, guys and anchors and all attachments of both
11 parties to conform to the applicable provisions of the
12 latest edition of the National Electrical Safety Code?

13 A. I would agree that's what those words say, but I'm also
14 -- my understanding of the National Electrical Safety
15 Code is that they are guidelines and not mandates.

16 Q. So what are you saying? That maintenance doesn't have
17 to conform to the provisions of the National Electrical
18 Safety Code?

19 A. No, not at all. This is an issue that is in conflict.
20 I hate to keep bringing it up, but it's an issue where
21 both sides have put in conflicting information in the
22 pole docket.

23 Q. Do you have -- did you review the testimony of Thomas
24 Meissner in preparing your testimony?

1 A. Yes, I did read it, yes.

2 Q. Okay. Is part of the purpose of your testimony to
3 provide Verizon's response to the pole and tree-
4 trimming issues that were raised in the testimony of
5 Unitil, PSNH and National Grid?

6 A. It's my understanding the issue -- they listed seven
7 issues, I believe, six of which they said were
8 addressed by the MOU of FairPoint, and I addressed the
9 residual issue.

10 It was not my intent to litigate the
11 pole docket in this docket, because I knew the process
12 hadn't even received all of the information in
13 evidence. So my testimony was particularly related to
14 the -- I'll call it the seventh issue, because the MOU
15 has resolved the first six issues.

16 Q. So is that a yes or no?

17 A. I was aware of it. I read it. I did not directly
18 address it in my testimony. So if you're asking me did
19 I directly address it, no.

20 Q. Okay. Do you have available a copy of Thomas
21 Meissner's prefiled testimony?

22 A. No, I don't. It's over there.

23 I have it.

24 Q. Okay. I don't know if there's a green page towards the

1 back, but towards the back, there's a UES Schedule
2 TPM-2, page 1 of 12.

3 A. If you could hold on one second, mine's not color-
4 coded.

5 Is it -- just so I'm sure I'm on the
6 same page, excuse me, "Section 21, General
7 Requirements," the last page?

8 Q. Yes.

9 A. I have it, then.

10 Q. Do you understand this to be a part of the electrical
11 safety -- National Electrical Safety Code?

12 A. It doesn't -- it doesn't indicate what the document is,
13 but...

14 Q. Well, I think that's -- it's referred to in the body of
15 the testimony, which I thought you had reviewed.

16 A. I did. I'm just looking at the -- if he's asserted
17 it's that, I have not reviewed the entire, you know,
18 united electrical code. But if he's referred to it,
19 okay.

20 Q. Okay. Well, if you look at 214A2, could you read what
21 that says?

22 A. Sure. Do you want me to read the note, too?

23 "Inspection: Lines and equipment shall
24 be inspected at such intervals as experience has shown

1 to be necessary. Note: It is recognized that
2 inspections may be performed in a separate operation or
3 while performing other duties, as desired."

4 Q. Okay. And if you'll take it subject to check that
5 that's a provision of the latest edition of the
6 National Electrical Safety Code, then would you agree
7 that that, to some extent, governs the inspection of
8 lines and poles under the joint ownership agreement?

9 A. It clearly plays a role. And I think we've indicated
10 -- I think maybe you asking a question. And that's
11 referring to it in the pole docket, that Verizon
12 performs its inspections when the crews arrive at the
13 pole to inspect the pole. They do it while performing
14 other duties. They don't necessarily do it in the way
15 the Electricians do it. And that's all in the pole
16 docket.

17 Q. Turning back to Verizon Exhibit 26, IOP No. 6, can you
18 find that?

19 A. Hold on. Excuse me. I've got it.

20 I have it. Specific page?

21 Q. IOP No. 6, it's page 16.

22 A. I have it. Thank you.

23 Q. Would you read item number 1 there?

24 A. Sure. Sure. "All joint poles shall be inspected

1 initially at or before the age of twenty years. Poles
2 shall be reinspected at a maximum of ten-year intervals
3 thereafter."

4 Q. Would you agree that that governs the frequency that
5 poles are to be inspected, the interval that they're
6 expected to be inspected at under the joint ownership
7 agreement?

8 A. It's a provision, yes. It clearly is a provision, yes.
9 And again, our way of meeting -- our way of meeting
10 that provision may be different than the electric
11 companies.

12 Q. Can you represent -- can you testify today here that
13 all of the poles that are twenty years or older are
14 inspected at least once every ten years?

15 A. All I remember from reading the information on this in
16 the pole docket is that our people do their inspection
17 in realtime. I don't recall as to when they feel every
18 pole has then been reviewed. I mean, again, that
19 docket -- I don't want to keep belaboring it, but
20 that's where that information sits.

21 Q. So you don't know if poles that are at least 20 years
22 old are inspected at least once every ten years after
23 they're 20 years old?

24 A. I personally don't, but there may be engineers and

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1 people in the company who have that information.

2 Q. Okay. Do you keep records, written records,
3 documentation of when each pole -- of its age and when
4 it's inspected?

5 A. I know we have records on poles. As to what exactly is
6 all on that record, I can't tell you on a personal
7 nature. I know the company has records and I know
8 that's probably the kind of information we would bring
9 forward if that was an issue the Commission wanted to
10 hear in the pole docket.

11 MR. DEL VECCHIO: Excuse me,
12 Commissioner Below. If you would like, also, we would be
13 happy to answer some of these in record responses.

14 CMSR. BELOW: Okay. I guess I would
15 make a record request of your written documentation as to
16 the frequency and record of inspection of poles.

17 CHAIRMAN GETZ: That will be Exhibit 31.

18 BY CMSR. BELOW:

19 Q. If you turn to IOP No. 7 in Verizon Exhibit 26 ---

20 A. I have it.

21 Q. Under the maintenance trimming section ---

22 A. Mm-hmm.

23 Q. --- could you read A?

24 A. Sure. "Maintenance trimming shall be done on a joint

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2 basis when both companies have a need. When it is
3 agreed that both parties will benefit from such joint
4 tree-trimming, the division of costs will be 75 percent
5 electric company and 25 percent telephone, paren, see
6 Attachment 1, close paren."

7 Q. Okay. This seems to incorporate, by reference,
8 Attachment No. 1?

9 A. Yes.

10 Q. And if you turn to -- if you turn to Attachment No. 1,
11 that's entitled "Maintenance Trimming"; correct?

12 A. Yes.

13 Q. And what does this show, in your understanding?

14 A. In my understanding, it's a diagram of how the trimming
15 will take place, basically, you know, with setbacks and
16 those types of things. And down below, it has the
17 division of costs.

18 Q. Does it indicate that trees should be trimmed 8 feet
19 back from the joint pole, both towards the tree line
20 and towards the road?

21 A. Well, it says the Electrics -- yes, it does. A simple
22 yes. Although, the one diagram, it says "entire
23 distance," whatever that is.

24 Q. From the pole to the road.

A. Correct.

1 Q. That appears to be for road-side trimming. And the
2 other diagram is for off-road trimming.

3 A. Yes. That's what it appears to be, yes.

4 Q. All right. So it seems to suggest an overall clearance
5 8 feet back to the tree line or, if there's a road, the
6 entire distance from the pole to the road; is that
7 correct?

8 A. That's how I would understand this, yes.

9 Q. And then, it indicates the division of those costs
10 would be 75 to PSNH and 25 percent to the telephone
11 company; is that correct?

12 A. Yes. When 1A applies, yes.

13 Q. And would it be fair to say that 1A would not apply
14 when either the electric or the telephone utility
15 doesn't have facilities on a particular pole?

16 A. I can speak for the telephone. Yes, if we don't have
17 facilities on a pole, then we would not have a need,
18 obviously, to have the pole trimmed.

19 Q. Right. And you're saying you think that there's --
20 even when vegetation has encroached within this 8-foot
21 trimming boundary, it doesn't necessarily mean, from
22 your point of view, that trees need to be trimmed.

23 A. Again, it's for Verizon's need. The telephone plant
24 being different than the electric plant. And the

1 determination is made under the -- the IOP 7 is when
2 both parties find the need and both parties agree, that
3 there's mutual consent. That could be different
4 opinions because of the fact that their plant differs
5 from our plant and their needs differ from our needs.

6 Q. Does Attachment 1 differentiate, in terms of the
7 distance that either the telephone utility or the
8 electric utility would trim, based on the wire,
9 distance from electric or telephone wire?

10 A. I'm assuming this reflects, whoever does the trimming,
11 that this is the -- this is the general -- I mean,
12 clearly, once you get out into the real world and you
13 find different things and where things are, they might
14 choose to do -- you know, the operations people might
15 choose to do what they need to do. But this is the --
16 this is the basics here.

17 Q. IOP No. 9, which is on page 23 -- could you read
18 numbers 1 and 2?

19 A. Okay. "The party requesting the work to be performed
20 or requesting joint ownership shall initiate the
21 exchange of notice. In the case where the work is of
22 mutual need for both parties, paren, i.e. road job,
23 close paren, the exchange of notice shall be initiated
24 by the custodian of the specific maintenance area."

1 Q. So that would seem to suggest that, if there's tree
2 trimming that, say, PSNH felt was needed and would be
3 of mutual benefit -- a mutual need to both parties --
4 then if it's within their maintenance area, they should
5 initiate it and send an exchange of notice to the
6 telephone company; is that correct?

7 A. To the extent they believe that Verizon has a need or
8 believes it may -- Verizon may find there is a benefit,
9 they should send the notice, yes.

10 Q. And likewise, vice-versa, if there's a need for tree-
11 trimming within a Verizon maintenance area, then it
12 should initiate the exchange of notice to the other
13 party.

14 A. To the extent Verizon would be doing any tree-trimming,
15 yes. It could go the other way. I mean, it's mutual.
16 The contract's designed to be mutual, yes.

17 Q. Okay. And what does number 4 say?

18 A. It says, "The receiving party, upon verification that
19 the proposed work depicted on the exchange of notice is
20 necessary, will return the notice signed within thirty
21 days for the following type of work." I don't know if
22 you want me to read 'em all.

23 Q. No, you don't need to read them all.

24 A. But, basically, I think this was the timeframe I was

1 talking with Mr. Eaton about, that what the agreements
2 say and then what, you know, transpires in real life
3 between the parties is different from that, in both
4 cases.

5 Q. Right. And -- but that suggests that, if there's
6 agreement, you should return it within thirty days.

7 A. I don't disagree with that. It should be. I think, in
8 real life, though, there's evidence that, you know,
9 those things do or do not happen.

10 Q. Okay. In number 6, that provides some modification to
11 that response. And in B, what does that say, 6B?

12 A. 6B says, "If the notice is unacceptable to the
13 receiving party, corrections shall be discussed between
14 the representatives of the companies. The original and
15 the revised copy should be returned to the originating
16 party within thirty days."

17 Q. So does this suggest that, if you don't agree -- if the
18 notice is unacceptable -- that there should be a
19 response and a discussion within thirty days?

20 A. That's what this says. Again, that's -- this is what
21 the process should be. And my understanding is that
22 there's -- obviously, you've heard great disagreement
23 that these are followed in some cases, not followed, on
24 both sides.

1 Q. Okay. If we look at your rebuttal testimony, there's
2 an exhibit attached to it, JFN-V, which I think was
3 probably a data response request in that pole docket DM
4 05-175; is that correct?

5 A. Yes. That's one that we got from that docket to
6 address some of the issues, yes.

7 Q. And it concerned questions of whether the inter-
8 operating procedures were -- always conformed to the
9 requirements with regard to pole maintenance; is that
10 -- the requirements of the joint ownership agreement;
11 is that correct?

12 A. Yeah. As a -- on a high level, this is exactly what
13 I'm talking about. These are examples where we may say
14 they didn't follow it. And they have examples where
15 they say we didn't follow it. But these are examples
16 where our people are indicating, in this response, that
17 they didn't follow -- we believe they didn't follow the
18 process. But that's the disagreement.

19 Q. On page 2 of that attachment, you have an item, IOP
20 No. 17, joint trim 2004.

21 A. Mm-hmm.

22 Q. That states that, during year 2004, Unitil did not
23 follow item 5A at IOP No. 17 requiring it to provide an
24 exchange of notice for Verizon New Hampshire's review

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1 and agreement of such need to be trimmed; is that
2 correct?

3 A. That's what that says, yes.

4 Q. Did you assert that they did not provide an exchange of
5 notice for 2005, 2006, or 2007?

6 MR. DEL VECCHIO: Excuse me, if I may,
7 Mr. Commissioner. I apologize. This is a discovery
8 response by two other respondents. It wasn't this
9 particular witness.

10 CMSR. BELOW: Okay.

11 A. Yeah. The gentlemen you see listed on this response
12 are -- one is one of our engineers, you'll see, and the
13 other is sort of the coordinator of the program.

14 Q. Okay. Well, to your knowledge, did Unitil not provide
15 an exchange of notice in '05, '06, or '07?

16 A. I don't know.

17 Q. You don't know whether they did?

18 A. One of the individuals here would know. I don't know.

19 Q. Okay. But this doesn't suggest that -- it doesn't
20 address 2005, '06 or '07.

21 A. Not there. I think there is -- there is some language,
22 I thought, about 2005, '6 and '7. I might be wrong.

23 Q. To your knowledge, is Unitil, in their testimony,
24 making any claim regarding 2004, in terms of

1 unreimbursed tree-trimming expenses?

2 A. I'm not a hundred percent sure what makes up their --
3 again, first of all, we don't have the number because
4 it's a moving target.

5 Second of all, there was the issue --
6 and this is in dispute -- of whether they were
7 continuing to bill on a forward basis amounts that
8 Verizon had said they wouldn't agree or had not agreed
9 to participate or weren't on Verizon's pole or were not
10 on the pole or whatever, and that some of the invoices
11 that are billed during that timeframe just carried
12 those amounts forward.

13 I understand there's also been testimony
14 that says no, they've been corrected. Those things
15 have been corrected. I can't verify one way or the
16 other on that, because I'm not dealing with the bills
17 on a daily basis.

18 And with respect to the PSNH amounts, I
19 understand those come from a rate case that has nothing
20 to do with these invoices.

21 Q. If you turn to the last page of Tom Meissner's
22 testimony, UES Schedule TPM-3, there is, I think, a
23 data discovery response in that other docket, DM
24 05-172, to a Verizon respondent, Martin Wilkinson.

Have you found that?

4 A. I'm sorry. Mine seems to -- my copy seems to end at
5 TPM -- oh, wait a minute. I have it. Yes, I do. I
6 have it.

7 Q. Does that look familiar? Are you familiar with that
8 document?

9 A. I have looked at a lot of documents in the pole docket.
10 I could have read it at one time. It doesn't strike me
11 as anything I focused on, but I may have read it.

12 Q. Well, I think it's also an exhibit that PSNH provided,
13 as well.

14 A. Oh, I read it there, yes. I mean, I just read it.

15 Q. And it's -- and it was a subject of all three
16 utilities' testimony, which is concerning the number of
17 double poles where there's a pending Verizon New
18 Hampshire transfer; is that right?

19 A. It's concerning transfer of poles, yes. That, it is.

20 Q. And the response is dated February 7th, 2006; is that
21 correct?

22 A. Yes.

23 CMSR. BELOW: Could I make a data
24 request that this summary be updated as of 6/30/07 and
25 9/30/07?

CHAIRMAN GETZ: Do you have that,

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1 Mr. Del Vecchio?

2 MR. DEL VECCHIO: I have it,
3 Mr. Chairman. I need to see whether we've compiled the
4 data as late as 9/30/07. I'm not sure that that would be
5 available, but we will see what is available.

6 CMSR. BELOW: Okay.

7 CHAIRMAN GETZ: And that will be
8 reserved as No. Exhibit 32, Verizon Exhibit 32?

9 BY CMSR. BELOW:

10 Q. And would you agree that this shows a large number of
11 transfers that are pending in excess of sixty days?

12 A. It shows the number of transfers, yes, and that's all
13 it basically shows. It shows number of transfers.

14 Q. That are pending.

15 A. That are pending. Oh, at this time, yes.

16 Q. At that time.

17 A. At that time.

18 Q. Right, right. And it has categories, in terms of under
19 sixty days and beyond that; right?

20 A. Yes. Yes, it does.

21 Q. Right, right. And most of the transfers are over sixty
22 days; is that correct?

23 A. For both the -- for both the telephone and electric,
24 without adding up the totals, the over-two-years ones

1 in both categories are the longest.

2 Q. Do you have an understanding if a pole -- if a transfer
3 is more than sixty days and it's in the electric set
4 area, who's responsible for removing the double pole
5 under the joint ownership agreement?

6 A. I remember reading something about it. If it's in an
7 electric set area and we are the last ones to move the
8 pole -- I probably shouldn't go beyond -- I remember
9 reading some of the documentation as to who goes when
10 in the pole docket, but I don't have a full
11 understanding.

12 My recollection is cloudy as to when we
13 would -- we would remove it or then the electricians would
14 step in and they would remove it. It differs, but I
15 know there's that general issue.

16 Q. Do you still have Verizon Exhibit 26?

17 A. Which is...? I'm sorry.

18 Q. The joint ownership agreement?

19 A. Back to that?

20 I have it.

21 Q. And IOP No. 10, page 27, appears to address this, would
22 you agree?

23 A. In a general -- yeah, it addresses the issue of removal
24 of joint poles. Is that your question?

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1 Q. Yes. And in 1C, could you read 1C?

2 A. "Upon receipt of the notification of request to
3 transfer facilities, each company is responsible for
4 transferring its facilities within sixty days, unless
5 otherwise agreed. After one of the joint owners has
6 given notice to the other owner, in accordance with
7 paragraph B above, that a pole is ready to be
8 transferred, all liability for the pole, including
9 removal, will be that of the other company if the
10 company does not remove its facilities within the
11 agreed time."

12 That's what I was talking about.

13 Q. Okay. So that, if -- you know, if the conditions of
14 the paragraph are met and the telephone company, for
15 example, didn't complete its transfers within sixty
16 days of notice that the pole's ready to be transferred,
17 then they would be responsible for the pole-removal
18 cost, essentially, regardless of whether -- regardless
19 the which maintenance areas ---

20 A. That's what I was referring to before. There's
21 different criteria that meet -- that require that
22 sometimes we would -- even though it's our set area or
23 their set area, we would be responsible for paying,
24 even though, like C says, in that particular case, if

1 you don't remove it within sixty days, they can remove
2 it and then bill us for it, that type of thing.

3 Q. And vice-versa.

4 A. And vice-versa. That's what I was referring to.

5 Q. Okay. The joint ownership agreement, does that allow
6 for third-party attachments, such as cable companies
7 and competitive local exchange carriers?

8 A. I don't remember the general categories of this. Like
9 I said, I read it once or twice and then I focused on
10 the specific tree-trimming maintenance. I don't know
11 if it gets into pole attachments or not.

12 I would have to go through it again.
13 But I don't know if it does. If there's a specific
14 section you want me to look at, I'd be glad to do it.

15 Q. Well, I guess it's not clear in the Verizon Exhibit 26.
16 But in the agreement with Unitil, which is Schedule
17 TPM-1 of UES Exhibit P1...

18 A. Are we talking the one entitled -- do you have a
19 particular page? Because there's 77 pages there.

20 Q. Yeah. I did have it, but now it's gone.

21 A. There's one called "Unauthorized Attachment" that I
22 see.

23 Q. "Sole Agreement," Article 4, on page 6 of 77, which is
24 actually also in the PSNH agreement -- it appears to be

1 pretty much the same language -- does it provide that
2 the parties have jointly contracted and may, in the
3 future, jointly contract with community TV companies
4 and other companies for joint user space rental of
5 poles covered by this agreement?

6 A. Yeah. There would be attachment agreements with the
7 various entities that would also attach to the pole.

8 Q. And do the utilities receive revenue, typically, when
9 these are commercial attachments?

10 A. Yes. I believe -- well, speaking for the telephone
11 company. I don't know about all utilities. But for
12 the telephone company, yes. If we receive -- we would
13 receive revenue, for example, from a cable company that
14 utilized our poles to attach.

15 Q. And when that occurs, how do you split the revenue with
16 the joint owner, the other joint owner of the pole?

17 A. Now, you're getting into our accounting guys. And
18 whatever the process is they follow is what I know.

19 Q. Okay. And do you know if that revenue helps defray the
20 capital costs and maintenance costs of the poles?

21 A. I don't -- well, let me put it this way: From what I
22 understand, New Hampshire is a rate-of-return state.
23 And so, at a time of a rate case, all of the revenues
24 and all of the expenses are looked at, but they're not

1 segregated that this goes to that or this goes to that.

2 It's -- you know, you would get the
3 revenue numbers that would come in and that would be
4 included in however it was booked, and then you'd do
5 the analysis on expenses and investment and compare the
6 two. And, you know, that's a general rate-of-return
7 case.

8 Q. Do you know if those charges for third-party
9 attachments either implicitly or explicitly recoup part
10 of the cost of maintenance, including tree-trimming?

11 A. I know, from past experience, when I did the -- when I
12 was with the Massachusetts commission and I actually
13 did the pole-attachment docket, that the rates that
14 they were trying to set, based on the FCC, were
15 designed in a way to try to recover the associated
16 costs to that. I couldn't speak for it here, but I do
17 know that that principle has been used sometimes in
18 setting attachment rates by telephone utilities.

19 CMSR. BELOW: Okay. That's all. Thank
20 you.

21 MR. DEL VECCHIO: I was going to
22 suggest, Commissioner, if you'd like, this is a pretty
23 complicated area with pole-attachment rates, particularly
24 as prescribed by the FCC. I'd be happy to try to provide

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1 further information, if you'd like, in the way of a record
2 response.

3 CMSR. BELOW: Sure. To the extent that
4 the FCC has formulas or set rates for pole attachments,
5 what the basis for those rates and what's included in
6 them, that would be a helpful data response.

7 WITNESS NESTOR: That is my
8 understanding, that the FCC has those.

9 MR. EPLER: Commissioners, if it pleases
10 the Commission, we would also like to be able to provide
11 supplemental information that addresses that question.

12 CHAIRMAN GETZ: Let me try to understand
13 this: Are there two possible or multiple worlds of
14 arguments about what that ---

15 MR. EPLER: There are possible
16 disagreements of interpretations. There's not necessarily
17 a disagreement, but there are possible differences of
18 interpretation on this data.

19 CMSR. BELOW: I mean, the core of the
20 question is whether the attachment rates are intended,
21 either explicitly or implicitly, to help recover a share
22 of the maintenance costs, including tree-trimming costs.

23 CHAIRMAN GETZ: Mr. Mandl, you'd like to
24 submit something on this?

1 MR. MANDL: I would not. I would not
2 want to submit anything, but I am a little leery of the
3 pole owners submitting something and, you know, should we
4 have disagreements with the way in which they characterize
5 the FCC rules, I might want an opportunity to respond to
6 that.

7 CHAIRMAN GETZ: Well, I guess what I
8 would like is one response on what the FCC's position is
9 on pole attachment. And I'd ask Mr. Del Vecchio and
10 Mr. Epler or Mr. Mandl, anyone else who wants to
11 participate, to see if we can get some agreement on one
12 answer to Commissioner Below's record request.

13 All right. At this time, yet again, it
14 appears the best laid plans of mice and chairmen have gone
15 awry. Let's take lunch and return at 2:30. And then, we
16 will resume with Mr. Rubin questioning Mr. Nestor. Thank
17 you.

18 MS. FABRIZIO: Mr. Chairman, I'm sorry,
19 could I get a determination from you as to whether or not
20 the CLEC panel will be on today so that we can inform them
21 for travel-planning purposes?

22 CHAIRMAN GETZ: Well, I mean, we still
23 have to finish Mr. Nestor, then we go to Dr. Peres, then
24 to Ms. Baldwin. And we have -- is Mr. Pelcovits here?

1 MR. MANDL: Yes, he is.

2 CHAIRMAN GETZ: And you said the panel.
3 After that, we have Mr. Lippold on the MOU and -- MOUs.
4 And then we have Ms. Griffin. That's all I have is left.
5 So you're just basically asking does Ms. Griffin need to
6 be here today?

7 MS. FABRIZIO: Actually, there is
8 another note on that. She has concluded a stipulation
9 agreement with segTEL obviating the need for her to go on
10 the stand. That will be filed today.

11 CHAIRMAN GETZ: Okay. So then, when you
12 were saying the ---

13 MS. FABRIZIO: The CLEC panel.

14 CHAIRMAN GETZ: Meaning...?

15 MS. FABRIZIO: We're getting inquiries
16 as to when they're likely to need to be here. And that
17 would include the Lippold testimony.

18 CHAIRMAN GETZ: Okay. But what you're
19 talking -- when you said -- referring to the panel, are
20 you talking about Thayer and Katz? Who are you referring
21 to?

22 MS. FABRIZIO: I believe several of the
23 CLEC parties would like to be here for the Lippold panel
24 testimony, and they have inquired as to the schedule.

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1 CHAIRMAN GETZ: I don't see how we're
2 going to get to Mr. Lippold today. I think we should save
3 him till last. So I think it would be fair ---

4 MS. HATFIELD: Mr. Chairman, I do want
5 to let you know that Susan Baldwin is not available after
6 4:00 o'clock today, so it could work that perhaps she
7 could go in the morning and perhaps Mr. Lippold could plan
8 to go after Mr. Peres.

9 CHAIRMAN GETZ: Let me make a
10 suggestion. During the lunch hour, see if we can come to
11 a meeting of the minds among the parties and the several
12 witnesses. If we can accommodate the schedules, I don't
13 think we have any particular preference about the order,
14 as long as we get everyone taken care of. And I just
15 don't see how it happens today, so it looks like we're
16 going into tomorrow. So let's resume at 2:30.

17 (Lunch recess taken at 1:30 p.m.)

18 (Hearing reconvened at 2:45 p.m.)

19 CHAIRMAN GETZ: Good afternoon. We're
20 back on the record in DT 07-011. And I guess, turning
21 to -- well, before we turn to Mr. Rubin, is there anything
22 else we need to address before the scheduling agreements
23 or -- Ms. Hatfield.

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

1 We did discuss an order for this afternoon. And I think
2 what people have agreed to is that after Mr. Peres, that
3 Mr. Pelcovits would go, so that Ms. Baldwin would start
4 off tomorrow morning.

5 CHAIRMAN GETZ: Okay. So then we'll be
6 continuing until sometime between five and six to get
7 through Mr. Nestor, Dr. Peres and Mr. Pelcovits. Okay.
8 And we have to take probably about a 10-minute break
9 around -- 15-minute break around 4:00, just for -- in case
10 you're wondering where we went.

11 Mr. Rubin.

12 MR. RUBIN: Thank you, Mr. Chairman.

13 **CROSS-EXAMINATION**

14 BY MR. RUBIN:

15 Q. Good afternoon, Mr. Nestor.

16 A. Good afternoon, Mr. Rubin.

17 Q. In your opinion, would improperly maintained poles pose
18 a safety hazard to Verizon line workers?

19 A. In my -- I'm sorry. Could you state the question again
20 to me?

21 Q. In your opinion, would improperly maintained poles pose
22 a safety hazard to Verizon line workers?

23 A. If a Verizon line worker were working on that pole, it
24 could.

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- 1 Q. And would that be true if the pole itself were
2 unsafe -- for example, a pole that had rotted?
- 3 A. Yes.
- 4 Q. Would it also be true if vegetation had encroached near
5 the electric lines on that pole?
- 6 A. It's possible.
- 7 Q. Okay. In your opinion, does Verizon have an obligation
8 to maintain a safe working environment for its
9 employees?
- 10 A. As a general proposition, yes.
- 11 Q. All right. Let's turn to your testimony on Page 7.
- 12 A. I have it.
- 13 Q. I'm looking at Lines 17 through 20, where you suggest
14 that Dr. Peres ignored the fact that, and I'll quote
15 here, "Customers are free to shop for
16 telecommunications services among competing providers
17 and technologies." Do you see that?
- 18 A. Yes, and the sentence continues. But yes.
- 19 Q. Is that true throughout Verizon's New Hampshire service
20 area or only in certain parts of it?
- 21 A. I would say it's true throughout the service area.
22 There may be different technologies or different
23 numbers of technologies in certain areas.
- 24 Q. Could you be more specific about what you mean?

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1 A. Sure. For example, resale is available everywhere. So
2 a carrier can resell Verizon's network anywhere,
3 including the North Country or whatever, or places
4 where they say it's urban and there's not a lot of
5 population. We have the UNI platform that's made
6 available also to CLECs. We have our own network.
7 When you put in broadband, it allows for VoIP and those
8 types of providers.

9 Q. Well, let me just stop you for a second, because from
10 your answer I may have misunderstood what you meant in
11 your testimony. Are you saying that competition is
12 available throughout Verizon service area or that it
13 could be available throughout Verizon service area?

14 A. Both. I'm saying both, because my understanding is the
15 local exchange market is open to competition. Whether
16 a carrier has chosen one of the methods I've talked
17 about, there may be limited carriers in certain areas
18 or there may be multiple carriers in an area using the
19 different technologies, including deploying your own
20 facilities.

21 Q. And when you're talking about customers being free to
22 shop for other services, are you talking about all
23 customers or just business customers?

24 A. I'm talking about all customers.

1 Q. Now, over on Page 8 of your testimony, and continuing
2 for the next few pages, you discuss various
3 service-quality metrics. Now, first, when a customer
4 in New Hampshire calls Verizon today, where does that
5 call go?

6 A. Calls -- can you give me -- calls for installation?
7 Calls for maintenance? It would go to a call center,
8 depending on what they were calling for.

9 Q. All right. Let's start with a repair call. Where does
10 that go?

11 A. I'm not exactly sure where the repair bureau is in New
12 Hampshire. I'm trying to remember. I know at one
13 point I had a list of all of them.

14 Q. Okay. Are all of those call centers and repair centers
15 handling calls only for New Hampshire?

16 A. No. I believe that's the issue that we heard earlier
17 testimony on, about having to realign some of the work
18 as to state -- different states are handling different
19 piece parts, and I'm trying to recall which parts.
20 Some -- some are in Rhode Island and Mass., and you
21 need to get all of the work in the north -- the call
22 centers in the north and in the south need to get it
23 down there. That's that issue.

24 Q. Sure. Let's look on Page 9 of your testimony. And the

- 1 number that you talk about on Lines 5 and 6 seems to be
2 very high. I understand you're claiming the number
3 itself is confidential, so please don't say it
4 inadvertently. But is the number that high because
5 that includes calls from throughout New England and not
6 just New Hampshire?
- 7 A. Yes, that's in my Footnote 5.
- 8 Q. But the numbers you show on Lines 2 and 4 on that page
9 are New Hampshire only?
- 10 A. No. Those, again, are -- hold on one second. I have
11 to just check. I think the installation numbers come
12 generally from my proprietary exhibit, the
13 service-quality reports. And I believe the repair
14 numbers that I cite there, I'm trying to remember
15 whether that also comes from a service-quality report
16 or a data request. I'm trying to remember which one.
17 But that would be my attachment, Exhibit 1B, I believe,
18 which has the number of installation orders on it.
- 19 Q. Okay. But my question was -- let's just take them one
20 at a time. The number you show on Line 2, is that just
21 for Verizon New Hampshire?
- 22 A. Yes, I believe that is a Verizon New Hampshire number.
- 23 Q. Okay. And the number you show on Line 4, is that just
24 Verizon New Hampshire?

1 A. That's my understanding, that's a Verizon New Hampshire
2 number.

3 Q. And you referred to the realignment that's taking
4 place. And we've explored that with our witnesses, but
5 I just want to quickly get your understanding. Is it
6 your understanding that that process will result in
7 calls being routed to different locations than they are
8 going to today?

9 A. That's my -- that's my general understanding. That's
10 what it's designed to do.

11 Q. So, for example, repair calls that today might be going
12 to Massachusetts, for example, will be going to some
13 location within the three northern New England states.

14 A. As Mr. Smith I believe testified, as it relates to the
15 work in New Hampshire, it should be answered in the New
16 England states, yes.

17 Q. And that as a result of that process, there will be
18 different people handling the calls than handle them
19 today, and they'll have to -- they'll be going through
20 some kind of training process and so on; is that right?

21 A. I don't know about different, but they'll be going
22 through training process and that type of thing, yes.

23 Q. Now, on Page 9, if we look at the number on Line 2 for
24 installation calls, if my math is right, that would

1 | imply roughly one installation request for about every
2 | two access lines in New Hampshire? Is that right?

3 | A. I think when we're talking installation, it comes from
4 | the service-quality report numbers, which I believe
5 | also include orders for things like adding features to
6 | lines, anything dealing with installation, not just an
7 | outside line.

8 | Q. And the number you show on Line 4 for repair calls,
9 | again, that would imply one repair call each year for
10 | about every five lines that Verizon has in New
11 | Hampshire? Is that right?

12 | A. I'm trying to remember the data request or where that
13 | exactly came from. I don't know if it -- no. The
14 | number of access lines in New Hampshire -- I won't give
15 | out the proprietary number -- is about -- well, looking
16 | at that number, it's about a magnitude of five on
17 | the -- about a magnitude of five. And that's also on
18 | the service-quality reports.

19 | Q. Right. I think that's what I said, unless I misspoke,
20 | that it's about one repair call for every five access
21 | lines in the state on an annual basis.

22 | A. I agree. I'm sorry. I was taking it the other way. I
23 | agree.

24 | Q. Okay. So, on average, it would mean about 20 percent

1 of your customers call in with some type of problem
2 each year? Is that what that means?

3 A. Some type. It could be out of service, it could be
4 static, any type of a call.

5 Q. How did you determine that that is an acceptable or
6 reasonable level of service?

7 A. I don't believe I say anything about the level there.
8 I'm just citing it for purposes of giving an idea here
9 in this portion of my testimony of the volume that we
10 handle, and basically that it's a customer interaction
11 where there's an opportunity to meet or fail the
12 customer. That's how I'm saying it.

13 Q. Is it your opinion -- and perhaps I misread your
14 testimony. But is it your opinion that Verizon's
15 existing level of service is adequate?

16 A. Yes.

17 Q. And that includes having roughly 20 percent of your
18 customers calling in each year with some type of
19 service problems; is that right?

20 A. That is the number, yes, because they're not all
21 out-of-service calls.

22 Q. In your current position, do you have any
23 responsibilities for Verizon's customer-service call
24 center or repair functions?

A. No, I do not.

2 Q. Okay. Do you have any responsibilities involving the
3 actual delivery of telephone service to customers in
4 this state?

5 A. Well, I have overall responsibility for regulatory
6 matters and legislative matters. So, to the extent
7 they interact with a regulatory body or a legislative
8 body, I have responsibility to become involved.

9 Q. All right. But you are not -- I guess I would separate
10 maybe what we could call maybe administration of the
11 company and the delivery of service to customers.

12 A. There are operations directors who have a direct
13 day-to-day responsibility for those functions who I
14 interact with.

15 Q. Okay. But you're not part of that group. You're in a
16 separate group, and there's some communication between
17 the two.

18 A. That's correct.

19 Q. Okay. Now let's go back to Page 3 in your testimony.
20 And I can't see your hands from here. So if you just
21 let me know when you have it --

22 A. I have it in.

23 Q. Thank you. On Lines 11 through 13, you criticize Dr.
24 Peres and Ms. Baldwin for, you use the term "incorrect

1 or selective information." Do you see that?

2 A. Yes, I do. On 12 and 13?

3 Q. Yes.

4 A. Yes, I see that.

5 Q. All right. I would like to focus for a moment on your
6 review of the analysis conducted by Dr. Peres.

7 A. Okay.

8 Q. Are there any aspects of his analysis that you believe
9 to be incorrect?

10 A. I guess what -- can I get a little clarification? If
11 your question is do I disagree with the ARMIS numbers
12 that he utilized, the answer would be no. If it's that
13 he analyzed them and reached conclusions, the answer
14 would be yes.

15 Q. All right. Now, I'm glad you made that distinction.
16 I'm not asking if you agree with his conclusions or the
17 way he characterized the data. I'm asking do you take
18 issue with any of the data itself?

19 A. Oh, actually, the data as he reported it and put it in
20 his testimony? No, I do not take issue with the data.
21 It came from ARMIS, yes.

22 Q. And the same would be true for any data that he used
23 from reports you filed with the New Hampshire
24 Commission. You're not taking issue with the data

1 itself; is that right?

2 A. I'm not taking issue that Dr. Peres took those numbers
3 and put them in his testimony. I have no mistake or
4 error comment on any of the data he put in.

5 Q. All right. Let's turn over to Page 5 in your
6 testimony.

7 A. I have it.

8 Q. And you show Verizon's capital investment in New
9 Hampshire for the years 2003 through 2006. And I
10 understand that Verizon claims the numbers are
11 confidential. Obviously, we're on the public record.
12 So if you need to refer to the specific numbers, just
13 let me know, and we'll come back to it on a sealed
14 record.

15 A. Okay.

16 Q. Now, first, would I be correct that in the table on
17 Page 5 you have included Verizon's investment in FiOS
18 in New Hampshire?

19 (Witness reviews document.)

20 A. Yes, I believe FiOS -- yes. FiOS is in one, two,
21 three, four, five. I believe it's in the sixth column
22 down. Most of it's in the sixth column down, let me
23 put it that way. There's some other that's not of that
24 category. I'm trying to be careful here not to use the

1 data.

2 Q. Well, just to be clear, I believe it's the numbers that
3 are confidential but not the headings.

4 A. Okay.

5 Q. So are you talking about central office equipment and
6 outside plant as containing FiOS-related investment?

7 A. Yes. Thank you. Those are the major categories. I
8 understand there was a data request that indicated
9 there was some other small numbers of investment. But
10 those are the major two categories.

11 Q. Right. It also might appear in the last line, TPUC,
12 which is telephone plan under construction. There
13 could be some FiOS-related investment in that as well?

14 A. I don't recall seeing it there. I remember the data
15 request that I saw had it in the central office,
16 outside plant categories and some one other I can't
17 recall. But that's where it mostly is.

18 Q. All right. Well, let me put this up on the screen and
19 then we'll try to go from there.

20 All right. Can you read that on your
21 screen?

22 A. I believe, yes. A couple of the categories are a
23 little blurry, but yes.

24 Q. Sure. What I've put on the screen is Page 16 from the

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1 S-4 filing that FairPoint made with the Securities and
2 Exchange Commission, that the Commission has taken
3 administrative notice in this case. And I'm sorry. I
4 guess I chopped off the very top of the page which
5 is -- no, I didn't. It's actually on the page before,
6 where it says that this is selected historical
7 financial data of Verizon's northern New England
8 business. Do you see that?

9 A. Yes, I do.

10 Q. All right. And I'm looking at the first line here,
11 which is capital expenditures. Can you read that okay?

12 A. Yes.

13 Q. And this shows data for the three states combined for
14 the years 2002 through 2006; is that correct?

15 A. It has also, I think, 2007 on it.

16 Q. I think that's the -- I think the first two columns are
17 just for the first quarter of '06 and '07.

18 A. But yes.

19 Q. Okay. And this shows that in the three states Verizon
20 has invested between a \$182 million and \$228 million
21 per year over the last five years. Would you agree
22 with that?

23 A. For the first line? Yes.

24 Q. In your testimony, the table on Page 5 lets us see what

1 portion of this investment was made in New Hampshire
2 over the last few years; is that right?

3 A. It would be somewhere in this -- in these numbers which
4 are the three states, the ones I'm looking at on the
5 screen.

6 Q. Right. So if we had a table similar to what's on
7 Page 5 in your testimony, if we had that same table for
8 the other two states, then the numbers should add up to
9 what we see here in the S-4 filing; is that right?

10 A. That would be for one of the accounting folks, 'cause
11 there may be some other things in there that I'm not
12 aware of.

13 Q. All right. Mr. Nestor, do you know how the capital
14 expenditure figures, either the ones you're looking at
15 here or the ones on Page 5 in your testimony, compare
16 to Verizon's contractual commitment to FairPoint to
17 make capital expenditures during 2007?

18 A. I do not.

19 Q. And here I'll make your life a little easier because I
20 have an extra copy.

21 A. Thank you.

22 Q. And what I'm showing you is Page 94 from the merger
23 agreement which is already in the record. The
24 agreement is Exhibit SES-1 to Mr. Smith's testimony.

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1 And I'm looking specifically at Paragraph 7.24, which
2 is called "Required Spinco business capital
3 expenditures." Do you see that paragraph?

4 A. Yes, I do.

5 Q. And would it be correct that Verizon has made a
6 commitment to FairPoint to invest only \$137.5 million
7 in capital expenditures during 2007?

8 A. I'm not familiar with this, but that's what those words
9 say.

10 Q. Do you know how much of this \$137.5 million investment
11 has been or will be made in New Hampshire during this
12 year?

13 A. Like I said, I'm not familiar with this. No. No, I do
14 not know.

15 Q. Do you know -- okay. I want to make sure you answered
16 the question I asked, 'cause your answer was really
17 quick. Do you know how much Verizon has actually
18 invested in capital expenditures in New Hampshire this
19 year?

20 A. I do not.

21 Q. Okay. Would you agree that Verizon's capital
22 expenditures in New Hampshire in 2007 will be
23 substantially less than they were in 2005 and 2006?

24 A. I can't judge from these documents, because, as I

1 understand it, the document you showed me that has the
2 hundred thirty-seven five hundred on it is Spinco,
3 which is the three states. And the categories that I
4 give on Page 5 of my testimony is just New Hampshire.

5 Q. Yes. And I'm trying to do this without having to go
6 into the confidential record. If we look at the
7 magnitude of the numbers -- if we look at the magnitude
8 of Verizon's capital investment in New Hampshire in
9 2005 and 2006, do you see any way that Verizon will
10 make a capital investment of the same magnitude in this
11 state in 2007, given what's in the merger agreement?

12 A. I don't. The best I can answer is, I know we gave a
13 data request that had some of the 2007 first-quarter
14 information. But I would be reluctant to project out
15 what 2007 would be.

16 Q. Are you familiar with FairPoint's planned level of
17 capital expenditures either in New Hampshire or in the
18 three states combined?

19 A. No.

20 Q. Then I won't ask you any more about that.

21 Now, going back to the table on Page 5
22 in your testimony, why did you include FiOS investment
23 in this table?

24 A. I think I addressed that on Page 6 of my testimony.

1 'Cause this table and other data was used to address
2 Ms. Baldwin's claim that Verizon had stopped investing
3 in the state. And it is our position that because FiOS
4 supports basic service, that for quality-of-service
5 purposes it must be looked at as an investment that
6 benefits basic exchange service. It's on Page 6.

7 Q. And I think it continues over onto Page 7, doesn't it?

8 A. Yes, it does.

9 Q. Now, in your opinion, was Verizon's investment in FiOS
10 in New Hampshire a reasonable and prudent investment?

11 A. That would be an issue to be taken up at a rate case,
12 if there ever was one.

13 Q. So you don't have an opinion about that.

14 A. Let me say that I can answer this way: All of our
15 investment we believe to be reasonable and prudent.
16 But the term you utilized is a rate case term that the
17 Commission would make a judgment on.

18 Q. Well, see, I'm -- obviously, I've read Pages 6 and 7 of
19 your testimony. And it sounds to me like you're saying
20 the investment in FiOS was a good thing for Verizon to
21 do because, and then you list a number of reasons,
22 including reducing outages and reducing maintenance
23 expenses and improving the quality of basic telephone
24 service. Is that a fair characterization of your

1 testimony?

2 A. Yes, that would be fair.

3 Q. But you're not willing to go the next step and say,
4 therefore, in your opinion, it was a reasonable and
5 prudent investment to make.

6 A. I would maintain it is. I thought you were using the
7 term -- that's a term of art, as you know, in a rate
8 case, as to how that term gets utilized. Verizon would
9 maintain yes, it is.

10 Q. In your opinion, would the failure to make that
11 investment have been unreasonable or imprudent?

12 A. I don't know how in a regulatory environment of a
13 rate-of-return model the failure to make investment
14 gets judged to be imprudent. Could you help me there?

15 Q. It was a simple question. I think you might be reading
16 more into it than I meant. I'm not asking you in a
17 rate-making context or anything else. I'm just saying,
18 in your opinion, if Verizon had not invested in FiOS in
19 New Hampshire, would that have been unreasonable or
20 imprudent?

21 A. Let me see if I understand the question, 'cause I want
22 to make sure -- in my opinion, if Verizon had not
23 decided to bring FiOS to New Hampshire, would that have
24 been an imprudent decision? Is that the question?

1 Q. That was my question.

2 A. No. The answer is no.

3 Q. Okay. In your opinion, if Verizon failed to continue
4 investing in FiOS in New Hampshire, would that be an
5 unreasonable or imprudent decision?

6 A. No, 'cause, again, FiOS is a product. It's a product
7 line.

8 Q. Okay. The benefits that you discuss from the FiOS
9 installation -- improving the quality of basic
10 telephone service, reducing outages, reducing
11 maintenance expenses -- are those same benefits
12 achieved when an existing telephone line is used to
13 provide DSL service?

14 A. My understanding is DSL is provided over copper
15 facilities and that there are maintenance or programs
16 to deal with that. My comparison here is to some of
17 the advantages that exist when you put fiber up instead
18 of copper.

19 Q. Right. I appreciate that. And I don't think you
20 answered my question at the outset.

21 A. I'm sorry.

22 Q. And the question was: Are the benefits that you
23 discuss for fiber, as they relate to basic telephone
24 service and outages, are those same benefits available

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1 when an existing telephone line is used to provide DSL
2 service?

3 A. The benefits that I outlined on pages -- Lines 2
4 through 6 relate to fiber and the benefits compared to
5 copper. So they would not be available as a different
6 technology.

7 Q. In your opinion, should an evaluation of whether to
8 install or expand a fiber-based service like FiOS
9 consider the resulting improvement in basic telephone
10 service?

11 A. My understanding is, when decisions are made to deploy
12 fiber, that there are marketing considerations,
13 technology considerations, budget considerations, in
14 addition to the factor that you just raised. And
15 that's just one thing that's looked at with respect to
16 whether or not to move ahead with deploying fiber
17 anywhere.

18 Q. Right. And I wasn't asking if it was the only
19 consideration. But you would agree that it is one
20 factor that should be considered.

21 A. Oh, yeah, it would be considered. How much, I don't
22 know. But it would be considered.

23 Q. And the same would be true for any estimated reduction
24 in maintenance costs or improvements in the quality of

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1 service; those are among the factors that should be
2 considered. Is that your opinion?

3 A. Yeah, I think those flow from putting up fiber. Yes.
4 Those would somehow be factored into the overall
5 equation.

6 Q. Now, hypothetically, if you were in a jurisdiction
7 where there were penalties or bill credits for failing
8 to meet customer service standards, would the relative
9 economics of fiber to the home be different than if you
10 were in a jurisdiction that did not impose such
11 penalties or credits?

12 A. I'm sorry. Can you say that again?

13 Q. Well, I can try. Maybe I should start with a more
14 basic question. Is it your understanding that in New
15 Hampshire, if Verizon failed to meet a customer service
16 standard, there are no automatic penalties or bill
17 credits to customers?

18 A. That's correct.

19 Q. Okay. And what I'm asking you to do is to compare the
20 situation that exists today in New Hampshire as to
21 penalties and credits to a hypothetical situation where
22 Verizon would have to pay penalties or bill credits if
23 it failed to meet service-quality standards. Are you
24 with me so far?

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1 A. I agree. I can even think of a state that has that.

2 Q. Okay. I think we can all think of several. And I'm
3 asking if we compare those two, call them regulatory
4 approaches, that the relative economics of a
5 fiber-to-the-home installation would be different if we
6 assume everything else is the same.

7 A. If we assume everything else is the same. But the
8 decision to deploy fiber is governed by a multitude of
9 other factors, not just the one we're talking about.
10 And again, with respect to service penalties, service
11 penalties in a regulatory environment are but one
12 factor Verizon utilizes in putting together service
13 delivery plans. Primarily they're driven mostly by the
14 CCI, as I indicate in my testimony.

15 Q. But it would be one factor of the many that are
16 considered; is that right?

17 A. It would get some consideration. I don't know where in
18 the waiting.

19 MR. RUBIN: Thank you. That's all I
20 have for this witness.

21 CHAIRMAN GETZ: Thank you, Mr. Rubin.
22 Ms. Hatfield.

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

24

CROSS EXAMINATION

1
2 BY MS. HATFIELD:

3 Q. Good afternoon, Mr. Nestor.

4 A. Good afternoon, Ms. Hatfield.

5 Q. I understand that your position is vice-president for
6 state government relations for New Hampshire; is that
7 correct?

8 A. That's correct.

9 Q. How long have you been in that position?

10 A. Since December of last year for the regulatory piece.
11 And I recently, in July, picked up the legislative
12 responsibility.

13 Q. So --

14 A. July 2007. I'm sorry.

15 Q. So for the regulatory piece, it would be in December of
16 2006.

17 A. That's correct.

18 Q. And then you also have duties with respect to media
19 affairs?

20 A. I picked those also up in July.

21 Q. And I think in response to a question from Mr. Rubin,
22 you stated that you do not have direct reports who are
23 responsible for delivering services in the field; is
24 that correct?

1 A. That's correct.

2 Q. And what position were you in with Verizon before you
3 took on duties related to New Hampshire?

4 A. A number of them. I was previously --

5 Q. Most recently.

6 A. Most recently, I came from the centralized regulatory
7 support organization to New Hampshire. And prior to
8 that I was the -- responsible -- I had a similar
9 regulatory position for 11 years in Massachusetts as
10 the director of regulatory affairs.

11 Q. And who do you report to?

12 A. Polly Brown.

13 Q. And Mr. Nestor, do you have the OCA's exhibits with you
14 up on the stand?

15 A. I do not.

16 Q. Okay.

17 MS. HATFIELD: May I approach the
18 witness?

19 (Ms. Hatfield hands document to
20 witness.)

21 BY MS. HATFIELD:

22 Q. I'd like to direct your attention to Exhibit OCA 118P.

23 A. I have it.

24 Q. Okay. And this is a response from Mr. Smith to an OCA

- 1 Data Request Group II 1-1 -- excuse me -- 1-21. And
2 what it asked is the name and title of the individuals
3 responsible for monitoring the quality of basic local
4 exchange service and those responsible for remedying
5 any service-quality lapses. I'm just wondering if you
6 can read the last paragraph and the reply.
- 7 A. Do you want me to read it out loud or --
- 8 Q. Please.
- 9 A. "Ms. Corcoran has overall responsibility for service
10 quality in the state."
- 11 Q. I'm sorry. Could you start with the first sentence in
12 that paragraph.
- 13 A. "The major service organizations responsible for
14 service delivery in New Hampshire report to Ellen
15 Corcoran, who is the senior vice-president and general
16 manager for the northeast region of Verizon, which
17 includes the state of New Hampshire. Ms. Corcoran has
18 overall responsibility for service quality in the
19 state."
- 20 Q. So, do you and Ms. Corcoran report to the same person?
- 21 A. No, we do not.
- 22 Q. Do you have any shared duties with respect to service
23 quality?
- 24 A. I would have shared duties with Ms. Corcoran's direct

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1 reports on the operations side who sit with me if the
2 issues relate to regulatory, legislative or media. Her
3 direct reports are the ones I interact with pretty much
4 daily.

5 Q. So, does she report to you?

6 A. No. No, she does not.

7 Q. I'm wondering if you could turn to Page 4 in your
8 testimony.

9 A. I have it.

10 Q. Actually, if you turn back to Page 3 for a moment, it
11 can help orient you. What you're discussing is the
12 Yellow Pages issue. But then, if you turn back to
13 Page 4, at the very top, in Lines 1 and 2 you use the
14 phrase "appropriate legal processes." And I'm
15 wondering, when you use those words, what was it that
16 you had in mind?

17 A. What I had in mind is if you were to look at the
18 Supreme Court case that was issued in New Hampshire --
19 hold on one second. I want to make sure I have the
20 words right. In the Yellow Pages docket, Verizon
21 raised a number of additional issues relating to the
22 Yellow Pages issues that were raised over and above the
23 issue of whether the Commission had the appropriate
24 authority to impute. And we raised a number of issues

1 that related to the arguments that were put forth with
2 respect to the limits on that authority --

3 Q. Mr. Nestor, actually, if I could interrupt. What I
4 really asked you is what you meant by "appropriate
5 legal process." And I think what you're saying is that
6 this isn't the appropriate legal process in this
7 proceeding. So I'm wondering what you had in mind, or
8 what would be the appropriate legal process. But I
9 don't really need you to provide an overview of
10 Verizon's position in that case.

11 A. Okay. The appropriate legal processes would be the
12 additional hearing and/or rate case that the Commission
13 referenced in its order, possible appeals to state
14 court on some of the issues Verizon raised, and
15 possible appeals to federal court for those issues that
16 the court did not address.

17 Q. And do you contemplate that there would be further
18 legal processes related to those issues if this
19 transaction is approved?

20 A. I don't know. I believe in my testimony I addressed
21 there is a possibility that the issue doesn't even need
22 to be considered.

23 Q. And is it your understanding that FairPoint is taking
24 on that obligation itself if this transaction is

1 approved?

2 A. My understanding, there was a data request that
3 specifically set forth that --

4 Q. And what's --

5 A. -- FairPoint was taking on responsibilities --

6 MR. DEL VECCHIO: If the witness could
7 simply be permitted to answer, Mr. Chairman.

8 A. -- that FairPoint was taking on those responsibilities
9 of following Commission orders and that that order
10 would move forward.

11 Q. So is your answer "Yes"?

12 A. Is my answer "Yes"? Yes, if that's the question. Yes.

13 Q. Thank you. Mr. Nestor, did you participate on behalf
14 of Verizon in the currently open 2004 service-quality
15 docket?

16 A. No, I did not. I've read it, but I did not participate
17 directly.

18 Q. And did you participate on behalf of Verizon in the
19 2005 poles docket that's currently open?

20 A. Again, no, I did not directly participate. I only read
21 the record for information.

22 Q. And were you present for Mr. Smee's testimony on
23 Monday?

24 A. Yes, I was.

1 Q. Did you hear him discussing FairPoint's plan and budget
2 to address existing service-quality issues?

3 A. Yes, I did.

4 Q. Do you think that what FairPoint is proposing is a
5 reasonable plan?

6 A. I think FairPoint -- what FairPoint is proposing is
7 reasonable in light of the fact that they particularly
8 plan to have different processes and procedures as
9 Verizon -- to Verizon, yes.

10 Q. In several places in your testimony, including on
11 Page 7, you use the term "service-quality metrics," and
12 you also use the term "benchmarks." Do you remember
13 those references?

14 A. Yes.

15 Q. And I'm wondering, in your view, are those metrics or
16 benchmarks, as you call them, are those in effect under
17 an existing PUC order or PUC rules?

18 A. Just from -- I use them in the following: A metric is
19 something to be measured. A benchmark is a standard.
20 And so if you were to look at our quality-of-service
21 report in New Hampshire, we have benchmark -- we have
22 metrics, and we have certain things that are measured.
23 That's the best way I can answer that.

24 Q. But do you -- are those in effect through a PUC order

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1 or a PUC rule, or are those merely internal Verizon
2 benchmarks?

3 A. No. It's my understanding that the Commission adopted
4 the NARUC standards in 1992 that were established
5 originally in 1997 and that those are still the
6 standards today.

7 Q. And to your knowledge -- I know you're newer to New
8 Hampshire. But to your knowledge, has Verizon filed
9 anything with the PUC seeking to have those rules
10 changed?

11 A. To my knowledge, that's exactly what the open
12 service-quality docket has put on the table.

13 Q. And are you aware of how that docket was opened?

14 A. I'm aware of the -- there was a report -- I'll
15 paraphrase to try to keep it simple. There was a
16 report on service quality, and the Commission chose,
17 based on that report, to open the proceeding.

18 Q. So are you aware that in this docket there's actually
19 an exhibit which is a Staff memorandum to the
20 Commission asking that the docket be opened?

21 A. Yes, that's what I was referring to.

22 Q. So my question was: Has Verizon filed anything with
23 the Commission seeking to have the rules changed? So
24 it sounds like your answer would be "No"?

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1 A. Well, it's my understanding that the docket hasn't
2 taken information or evidence but --

3 MS. HATFIELD: Mr. Chairman, I would
4 like the witness to be directed to please answer the
5 question and not discuss what is going on in that docket.
6 I asked him: Has Verizon filed anything with the Public
7 Utilities Commission seeking to have the rules changed?
8 We had a discussion about the fact that the Staff filed
9 something to open that docket. And I'm merely asking him
10 a "Yes" or "No" question.

11 CHAIRMAN GETZ: Mr. Del Vecchio, do you
12 have something on this?

13 MR. DEL VECCHIO: I do, Mr. Chairman. I
14 would just note that I think the witness has already said
15 that the docket put the matter on the table. So, to the
16 extent that Ms. Hatfield is asking whether the company is
17 presenting the proposal that the standards be changed, I
18 think what the witness has already testified is that by
19 virtue of this open docket they have indeed done that.
20 But I don't think he's denying that it hasn't initiated
21 the docket.

22 MS. HATFIELD: But that didn't answer my
23 question.

24 CHAIRMAN GETZ: Well, I guess the direct

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1 question, has there been a filing, which if we can get a
2 straight "Yes" or "No" on. And if there's more
3 explanation beyond that, which may be the case, then I
4 think he's permitted to do so.

5 So the answer to the question of whether
6 there is a filing by Verizon in that particular docket to
7 change the standards, the answer is?

8 WITNESS NESTOR: To the best of my
9 knowledge, there is not a filing. I'll call it a document
10 that Verizon filed. But I do know from reading the order
11 of notice that Ms. Hatfield asked to take administrative
12 notice of the other day, that there is a reference -- and
13 I'm trying to find it -- that Verizon raised the issue of
14 the Commission should consider customer surveys. So we
15 did not come in and specifically say change all these
16 metrics. But I believe there was a reference in the order
17 of notice that referenced Verizon indicating that the
18 Commission should be looking at customer surveys. So, to
19 the extent that's a change, then I guess that's a Verizon
20 filing. I don't know if it was done orally or on paper or
21 what. I'm going from what the order of notice said.

22 CHAIRMAN GETZ: Ms. Hatfield.

23 MS. HATFIELD: Thank you.

24 BY MS. HATFIELD:

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- 1 Q. Mr. Nestor, you previously testified that you didn't
2 have any issues with the data used by Dr. Peres. Do
3 you remember that?
- 4 A. That he copied it correctly, yes.
- 5 Q. And would the same be true for Ms. Baldwin when she
6 used ARMIS data and other data reported by Verizon to
7 the Commission, that you don't have an issue with the
8 data that she used?
- 9 A. I don't have an issue that she copied it correctly.
10 That's correct.
- 11 Q. I have a question for you about Verizon rates, and my
12 question is: In your understanding, do the rates that
13 are in place for Verizon today include costs related to
14 pole maintenance and tree-trimming?
- 15 A. I don't know. The last rate case was 1990 that I can
16 recall. So I have not reviewed that entire docket. So
17 I don't know.
- 18 Q. But do you think it would be customary during a rate
19 case for the test year to include all sorts of costs,
20 including those for pole maintenance and tree-trimming?
- 21 A. I just don't know. I mean, there's clearly schedules
22 that are put together and expenses. And, you know,
23 whatever's prudent and reasonable is included in those
24 schedules. But I have not reviewed them.

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1 Q. Do you think, though, that in order for Verizon to be
2 able to recover those costs, they would likely be
3 included?

4 A. If they were viewed to be -- not to be evasive. But if
5 they were viewed as prudent costs incurred for whatever
6 purposes, they would be included in the expense, as
7 would the fees received be included in the revenue
8 side.

9 Q. But you don't know for sure?

10 A. I have not reviewed that docket.

11 MS. HATFIELD: Mr. Chairman, I'm
12 wondering if it's possible to make a record request for
13 Verizon to review whether or not in their last rate case
14 there were costs included related to pole maintenance and
15 tree-trimming so that we could know whether or not those
16 costs are included in today's rates.

17 CHAIRMAN GETZ: Well, I guess let me
18 understand. I was trying to follow the line of inquiry
19 here. Were you trying to get him to answer the question
20 about rates specifically as they exist today for Verizon,
21 or as a general proposition, as a regulatory matter,
22 what's included in rates, based on his experience in New
23 Hampshire and Massachusetts? I mean, is it...

24 MS. HATFIELD: Well, it was helpful to

1 hear his answer to the latter. But the former question is
2 really what's of interest to the OCA, and that is whether
3 ratepayers have been paying Verizon rates for costs
4 related to pole maintenance and tree-trimming that are now
5 at issue, that the electric companies claim they have not
6 been paid. Because if that is the case --

7 CHAIRMAN GETZ: Well, it occurs to me --
8 I mean, is it necessary for a record request or for us to
9 take administrative notice of the last rate case? I don't
10 recall the docket number.

11 AUDIENCE MEMBER: 89-10.

12 MR. DEL VECCHIO: Disembodied voice.

13 CHAIRMAN GETZ: We can take
14 administrative notice of that final order in that case.

15 MS. HATFIELD: Thank you. If I could
16 just have one moment.

17 BY MS. HATFIELD:

18 Q. Mr. Nestor, Mr. Rubin asked you a question, I think it
19 was -- yes, it was related to your testimony on Page 7
20 regarding today's competitive marketplace. And I
21 believe that you testified that there is competition
22 throughout Verizon's service area. And I'm wondering,
23 what do you base that opinion on, that there is
24 competition?

1 A. I'm sorry. Competition? I believe I testified there
2 was the opportunity for it. In looking at -- in
3 preparing for this docket -- we answered this in a data
4 request -- I reviewed the testimony of Mr. Kenny that
5 was filed in the recent AFOR proceeding, which has an
6 extensive explanation of the New Hampshire market and
7 the competitive positions. In addition, I had asked
8 for some updating of that information, particularly
9 related to access line loss, revenue loss, minutes of
10 use. And I based my comments on that information
11 that's in his testimony, as well as, I'll call it
12 demographic maps of New Hampshire as to where the
13 population is, where I believe only something like
14 13 percent of the population is in the north and 87 in
15 the south where most of the facilities are. So when
16 you put all that data together, most of the state has
17 access to alternative technologies and vendors and
18 suppliers.

19 Q. And I think you included in your list of competitive
20 alternatives, you included competitive local exchange
21 carriers; is that correct?

22 A. CLECs would be one part that Mr. Kenny talks
23 extensively of, yes.

24 Q. And are you aware of the extent to which CLECs provide

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1 service to residential customers?

2 A. In general, yes.

3 Q. And to what extent do they provide options to
4 residential customers?

5 A. They're mostly focused on the business market and not
6 the residence market -- that is, the CLEC entity.

7 MS. HATFIELD: That concludes my
8 questions.

9 CHAIRMAN GETZ: Thank you.

10 Ms. Fabrizio.

11 MS. FABRIZIO: Thank you, Mr. Chairman.

12 **CROSS-EXAMINATION**

13 BY MS. FABRIZIO:

14 Q. Good afternoon, Mr. Nestor.

15 A. Good afternoon.

16 Q. My questions are designed really to clarify some of the
17 things you've discussed earlier today.

18 A. Okay.

19 Q. Does Verizon have written procedures regarding its
20 tree-trimming practice?

21 A. I mean, we have the IOPs and the agreements. Those are
22 the so-called written procedures. Are you asking me do
23 we have like operations manual and stuff?

24 Q. Do you have my additional procedures that your -- that

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1 Verizon employees follow to implement the IOP
2 requirements?

3 A. I've never seen them. So I don't know.

4 Q. Okay. You had discussed earlier the process that
5 Verizon follows with respect to reviewing invoices that
6 it receives from the electric companies. Could you
7 walk with me through that process again, 'cause I think
8 I missed a couple of steps.

9 A. Sure.

10 Q. And if you could elaborate on the specific chain of
11 command that is involved with each step.

12 A. Sure.

13 Q. First, I think you mentioned the exchange of notice
14 that's received from the electric company. Who -- what
15 office or what person receives that notice?

16 A. It's usually sent to a central organization in
17 Merrimack, New Hampshire. There's a central group
18 there that gets those.

19 Q. What are those job titles in that central group?

20 A. I don't -- I believe we answered the data request as
21 to --

22 Q. Is it an accounting group or --

23 A. No. If you hold on one second... there was a data
24 request that gave the job titles of the individuals.

1 May have been a Unitel request. But if you're really
2 interested, maybe I can find the number for you. But
3 it has the list of the job -- people who do the jobs.

4 Q. If you think you can find it quickly, that would be
5 great. If not --

6 A. If not, I could do it at a break and identify it for
7 you if you want.

8 Q. Okay. So you said it went to the central group in
9 Merrimack. Then it goes out to the outside plant
10 engineer who surveys the routes and assesses the need?

11 A. Right. It goes to a central group to make sure all the
12 information's there. Once all the information is
13 there, it's sent to an outside plant engineer. That
14 outside plant engineer then reviews the proposal to --
15 out in the field or whatever they have to do, and then
16 says we agree with this or disagree with that.

17 Q. And then it goes back to the centralized group, I heard
18 you say?

19 A. Comes back to the centralized group where it's reviewed
20 again for completeness and then sent on to the electric
21 company. And then the electric company does the work
22 and sends us a bill and all the associated documents,
23 which then the process reverses. It goes into the
24 centralized group, out to the engineer who signed

1 off --

2 Q. For payment?

3 A. They check off to make sure, and then it comes back for
4 payment and then for recordkeeping. So there's a group
5 in Merrimack that keeps track of all that information
6 for us.

7 Q. Okay. Great. Thanks. Now, what specific criteria
8 does Verizon use to make a determination that there is,
9 in fact, no need or no mutual need for the trimming in
10 question with respect to any particular invoice?

11 A. That would be the outside plant engineers deciding
12 whether there's a need or whether we would benefit from
13 whatever we received notice on that the electricians plan
14 on trimming. So they would determine that based on a
15 review of what's going on in our plant. They make that
16 determination, in other words.

17 Q. And are you aware of any specific criteria that they
18 look to?

19 A. I have not seen a specific list of criteria. I'm
20 assuming these people do this on a daily basis and they
21 have whatever they deem appropriate.

22 Q. And then you said it goes back to the central group,
23 and that determination is reviewed for completeness.
24 Can it be overturned at that level?

1 A. It's not overturned. It may mean you have to go back
2 to the electric company and seek additional
3 information, like you didn't send us back the 605 or
4 this map or -- you didn't send us a map or, you know,
5 something like that, whatever it might be, and could
6 you please get that to us so we can, you know -- or a
7 list of poles or whatever. And then once it's
8 complete -- both ways.

9 Q. So you're really talking about the completeness of
10 documentation, not necessarily the validity of the
11 determination made by the plant engineer?

12 A. Correct. It's the completeness of, I'll call it the
13 package of documents that's necessary.

14 Q. Okay. And is every single invoice received by Verizon
15 from an electric company reviewed in the field by an
16 outside plant engineer?

17 A. That I don't know. I don't know.

18 Q. Okay. On Page 28 of Mr. Meissner's testimony, he
19 includes a chart of invoices sent to Verizon and
20 amounts paid by Verizon, as between Unitil and Verizon
21 for 2005, '06 and '07. I notice in the column for the
22 seacoast territory that there are three years in which
23 no payments at all have been made. And on Page 29 of
24 his testimony, Mr. Meissner states that some of these

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1 amounts -- and he's talking about the seacoast
2 region -- were agreed to by Verizon representatives in
3 the field but then were subsequently refused. Could
4 you clarify for us what might be happening in that
5 region?

6 A. I think -- I know there's -- first of all, I know at a
7 high level there was a different process being used
8 originally by Unitil in the seacoast region than in
9 their capital region. And there were meetings on
10 trying to work through that with the groups. And I
11 think in my -- I just have to verify. I know in a data
12 request that was answered there were some examples
13 given -- it might be similar to the one that I'm
14 looking up for you -- of e-mails that came back and
15 forth between Verizon and Unitil dealing with the
16 issues of you may have agreed verbally in the field to
17 cut as opposed to what you show on your notice. And I
18 know that's part of the dispute issues that are going
19 on. So there's just more information, data information
20 about the factual disputes that exist today.

21 Q. Hmm-hmm. Okay. And is it fair to say that a
22 determination of need really depends on the relevant
23 engineer's interpretation of what that need may be?

24 A. Yes. I mean, with respect to a telephone plan, yes,

1 'cause they're assessing the need based on looking at
2 the telephone plan, assessing the telephone plan, yes.

3 Q. And you testified today that you believe FairPoint's
4 approach with respect to the MOUs it has signed with
5 the electric companies is reasonable and resolves the
6 issues that have been raised in the poles docket, and
7 even resolves issues to the extent that the poles
8 docket can now be closed. Is that what I understood
9 you to say earlier?

10 A. I don't think I stated the last part of that. That's a
11 decision for the Commission to make, as far as closing
12 dockets. What I stated was that I believe it
13 reasonably addresses the issues that are currently
14 floating around in the poles docket from both sides,
15 and the disagreement, legal and factually. This is a
16 way to address those.

17 Q. Okay. And if Verizon ends up remaining in New
18 Hampshire, would it agree to the same commitments
19 FairPoint has made through the pole-related MOUs with
20 the electric companies as a means of resolving the poles docket?

21 A. I have no authority to negotiate on the stand for
22 conditions.

23 Q. Thanks. I have a series of questions.

24 You referred earlier, I believe in your

1 discussion with Mr. Rubin, and also we've heard earlier
2 testimony from witnesses through this proceeding
3 regarding work center realignments. And we've heard
4 testimony to the effect that Verizon employees in New
5 Hampshire will remain in New Hampshire. Do you agree
6 with that?

7 A. As a general statement, I believe Mr. Smith testified
8 to that, yes.

9 Q. And will all Verizon employees who currently work in
10 New Hampshire have the same job in New Hampshire if the
11 transaction is approved?

12 A. That's better of Mr. Smith. I really -- that's not a
13 question I could answer 'cause I'm not in on the
14 day-to-day realignment plan. I've heard of it. I'm
15 not day-to-day involved in it.

16 Q. Okay. Are you familiar with the retail sales center in
17 Manchester?

18 A. Only that it exists. I'm not -- I don't have any
19 day-to-day operation -- interaction with it. If it
20 doesn't have a regulatory or legislative issue, I don't
21 interrupt those people. They're busy running the
22 business.

23 Q. Maybe you can just confirm my understanding. Is it a
24 regional center with sales associates for northern New

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1 England, as well as Massachusetts and Rhode Island?

2 A. I really don't know. I'm not a hundred-percent sure
3 what it is. I know it exists. That's about my
4 knowledge on that.

5 Q. Have you heard any plans of the possible transfer of
6 the Verizon employees in that center to Lowell, Mass.?

7 A. Again, my knowledge of the realignment is pretty much
8 what I've told you I'm aware of at a very, very high
9 level, not the specifics.

10 Q. Okay. Thanks.

11 MS. FABRIZIO: That concludes my
12 questions for Mr. Nestor.

13 CHAIRMAN GETZ: How much in the way of
14 redirect?

15 MR. DEL VECCHIO: Zero.

16 CHAIRMAN GETZ: Zero? Okay. Appreciate
17 that direct answer. I think that completes the
18 examination of Mr. Nestor.

19 You're excused. Thank you, sir.

20 And we're going to take 15 minutes now,
21 and then when we come back we'll hear from Dr. Peres and
22 then from Mr. Pelcovits. Thank you.

23 (Recess taken at 3:45 p.m.)

24 Hearing resumed at 4:15 p.m.)

1 CHAIRMAN GETZ: Okay. We're back on the
2 record in DT 07-011. Turning to Dr. Dr. Peres, if you
3 could swear in the witness please, Sue.

4 **KENNETH R. PERES SWORN**

5 **DIRECT EXAMINATION**

6 CHAIRMAN GETZ: Mr. Rubin.

7 MR. RUBIN: Thank you.

8 BY MR. RUBIN:

9 Q. Mr. Peres, could you please state your name and
10 business address and spell your last name for the
11 record.

12 A. My name is Kenneth R. Peres. P, as in Paul, E-R-E-S,
13 as in Sam. My business address is 501 Third Street,
14 Northwest, Washington, D.C., 20001.

15 Q. Do you have in front of you a copy of what has been
16 marked Labor Exhibit 1P?

17 A. Yes, I do.

18 Q. And does this represent your prepared direct testimony
19 in this case?

20 A. Yes.

21 Q. Was this prepared by you or under your direction and
22 supervision?

23 A. Yes.

24 Q. If I were to ask you the questions shown in Labor

1 Exhibit 1P, would your answers be as reflected therein?

2 A. Yes.

3 Q. Are those answers true and correct to the best of your
4 knowledge?

5 A. Yes.

6 MR. RUBIN: Mr. Chairman, the witness is
7 available for cross-examination.

8 CHAIRMAN GETZ: Okay. Thank you. I
9 have on my list that the Consumer Advocate, Verizon and
10 FairPoint seek to question Dr. Peres. Is that correct?
11 Then we'll begin with Ms. Hatfield.

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

13 **CROSS-EXAMINATION**

14 BY MS. HATFIELD:

15 Q. Good afternoon, Dr. Peres.

16 A. Hello.

17 Q. Your testimony largely focuses on service-quality
18 issues; is that correct?

19 A. Yes, it is.

20 Q. I'm wondering if you have -- if you're familiar with
21 FairPoint's proposal that service-quality standards not
22 apply to FairPoint if the transaction is approved for
23 24 months. Are you aware of that?

24 A. Yes.

1 Q. And do you think that that's a sufficient proposal to
2 protect New Hampshire's ratepayers?

3 A. I can understand why it would be great from a FairPoint
4 perspective; after all, many companies dream of a
5 regulatory holiday. But it seems outrageous from a
6 customer perspective. Why should customers continue to
7 suffer the ramifications derived from Verizon's lack of
8 adequate investment in the plant for a number of years,
9 so that service quality has been substandard in a
10 number of areas. Why should Verizon be rewarded for
11 this past inadequate investment of resources for
12 service quality. Why should the PUC give up its
13 ability to force improvements or provide incentives to
14 improve service quality for two years if it so desired.
15 If the Commission finds that FairPoint doesn't have the
16 resources or technical ability to improve service
17 beginning immediately, then, in our estimation, the
18 transaction should be denied. In the alternative, the
19 PUC should require that Verizon improve service quality
20 before any sale of New Hampshire's lines.

21 Q. So this regulatory holiday, as you call that period, do
22 you believe that service quality could actually decline
23 from existing levels during that period?

24 A. Yes, especially if FairPoint does not have or allocate

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1 adequate capital and labor resources to improve service
2 quality, it could definitely decline.

3 Q. And Dr. Peres, did you file testimony in all of the
4 three state proceedings related to this proposed
5 transaction?

6 A. Yes.

7 Q. Earlier in these hearings the OCA entered an exhibit
8 that was a printout from the main PUC web site, and it
9 was publicly available information that anyone could
10 access that showed Verizon service-quality information.
11 I'm wondering, do you support that type of public
12 access to service-quality information?

13 A. Yes, I do. In my direct testimony on Pages 44 and 45,
14 I list the service-quality performance results that are
15 publicly available from the Vermont Public Service
16 Board and also from the Maine Public Utilities
17 Commission. And there's a long list that is included
18 in the testimony itself.

19 Q. But there's not a list for New Hampshire. Why is that?

20 A. I don't know the reason why that information is not
21 publicly available in New Hampshire.

22 Q. But it's not in your testimony because it's not
23 available?

24 A. Well, that's correct, that the -- while the standards

1 are publicly available, the benchmarks, to my
2 understanding, but especially the -- benchmarks might
3 be available, but the service-quality results are not
4 publicly available.

5 Q. And I wanted to turn your attention to Page 38 in your
6 testimony, which includes Table 8. Do you have that?

7 A. Yes.

8 Q. Okay. And this is titled, "Recommended Service-Quality
9 Standards and Benchmarks to be Reported Monthly by
10 Exchange." Does this represent your recommendations to
11 the Commission on the service-quality standards that
12 should be in effect for either FairPoint or Verizon
13 after the transaction, whether it's approved or not?

14 A. Yes.

15 Q. And can you just describe the difference between --
16 there are current benchmarks and there are recommended
17 benchmarks, and there are some differences between the
18 two. Can you explain any of those differences?

19 A. Surely. The three benchmarks would remain the same:
20 That's held orders over five days, percentage
21 out-of-service cleared within 24 hours, and percentage
22 premise repair appointments missed. Those are three
23 that Verizon has failed to meet. So because of that
24 failure, the current benchmarks should, in my opinion,

1 be retained. However, the other six standards have
2 been attained by Verizon, and they have delivered
3 service that has met the benchmarks.

4 So, based really on a concept that I saw
5 in a PUC order, the one in the Nynex Bell Atlantic
6 merger -- and actually, I have a quote in that. It
7 said, "In those cases in which Nynex is now exceeding
8 the NARUC standards which were adopted as part of the
9 Bell Atlantic Nynex order, the standards should not be
10 considered a new, lower target for performance." The
11 way I interpreted that is that there shouldn't be any
12 back-sliding. So if the transaction is approved, then
13 consumers should not expect worse service than Verizon
14 has delivered in those particular areas. So the
15 particular benchmarks I chose were based on the two
16 best years, from 2003 to 2006; and in one instance with
17 customer trouble report rate, it was from 1997 to '01,
18 2001, the best two years, the average. So there are
19 two levels. One is to ensure that the service improve
20 in those three areas, and on the six areas as per this
21 table, that there be no back-sliding.

22 Q. And do you have an opinion as to whether it would be in
23 the public interest to allow any back-sliding in terms
24 of service-quality standards?

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1 A. In my estimation, that would not be in the public
2 interest. Consumers should not suffer worse service.
3 In fact, based on FairPoint promises, service would
4 improve. It's not -- it wouldn't be good if it's the
5 same of level of service. If Verizon service is bad,
6 why should consumers get continually bad service.
7 That's not a good deal. And where they're getting
8 decent service or good service, they should continue to
9 get good service.

10 Q. I think you also talk in several places in your
11 testimony about the importance of service-quality
12 standards being enforceable; is that correct?

13 A. Yes, it is.

14 Q. And can you talk a little bit about the importance of
15 enforceability?

16 A. Well, what I've seen in my experience, and especially
17 the experience in the three states where there haven't
18 been sufficient penalties, then Verizon service has
19 failed to meet particular benchmarks, especially in the
20 areas that require capital and labor, increased capital
21 and labor allocations, especially in New Hampshire's
22 out-of-service-over-24-hour standard. In the other two
23 states it would be network troubles cleared within 24
24 hours.

1 So, especially Verizon's performance in
2 that has been especially poor over an extended period
3 of time. And it's a critical standard because it
4 relates to health and safety issues. If you don't have
5 service for a period of time, in many instances you
6 don't have service for 911. Or if there's an accident
7 or your connection to the world is interrupted, that
8 can lead to health and safety issues. So that is a
9 very important measure of not only service quality but
10 of the health and safety -- potential health and safety
11 of consumers.

12 Q. And this Commission, during public statement hearings
13 when the public had an opportunity to come and talk to
14 the Commission about this transaction, some members of
15 the public expressed especially the need for the
16 elderly and for disabled communities to have access.
17 And would you agree that that's especially important,
18 that those out-of-service times can have even more of
19 an impact on those communities?

20 A. Yes, it would be very important, especially those
21 people who don't have any alternate method of
22 connections. And you don't know when that is or what
23 particular geographic or whatever. This is the largest
24 telecommunications provider in the state. Many people

1 fall into that category.

2 Q. Another issue that you discuss in your testimony is how
3 the potential loss of experienced workers might relate
4 to service-quality issues. And I want to draw your
5 attention to what's been marked as OCA Exhibit Peres
6 126P. Do you have that with you?

7 A. No, I don't.

8 (Ms. Hatfield hands document to
9 witness.)

10 A. Thank you.

11 Q. OCA Exhibit 126P is a copy of your response to
12 FairPoint Data Request Number 46; is that correct?

13 A. Yes.

14 Q. And that data request related to Page 29 in your
15 testimony, Lines 11 through 16, where you discuss what
16 you believe is a connection between having skilled
17 workers and maintaining service quality. And I'm
18 wondering if you can discuss your response. In your
19 response you refer to a survey that you conducted on
20 behalf of the CWA and the IBEW, and attached on the
21 second page of that exhibit is a page from your Vermont
22 testimony where you discuss the New Hampshire results.
23 I'm wondering if you could talk about why you undertook
24 that survey and what your findings were with respect to

1 New Hampshire.

2 A. We undertook the survey subsequent to this. The
3 results went in subsequent to the direct testimony that
4 I delivered in New Hampshire.

5 The survey was really to determine the
6 reliability of reports by union officials, which I cite
7 in my direct testimony, about the potentially large
8 exodus of workers if the transaction were approved.
9 Basically, in Vermont, the applicants tried to strike
10 that testimony, and the Public Service Board afforded
11 us the opportunity to provide additional information,
12 which we did. And we created a survey instrument that
13 basically consisted of four questions into two parts.
14 The first was if the -- if you were pension-eligible --
15 this is to the workers -- if you're pension-eligible,
16 the first question was: Are you seriously considering
17 retiring from the company if the transaction is
18 approved? The second question is: Are you seriously
19 considering retiring from the company if the
20 transaction were not approved? And then the next set
21 of two questions was: If you are not
22 pension-eligible -- same two questions, basically --
23 are you seriously considering leaving the company if
24 the transaction is approved? And the last is: Are you

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1 seriously considering leaving the company if the
2 transaction were not approved?

3 And the results were pretty astounding
4 and very powerful. Forty percent of the
5 union-represented work force responded to the survey,
6 which is a very impressive response just over a
7 two-week period. And of the total, 56 percent of
8 respondents stated that they were seriously considering
9 leaving the company if the transaction were approved.
10 Only 7 percent stated that they were seriously
11 considering leaving the company if the transaction were
12 not approved. So a net result was 49 percent of
13 respondents basically stated they were seriously
14 considering leaving the company, really, solely because
15 of this transaction. The other implication is that
16 56 percent, FairPoint -- if people act on their
17 statements of seriously considering, FairPoint's
18 looking at a potential loss of 56 percent of the work
19 force. And the response of the pension-eligible was
20 very high. Eighty percent of pension-eligible workers
21 responded that they were seriously considering leaving
22 the company if this transaction were approved.
23 Eighty percent.

24 Q. And if you look at OCA Exhibit 126P, which is your data

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1 response, you have a paragraph that's indented at the
2 bottom of your response. At the very end of that
3 paragraph there's a bolded sentence. Would you read
4 that sentence?

5 A. "Extending these survey results to the entire
6 union-represented work force in New Hampshire indicates
7 that almost 500 workers currently employed by Verizon
8 are seriously considering leaving the company if the
9 transaction is approved."

10 Q. And in your view, what kind of impact could that have
11 on service quality?

12 A. Well, there's one proviso here, that this doesn't mean
13 that 500 workers will leave. It means that they are
14 seriously considering leaving. And given the magnitude
15 of the result and the comments that accompanied those
16 surveys that we got back, that this is a potential and
17 possibly probable problem for FairPoint if the
18 transaction is approved.

19 Already, in addition to the information
20 in the direct testimony, we've just had reports that
21 six out of nine technicians in the Baldwin [sic] garage
22 are going to be leaving, they announced, after October.
23 So that's two thirds of the work force right there
24 that's leaving already. I mean the Belmont garage.

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1 The dates of import for pension or for pension-eligible
2 people, October 1st they became eligible for a
3 3-percent increase in the pension. So you have
4 movement towards those who will retire will retire
5 after October 1st. They were waiting for that. And
6 the other date to keep in mind is January 1st, when, if
7 you work a day in January, you become eligible for your
8 2008 vacation, which can be bought back by the company.
9 You get the choice of either using the vacation or the
10 company buys it back and pays you. So that's another
11 date to notice if the transaction is approved when
12 there might be an exodus of people.

13 And the loss of experience -- these are
14 the most experienced workers. The loss of experienced
15 workers is very critical. And there are quotes in
16 FairPoint's testimony about an experienced work force
17 being a cornerstone and things like that. You can
18 imagine the loss of workers with 25, 30 years'
19 experience in sizable numbers will have a major, major
20 impact on operations and the delivery of service
21 quality to the consumer.

22 And just to go along, there is -- we
23 haven't seen any particular plan or specific plan by
24 FairPoint that deals with that probability, given the

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1 results of the survey. We've seen they want to add 675
2 jobs. They stated they would add 10 outside plant
3 technicians to improve service quality. That's 10 out
4 of a work force of let's say between 300 and 400
5 people, maybe more. It's not a whole lot. But
6 already, they will lose sizeable numbers of experienced
7 workers. And we haven't seen particular plans for
8 identifying where those areas will be, identifying a
9 plan for backfilling those positions, or a specific
10 plan for training people, because the people that you
11 will get, if they get people to take those places, they
12 will not necessarily be and probably will not be
13 experienced technicians. They will have to be trained.
14 And that's -- in the past, that's basically a 42-month
15 process to be deemed experienced.

16 Q. Is it your understanding that the 675 new positions
17 that we've heard about are largely to replace functions
18 that Verizon is currently providing to the northern New
19 England states from outside the region, sort of
20 back-office system type of functions?

21 A. Yes, that's what I understand from FairPoint's
22 statements.

23 MS. HATFIELD: Thank you. That
24 completes my questions.

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1 CHAIRMAN GETZ: Thank you. Who would go
2 next? Mr. Del Vecchio? Mr. McHugh?

3 MR. MCHUGH: Mr. Chairman, FairPoint
4 reached an agreement with Labor, in terms of our exhibits
5 coming into evidence, and we have no cross today.

6 CHAIRMAN GETZ: Mr. Del Vecchio.

7 MR. DEL VECCHIO: Yes, sir, if I may.

8 **CROSS-EXAMINATION**

9 BY MR. DEL VECCHIO:

10 Q. Good afternoon, Dr. Peres. Did I pronounced that
11 correctly?

12 A. Yes. Good afternoon.

13 Q. My name is Victor Del Vecchio, and I represent Verizon.
14 Perhaps we could start from the beginning, if you will.

15 You've been employed by the CWA for 20
16 years or so, approximately?

17 A. Nineteen.

18 Q. And you began with them in 1988 or 1989; is that
19 correct?

20 A. 1988, fall.

21 Q. And have you testified in other proceedings on behalf
22 of the CWA?

23 A. Yes.

24 Q. And have you testified on behalf of any other parties

1 in proceedings such as this, other than on behalf of
2 the CWA?

3 A. No.

4 Q. And the purpose of your testimony is to examine the
5 impact on service quality of the proposed transaction
6 and to determine the risks posed by that transaction;
7 is that correct?

8 A. To examine the service quality. Yes, that's...

9 Q. And you're familiar, I take it, with the attempted sale
10 by Verizon of telephone lines in New York in 2004?

11 A. Yes.

12 Q. And did the union oppose that sale?

13 A. The union -- there wasn't a particular sale. Verizon
14 announced its intention to sell its upstate New York
15 lines. And we opposed the potential sale as an
16 abandonment of service, millions of customers and
17 thousands of workers.

18 Q. I'm sorry. So your answer is: Yes, they opposed that
19 potential sale.

20 A. Yes, we did.

21 Q. Okay. And did you provide any assistance to your
22 employer in connection with the union's opposition to
23 Verizon's sale of those assets in 2004?

24 A. Assistance, meaning?

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1 Q. Did you assist in any way, given your role as a
2 research economist?

3 A. I did some research, yes.

4 Q. For the purpose of opposing that transaction?

5 A. To do background research into what the number of
6 affected lines, quality of what was there, service
7 quality at the moment, and potential purchasers.

8 Q. And was that for the purpose of opposing that proposed
9 transaction?

10 A. It was for the purpose of providing information to the
11 Communications Workers of America to make an informed
12 decision.

13 Q. And did they use that data for the purpose of opposing
14 that proposed transaction?

15 A. Yes.

16 Q. Now, I reviewed your background in this proceeding, I
17 believe on Page 1 of your testimony. I didn't notice
18 that you claim to be an expert on surveys. Are you?

19 A. I'm sorry. Could you repeat?

20 Q. I say I looked at your background and qualifications on
21 Page 1 of your testimony, and I did not notice that you
22 claimed to be an expert on surveys.

23 A. Right.

24 Q. Do you claim that?

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1 A. Do I claim to be an expert on surveys?

2 Q. Correct.

3 A. I've had some experience with analyses of surveys.

4 Whether I would be an expert...

5 Q. Well, have you been qualified in any legal proceedings
6 based on your scientific or technical or specialized
7 knowledge, based on your training or professional
8 associations as an expert in the conducting of surveys?

9 A. No.

10 Q. And I take it you also don't claim to be an expert on
11 operational or administrative support systems; is that
12 correct?

13 A. Correct.

14 Q. Now, regarding service-quality issues that you are
15 testifying to today and in your rebuttal testimony, did
16 you have an opportunity to review Mr. Nestor's rebuttal
17 testimony in this docket?

18 A. Yes.

19 Q. And much like the questions that your attorney asked
20 Mr. Nestor, do you disagree with any of the specific
21 data that Mr. Nestor sets forth in his testimony -- not
22 going to the conclusions reached by use of that data,
23 but rather with the underlying data?

24 A. I didn't -- it didn't raise any questions, no.

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1 Q. You reference a quality-of-service investigation in the
2 state of Maine in your testimony; is that correct?

3 A. Be a little more specific.

4 Q. I think it's on Page 25.

5 A. Okay. Examiner's report. Yes.

6 Q. Okay. And my question is: Have you conducted any
7 quality-of-service investigation or study in the state
8 of New Hampshire like the study you discuss in your
9 testimony on Page 25 regarding Maine Docket 2005-155?

10 A. I conducted an analysis of Verizon's service-quality
11 performance since -- with whatever information was
12 available from '97 on. Looked at their annual results,
13 monthly results, especially from 2001 which were more
14 available, and did an analysis of Verizon's
15 service-quality performance in the nine different
16 benchmark areas.

17 Q. And is it your testimony to this Commission that that's
18 the extent of the type of survey, or I should say
19 analysis that was conducted in the Maine proceeding?
20 That was it?

21 A. My understanding of what the Maine examiner did,
22 looking at the Maine examiner's report, was an analysis
23 of Verizon's service-quality performance over the past
24 X-number of years, presenting that service-quality

1 performance and making conclusions based on that
2 performance.

3 Q. So you're comfortable, I take it, then, in having the
4 Commission conclude that the scope of your analyses of
5 service quality in New Hampshire is similar to the
6 scope of the analyses undertaken by the Maine
7 Commission in that docket. Is that your testimony?

8 A. I'm not going to say it's similar in terms of the
9 scope. The scope of the examiner's report dealt with
10 rate information. They recommend -- the examiner
11 recommended a \$32 million or so rate reduction based on
12 Yellow Pages advertising imputations. I did not go
13 into that. My analysis is what-you-see-is-what-you-get
14 in the report. It was strictly an analysis of
15 Verizon's data, as presented by Verizon to the New
16 Hampshire Public Utilities Commission, looking at the
17 results and basically determining in each year this is
18 what you got.

19 Q. In fact, don't you propose in your testimony that,
20 should the Commission approve the proposed transaction,
21 that they undertake a quality-of-service analysis?

22 A. I state in the -- as the conditions, one of the
23 conditions is that if FairPoint fails to meet any
24 individual service-quality benchmark for three

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1 consecutive years -- that's on Page 42, at least of my
2 version -- that there be a audit by an independent,
3 outside auditor directed by the Commission, paid for by
4 FairPoint, to conduct an in-depth analysis of the
5 causes for service-quality under-performance.

6 Q. And that's because the scope of your analysis is not as
7 comprehensive or inclusive as you would propose this
8 Commission undertake; is that correct?

9 A. In that instance, that would be an in-depth analysis
10 and audit of the root causes of service-quality
11 under-performance by, in this case, FairPoint. That
12 would be a very in-depth analysis which would include
13 site visits, assessment of outside -- condition of
14 outside plant, condition of central office's equipment,
15 work-force levels. It would include analyses of
16 processes, internal processes within the company, to
17 see the range of how the company reacts to
18 service-quality problems, how it identifies the
19 problems, proactive maintenance, a whole host.

20 Q. And that "in-depth analysis," I think that was your
21 term, is distinguishable from the you-get-what-you-see,
22 or words to that effect. I apologize if I missed or
23 transposed. But the analysis you did --

24 A. Correct. And it also -- from what we were told, it

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1 would be much more in-depth from my understanding of
2 what FairPoint has done to date.

3 Q. Now, sir, you didn't conduct a study to quantify the
4 amount of capital expenditures, if any, needed to meet
5 what you deemed to be a minimally satisfactory level of
6 service quality, did you?

7 A. I did not connect -- conduct an analysis.

8 Q. In your testimony, sir, you relate certain
9 conversations you had with union officials regarding
10 the potential loss of workers; is that correct?

11 A. That's correct.

12 Q. And are any of those union officials testifying in this
13 proceeding?

14 A. No.

15 Q. Are they available therefor for any cross-examination
16 or questioning by parties?

17 A. They did not deliver formal testimony.

18 Q. Now, you also stated in response to questions by Ms.
19 Hatfield that the CWA conducted a survey of some union
20 members in northern New England; is that correct?

21 A. I stated or -- that the CWA and IBEW conducted a survey
22 of its membership.

23 Q. All right. And I think it was referenced in the OCA's
24 Exhibit 126P; is that correct?

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1 A. That's correct.

2 Q. And was the survey a scientific sample or a judgment
3 sample?

4 A. Well, a 40-percent response rate is a very significant
5 response. The questions are not the same as you would
6 have on customer care or customer satisfaction survey,
7 where you would try to have five points of data that
8 you could assemble. It was very black and white. Are
9 you seriously considering leaving the company if the
10 transaction is approved? Yes, no, not sure. Pretty
11 straightforward.

12 Q. Okay. My question to you, sir, wasn't that. It was
13 whether you conducted a scientific sample or judgment
14 sample. Do you not understand the meaning of those
15 terms?

16 A. Why don't you enlighten me.

17 Q. I will, but first answer my question. Do you
18 understand the meaning of those terms?

19 A. I don't know how you're using the term, "judgment
20 sample" and "scientific sample."

21 Q. Fair enough. Tell me how you interpret those terms,
22 sir.

23 A. I won't interpret those terms.

24 Q. Fair enough. So I take it if I asked you whether the

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1 survey was -- if it were a scientific study, do you
2 know if the technique that you used to select the
3 employees was a simple random sampling?

4 A. It was not a simple random sampling, no.

5 Q. Was it an end-factor sampling process?

6 A. No.

7 Q. Was it scientific at all?

8 A. In the sense of -- not in those terms, no. What it was
9 is, the surveys went to stewards who handed them out to
10 whoever they could, and they would get the responses as
11 they could.

12 Q. Okay. And that actually addresses my next question,
13 which is what method of surveying or interviewing was
14 used? Were they mailed?

15 A. No. They were handed, primarily.

16 Q. Okay. Handed. So you didn't use an e-mail process.
17 They were personally delivered by a union official to a
18 respondent; is that correct?

19 A. That's the way I understand it, yes.

20 Q. When you say that's the way you understand it, what
21 does that mean, sir?

22 A. I wasn't there at each point of distribution of the
23 survey.

24 Q. But didn't you state in your testimony that this survey

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1 was undertaken at your direction?

2 A. Yes, it was.

3 Q. Did you not instruct the officials undertaking the
4 survey to do so in a specific way?

5 A. Yes.

6 Q. And what way did you instruct them to do it?

7 A. That they take the survey and give it to as many
8 workers as they could and get the responses.

9 Q. And did you instruct your union officials to distribute
10 them directly after or in conjunction with union
11 meetings regarding the sale of assets?

12 A. I did not specify when or where it would be
13 distributed.

14 Q. Well, do you know whether the surveys were distributed
15 directly after or in conjunction with union meetings
16 regarding the sale of the assets?

17 A. I do not so know.

18 Q. And is it your testimony to this Commission that the
19 results could not possibly have been biased because of
20 information provided by the union at or before the
21 surveys were taken?

22 A. Well, the membership of both CWA and IBEW are not going
23 to take the union's stance as determinative of what
24 they will make as a life decision for themselves and

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1 for their families. This is very critical. They are
2 generally well informed about this. It's their lives,
3 their work lives that are on the line. And they will
4 make up their own decisions, regardless of what the
5 union might or might not say.

6 Q. And the union, of course, as you stated earlier,
7 opposes the transaction.

8 A. Yes.

9 Q. And I take it you would agree that it's not probable
10 that an employee would make a life decision affecting
11 their families based on whether they get additional
12 vacation pay. Or is that your testimony?

13 A. My testimony was that, in the terms of seriously
14 considering when you would retire, if it's the choice
15 of retiring right now or at a point when you can get an
16 additional X-number of weeks' vacation bought, other
17 things being equal, you would get that additional
18 amount of money. Just like if you were qualified to
19 obtain a 3-percent pension increase one day. You
20 decide to retire after you get the 3-percent increase
21 or before the 3-percent increase? Other things being
22 equal, you would decide to do it after.

23 Q. Okay. Fair enough. Was there any additional analysis
24 that you undertook or that the union undertook to

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1 support the contention that the non-responding portion
2 of the relevant employee population would have
3 responded in a manner similar to the responding portion
4 of the population?

5 A. Repeat that question?

6 MR. DEL VECCHIO: Could you repeat that
7 back, ma'am.

8 (Record read as requested.)

9 A. No. We just assume extending that, as I stated in the
10 rebuttal testimony in Vermont that was attached,
11 extending these surveys results.

12 Q. And I take it based on the fact you said you assumed
13 that. But you're asking this Commission also to assume
14 that the people who did not respond would respond in a
15 similar fashion to those that did respond. Is that
16 your testimony?

17 A. My testimony was, extending these results, I gave the
18 specifics, in terms of the numbers of people who
19 responded, in terms of seriously considering yes, no,
20 not sure, and then stating -- extending these results.

21 Q. So you're not asking this Commission to make that
22 assumption?

23 A. I'm asking them to consider that as a possibility.

24 Q. Not as a probability necessarily. But you're asking

1 them to assume this as a possibility. Is that your
2 testimony?

3 A. Yeah.

4 Q. And do you know what the non-responded bias was in the
5 survey regarding those that did not reply?

6 A. No.

7 Q. And I take it you did not do a second survey to the
8 non-responding population to determine their
9 preferences?

10 A. That's correct.

11 Q. And I take it, also, that you would agree that stated
12 intention does not necessarily match behavior?

13 A. Correct.

14 Q. And the fact that an employee may say that he is,
15 quote, very likely to leave the company, doesn't mean
16 they necessarily will leave the company; correct?

17 A. Correct. But we didn't use the term "very likely." We
18 said "seriously considering."

19 Q. Fair enough. But the answer is still --

20 A. Yes, there is a difference between seriously
21 considering and taking that step. And I state that
22 also in the rebuttal testimony. But also, given the
23 magnitude of the responses, that was significant.

24 Q. Right. But I just want to clarify the record, though.

1 Despite the fact that you used "very seriously" -- is
2 that it -- "considering"?

3 A. "Seriously considering."

4 Q. "Seriously considering"?

5 A. Right.

6 Q. That doesn't necessarily mean that they're going to
7 leave.

8 A. That's correct.

9 Q. And I take it that you would agree that individual
10 decisions will ultimately or would ultimately be based
11 on many variables and not just a change in employer; is
12 that correct?

13 A. Well, when you say "change of employer," you're talking
14 about all that represents, not just, in quotes, the
15 employer, but the wages, the benefits, the financial
16 condition and viability of the employer, the reputation
17 of the employer and all that entails. So it's not just
18 the employer. It's a change in the entire -- possibly
19 the entire working conditions and future.

20 Q. And it may have nothing at all to do with the working
21 conditions, might it?

22 A. In terms of working conditions, meaning what?

23 Q. That is, an employee's decision whether to retire may
24 have nothing at all to do with the fact that FairPoint

1 is assuming these assets; isn't that correct?

2 A. Well, that's correct. That's why we asked the second
3 question: Are you seriously considering retiring if
4 the transaction is not approved and Verizon remains
5 your employer? And that difference was, on the whole,
6 56 percent said yes, we're seriously considering if
7 FairPoint takes over, and 7 percent said yes, if
8 FairPoint -- if Verizon remains the employer.

9 Q. Let me see if I can put it this way: Would you agree,
10 Dr. Peres, that the survey doesn't prove that many
11 Verizon workers will, in fact, leave their present
12 employment if the deal is approved?

13 A. It doesn't prove -- nothing will prove, in quotes,
14 until those people or whatever portion of them actually
15 do leave.

16 In addition to the survey, there's
17 anecdotal evidence which I cite here, and that has
18 occurred -- and I'll give a few examples. One is --
19 and it's anecdotal again. But in response to some
20 requests, the Vermont IBEW local had a financial
21 planner come in on a Saturday. A hundred people showed
22 up, approximately 60 members of the IBEW, to deal with
23 financial planning issues, looking at pensions, looking
24 at what the ramifications are. And those people

1 brought their significant others to deal with. There's
2 the example of the garage I mentioned earlier in
3 Belmont, New Hampshire, with six out of nine have
4 retired since October. There are constant requests to
5 the business agents about pension, pension eligibility,
6 penalties. If you're pension-eligible, you could
7 retire with a penalty if you don't have a certain
8 number of years. Those people are asking a lot of
9 questions.

10 So the survey is not proof that people
11 will in fact leave. But it gives probable cause, in my
12 estimation, that this is a serious issue that FairPoint
13 and the Commission should deal with in planning for the
14 future.

15 Q. Fair enough. I believe you said that in the past the
16 CWA has conducted studies like this?

17 A. No, not to my knowledge, in terms of the survey.

18 Q. In terms of what?

19 A. If you're referring specifically to the survey.

20 Q. Have you conducted surveys like this?

21 A. Not this particular, no.

22 Q. I'm sorry. You say "not this particular." Surveys
23 designed to attempt to gauge whether stated intention
24 is probative of actual conduct.

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1 A. No, we have not conducted such a survey.

2 Q. So you've never conducted in the past whether or not
3 surveys like this have in fact proven to be true, have
4 you?

5 A. We have not had the reason to conduct such a survey
6 because we have not dealt with a situation -- well, we
7 have dealt, at least in my experience, with mergers --
8 there's a litany of mergers, such as Nynex with Bell
9 Atlantic, Bell Atlantic with GTE -- those types of
10 mergers where there wasn't an issue really involved
11 with the financial viability of the purchaser.

12 Q. Now, regarding the survey results in New Hampshire, I
13 believe you were answering some questions from Ms.
14 Hatfield. Do you recall that?

15 A. Yes.

16 Q. And is it true that only 34 percent -- and you can
17 strike the word "only" if you feel more comfortable
18 responding -- but 34 percent, or approximately 352
19 workers responded to the survey?

20 A. That's a significant response.

21 Q. Okay. Is that the lowest number of respondents in the
22 three states?

23 A. In terms of percentages? Yes.

24 Q. And thus, I take it that 66 percent did not respond in

1 New Hampshire?

2 A. Good math.

3 Q. That's about the extent of my math, trust me.

4 Was the -- I think you just said the
5 response was in fact the lowest in the northern states.
6 Of those that --

7 A. That could be a function of many different factors.

8 Q. For whatever reason, it was the lowest response rate in
9 the northern states; correct?

10 A. Correct.

11 Q. And of those that did respond, approximately 52 percent
12 said they'd seriously consider leaving; is that
13 correct?

14 A. If the FairPoint deal was approved, yes.

15 Q. Okay. And if my math is correct -- and this is still
16 within the penumbra of my math capabilities -- would
17 52 percent of the 34 percent represent approximately
18 17.7 percent of the New Hampshire population of
19 organized employees?

20 A. Okay.

21 Q. So that's approximately 164 employees out of the total
22 pool?

23 A. Well, 183.

24 Q. Okay. And the total would be -- I'm not going to try

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1 this math -- but somewhere in the vicinity of 900 to a
2 thousand?

3 A. A thousand is the total union -- 1034 is the total
4 union-represented work force.

5 Q. So approximately 82 percent did not reply that they
6 were seriously considering leaving their jobs in New
7 Hampshire?

8 A. Okay.

9 Q. That's a "Yes"?

10 A. Yes.

11 Q. Now, sir, the CWA has a web site; is that correct?

12 A. That's of the total.

13 Q. Yes.

14 A. All right? So it's not of the responses.

15 Q. No. I think we're following you. It's of the total
16 population --

17 A. That's correct.

18 Q. -- of organized employees in the state of New
19 Hampshire. Yes.

20 A. Right. Seventeen percent of the total population is
21 pretty large for a survey.

22 Q. Oh, I understand. But I was, as you might imagine,
23 focusing on the converse --

24 A. That's right.

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1 Q. -- which is approximately 82 percent did not respond in
2 that fashion.

3 A. That's correct.

4 Q. Okay. And the CWA has a web site. Are you familiar
5 with that?

6 A. Yes.

7 Q. And I believe I handed out some documents yesterday to
8 your counsel which were marked for identification as
9 Verizon Exhibits 11P through 22P. Have you had a
10 chance to look at those?

11 A. I looked quickly, yes.

12 Q. And I'll represent to you, so that we don't have to
13 spend a huge amount of time on this, that they
14 represent excerpts of various pieces of information
15 conveyed by the union to the public, and presumably to
16 its membership on its web page. Would you agree with
17 that?

18 A. Yes.

19 Q. And the purpose of this is to educate, presumably their
20 work force, the membership, as to matters of interest
21 to them?

22 A. Yes.

23 Q. Okay. Now I'd like to direct your attention to some of
24 these if we could. And this will be my first time

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1 using Elmo. I want to say Alamo, but that would be
2 obviously incorrect.

3 And these highlights are mine, sir, if
4 you could just follow along with me.

5 A. Okay.

6 Q. I apologize if they don't look very pretty.

7 This represents a news report, if that's
8 the correct term, to the membership. And I wonder if
9 you could simply read the highlighted sections. And we
10 won't read all the highlighted sections because it's
11 past 5:00. But if you could do this page for me.

12 A. Okay. I'll try to interpolate from there to here
13 because --

14 Q. You have it right there, sir.

15 A. Oh, jeez. Whole new world. Can I change the channel?

16 Q. It might be FiOS. You never know.

17 A. "November 1st, 2006" is the first line highlighted.

18 Q. Yes.

19 A. You want me to continue?

20 Q. Yes.

21 A. Okay. "CWA once again is battling plans by Verizon to
22 abandon phone service in rural areas."

23 Q. Next highlighted area?

24 A. "Earlier in 1994, after union activists mounted a

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1 political and public awareness campaign in New York
2 state, Verizon dropped its plan to sell off access lines
3 in the more rural upstate area."

4 Q. Could that have been 2004, or was there another sale
5 proposed in '94?

6 A. No, no, no. That should be 2004.

7 Q. Okay. Thank you. And there's a third page here to
8 this Exhibit 11P which I will present. In the bottom,
9 does it read where I highlighted, "Governor John Lynch
10 of New Hampshire, parentheses, and others, have
11 publicly urged that Verizon drop plans to sell off its
12 phone lines in the three states"? Did I read that
13 correctly with my annotation?

14 A. You did pretty well.

15 Q. Thank you. Is it your testimony that the governor of
16 the state has publicly opposed this transaction?

17 A. My testimony did not cover the statements by the
18 governor.

19 Q. Okay. And you don't know whether or not the union ever
20 corrected that bit of information to its membership, do
21 you?

22 A. I don't know. I think they -- there was a letter, if I
23 am not mistaken, from Governor Lynch that was -- wasn't
24 there a letter included in here?

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1 Q. Yes. Thank you. We'll get to that.

2 A. Okay. So that would be what the governor actually
3 said.

4 I would like to make one comment on the
5 upstate, the potential upstate New York sale --
6 northern New York sale -- upstate New York sale -- that
7 it did not go through. There wasn't a particular sale.
8 Verizon kept the lines. But it should be noted that
9 instead of abandoning those lines as they wanted to do,
10 they actually have invested in FiOS in Buffalo,
11 Syracuse and Albany.

12 Q. Thank you, sir. And directing your attention to
13 Exhibit 13P, which I think is the letter you were
14 referring to a moment ago, the governor's letter.

15 A. Yeah. Yes.

16 Q. And is the highlighted paragraph an example of what the
17 CWA represented as the governor's opposition to this
18 transaction?

19 A. I don't know what the original -- whoever wrote the
20 original sentence that you referred to, in terms of the
21 governor's position. I did not write that. I don't
22 know about what the basis for that was.

23 Q. That's fair. Could you please read the first sentence
24 of the highlighted area.

1 A. I feel like I'm on a test for a driver's license.

2 Q. I know.

3 A. "Over the years, Verizon has worked closely with the
4 state of New Hampshire to provide reliable service to
5 rural areas of New Hampshire. This partnership has
6 played an important role in the economic development
7 and expansion of broadband services throughout New
8 Hampshire. The sale of assets to a smaller company or
9 companies that cannot adequately maintain the network
10 or provide the same level of services currently
11 available could have a substantial impact on Verizon
12 customers across New Hampshire."

13 Q. Okay. Thank you. Directing your attention to Verizon
14 Exhibit 12P, this is a reference to a meeting in
15 Vermont, as I understand it. Is that correct?

16 A. That's what it refers to.

17 Q. And by the way, the date on this is October the 10th of
18 2006; is that correct?

19 A. Yes, that's the date on this sheet.

20 Q. And the day on Verizon Exhibit 11P -- or the date, I
21 should say, was November the 1st, 2006; is that
22 correct?

23 A. You're reading that correctly.

24 Q. Yes. And Exhibit 13P was sometime prior to September

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1 the 4th, I believe, 'cause it says, "Don't forget Labor
2 Day, September 4th." Is that fair?

3 A. Fair.

4 Q. Okay. And these, of course, are all prior to the
5 announcement of the transaction with or between Verizon
6 and FairPoint in January of '07; is that correct?

7 A. Yes.

8 Q. So you were at a session -- were you not -- on October
9 the 10th? Is that correct? 'Cause I see a Ken
10 Perez -- which is Peres. Sorry.

11 A. Not your fault. Whoever, you know. What can I say.

12 Q. You were present at this session; is that correct?

13 A. Yes.

14 Q. And you were speaking in connection with the CWA's
15 attempts to do what?

16 A. I was speaking about the importance of my portion of
17 that. I spoke about the importance of broadband to
18 rural and smaller urban areas, in terms of the general
19 economy, and what policies could help stimulate both
20 investment and demand.

21 Q. And was the purpose of this session, in large part, to
22 specifically address the proposed sale of Verizon's
23 land lines?

24 A. Yes.

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1 Q. And continuing down memory lane, if I could, Verizon
2 Exhibit 14P. Are you with me?

3 A. Okay.

4 Q. And this refers to a meeting; does it not? Allow me to
5 read this just for convenience so you don't have to
6 strain your eyesight, 'cause we appreciate how
7 difficult it is to see the monitors.

8 Intro. "Presentation by Mike Oday
9 regarding potential sale to FairPoint Communications:
10 Pitfalls of selling to an under-capitalized company,
11 the impact on service quality and inability to grow
12 broadband with shortage of capital." Did I read that
13 correctly?

14 A. You read that correctly.

15 Q. And this was in August of 2006; is that correct?

16 A. That's what's stated. I was not at that meeting.

17 Q. And then, prior to that, on Exhibit 15P there is a tape
18 update with respect to a labor rally; is that correct?

19 A. That's what it states.

20 Q. And among other rallies, there was one to be held in
21 Manchester, New Hampshire; is that correct?

22 A. That's what it says.

23 Q. And then continuing backward in time, Verizon
24 Exhibit 17P, this represents or reflects a meeting with

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1 the governor of Vermont; is that correct?

2 A. That's what it states.

3 Q. And I've highlighted a portion there, and it identifies
4 potential buyers; is that correct?

5 A. Yes.

6 Q. And at this point, of course, the union apparently did
7 not know what -- or which buyer it would be?

8 A. Yes.

9 Q. So they had identified Century Telephone, FairPoint and
10 Citizens as possibilities?

11 A. I believe that came from media reports.

12 Q. And they, the union, opposed each of those; is that
13 correct?

14 A. The concern, as you look through all these submissions,
15 is the possibility of selling to a company that would
16 not be financially or operationally capable of meeting
17 the needs of both the workers and the consumers. That
18 is the whole reason for the opposition to the potential
19 sale. Now, there are examples where CWA has opposed
20 sales of Verizon lines in the initial -- initially.
21 But once there was a particular buyer, once it was
22 shown that that buyer could meet the needs of both
23 workers and consumers, CWA ended up supporting it -- as
24 an instance, the Alltel purchase of the Kentucky lines

1 a few years back.

2 Q. Right. And I think I heard some reference to that
3 earlier. Thank you.

4 Were there any potential buyers in the
5 northern states that the union did not oppose?

6 A. We don't know what specifics -- or what the companies
7 were or what exactly would be offered and what their
8 capabilities had been.

9 Q. Well, you mentioned the rumor mill, or words to that
10 effect, which is why I think you just testified that
11 there were three companies identified here. Were there
12 other companies that had been identified in the rumor
13 mill?

14 A. Not that I can remember. There may have been.

15 Q. Okay. But those that were identified, the union
16 opposed; is that correct?

17 A. The union opposed Verizon's abandonment of these lines.

18 Q. Okay. Thank you. And I will just represent to you --
19 and you won't have to read this one -- that on the 25th
20 of May, Verizon Exhibit 18P, there was another meeting
21 in Manchester to stop Verizon from selling land lines;
22 is that correct?

23 A. That's what it says.

24 Q. And I direct your attention to Verizon Exhibit 19P.

1 Are you with me?

2 A. I'm catching up.

3 Q. I apologize. I tend to be faster than I should be.

4 A. Okay.

5 Q. I think at this late time it's appreciated.

6 Directing your attention to the bottom,
7 could you please read that highlighted section?

8 A. "Attention all members. This is your job you are
9 fighting for. We all need to get involved. Let all of
10 us duplicate the success of our brother [sic] and
11 sisters in New York. We all need to work together.
12 Thank you for coming."

13 Q. Direct your attention to Verizon Exhibit 20P, the
14 highlighted, I think it's Page 2.

15 A. The highlighted?

16 Q. Page 2, I believe.

17 A. Is that the one you have right there?

18 Q. Yes. Thank you.

19 A. "CWA, along with IBEW" -- it would help if we had a
20 bouncing ball.

21 "CWA, along with IBEW, along with the
22 state AFL-CIOs, are coordinating an all-out effort to
23 bury and defeat the sale of the upper states' land
24 lines. We will be contacting politicians, PUCs, the

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1 media, to name a few."

2 Q. I assume that that is, in fact, what the union has been
3 doing; is that correct?

4 A. I would assume.

5 Q. And finally direct your attention to Exhibit 22P. Can
6 you read that?

7 A. Yes.

8 Q. And is it correct that the union here states, "I can
9 assure you that we have a lot of support and we'll do
10 whatever it takes to fight for our members in the
11 northern states"? Did I read that correctly?

12 A. Yes, you did.

13 Q. Okay. One final question, Dr. Peres. You mentioned
14 earlier the issue of six out of nine retiring from
15 Belmont, I believe; is that correct?

16 A. Yes.

17 Q. And you referenced that as being anecdotal. What do
18 you mean by "anecdotal"?

19 A. I was told that.

20 Q. I'm sorry?

21 A. I was told that's what happened.

22 Q. I see. So you don't have any understanding as to the
23 specifics of that particular garage or CO, do you?

24 A. Correct.

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1 Q. Do you know where it's located?

2 A. New Hampshire.

3 Q. Well, I think we would all stipulate to that, yes.

4 Would you accept, subject to check, that
5 it's near Winnepesaukee, Lake Winnepesaukee?

6 A. I would, subject to check.

7 Q. Would you accept, subject to check, also, that it's a
8 very desirable location for union employees to work at?

9 A. Subject to check.

10 Q. Would you also accept, subject to check, that the
11 company has not had difficulty attracting workers in
12 the Lake Winnepesaukee area to work in a garage such as
13 Belmont?

14 A. Subject to check.

15 Q. Thank you, sir.

16 A. But then again, there is the issue of replacing
17 long-term employees currently. And my understanding,
18 again, anecdotal -- I was told this by business
19 agents -- that many of the people coming in and getting
20 tech jobs now are in nontraditional occupations, such
21 as clerical, operators, service reps, in terms of
22 nontraditional in terms of tech jobs. So, though they
23 may have 20 years', 15 years', 25 years' experience
24 with the company, it's not in the outside plant

1 technician title. So if they obtain that job, they
2 would have to be trained as a new trainee.

3 Q. But you have no idea whether or not there will be
4 bidding into that from other less desirable locations
5 elsewhere in the company or in New Hampshire, do you?

6 A. Correct. And we also don't know how many other garages
7 would be so affected, to use your terms, in "less
8 desirable locations."

9 Q. And that's fair. But for the moment, I'm only focusing
10 on the anecdotal list of choices that you provided to
11 the Commission a moment ago.

12 A. Okay.

13 Q. Would it be unusual in this particular case, assuming
14 that it is desirable -- I'd ask you to accept that,
15 subject to check, that working on or near Lake
16 Winnepesaukee is -- that employees might work there
17 their entire career, and when they become
18 pension-eligible might decide to leave, thus seeing a
19 mass migration, if you will, a mass retirement?

20 A. State that as a question?

21 Q. I'm basically asking you whether you find it unusual
22 that the employees in this particular area have retired
23 at one time, given that, subject to check, it's
24 desirable to work in an area like Lake Winnepesaukee?

1 A. Yes, I would say that, assuming it's a desirable
2 location, that in terms of the survey, relatively few
3 workers said that they would retire if the sale were
4 not approved and Verizon were still their employer.
5 Talks to the desirability of a Verizon -- a position
6 with Verizon, and that the exodus, the potential exodus
7 and at least the strong, serious consideration of
8 retirement-eligible workers is cause for a lot of
9 concern.

10 Q. Thank you, Dr. Peres.

11 MR. DEL VECCHIO: Thank you, Mr.
12 Chairman.

13 CHAIRMAN GETZ: Redirect, Mr. Rubin?

14 MR. RUBIN: Just very briefly, Mr.
15 Chairman. Thank you.

16 **REDIRECT EXAMINATION**

17 BY MR. RUBIN:

18 Q. Dr. Peres, you rather modestly declined to call
19 yourself an expert on survey design or research. Do
20 you have any experience developing surveys for state
21 regulatory proceedings or commissions?

22 A. Yes. Actually, in New York there was a proceeding on a
23 potential service-quality satisfaction survey. I
24 worked with a team that basically was selected by the

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1 Commission in a broader case, a service-quality case,
2 that consisted of representatives from the attorney
3 general's office, from New York Telephone, from the
4 staff of the Commission and, well, the consultants also
5 hired by New York Telephone. So we spent a few months,
6 actually, analyzing different survey instruments, the
7 type of questions, the potential demographics of the
8 prospective respondents and all those types of issues,
9 scales and things like that. So I do have a history
10 of -- some history of working on that.

11 Q. Thank you.

12 MR. RUBIN: That's all we have, Mr.
13 Chairman.

14 CHAIRMAN GETZ: Thank you.
15 Then you're excused. Thank you, Dr.
16 Peres.

17 THE WITNESS: You're welcome.

18 CHAIRMAN GETZ: Mr. Mandl, is Dr.
19 Pelcovits prepared?

20 MR. MANDL: Yes, he is.

21 **MICHAEL D. PELCOVITS SWORN**

22 **DIRECT EXAMINATION**

23 BY MR. MANDL:

24 Q. Good afternoon, Dr. Pelcovits. Could you please state

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1 your full name for the record.

2 A. Yes. Michael D. Pelcovits.

3 Q. What is your business address?

4 A. Business address is 1155 Connecticut Avenue, Northwest,
5 Suite 900, Washington D.C., 20036.

6 Q. By whom are you employed, and in what capacity?

7 A. I'm employed by the consulting firm Microeconomic
8 Consulting and Research Associates, known as MiCRA.
9 And I'm a principal with the firm. I'm one of the
10 partners of the firm.

11 Q. Do you have before you documents entitled "Direct
12 testimony of Michael Pelcovits" in this proceeding?

13 A. I do.

14 Q. You have both a public version of that direct testimony
15 as well as a confidential version?

16 A. I actually only have a confidential with me. But I
17 think we also have the public.

18 Q. All right. Let me show you the public version, just so
19 we're -- we have that taken care of.

20 (Mr. Mandl hands document to witness.)

21 CHAIRMAN GETZ: While we're doing that,
22 let me confirm my list. Ms. Hatfield, do you have
23 questions? Ms. Fabrizio?

24 MS. FABRIZIO: I do not.

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1 CHAIRMAN GETZ: No questions.

2 And Mr. McHugh?

3 MR. MCHUGH: No.

4 CHAIRMAN GETZ: Thank you.

5 BY MR. MANDL:

6 Q. Now you have the public and confidential versions of
7 your prefiled testimony; is that correct?

8 A. Yes, I do, Mr. Mandl.

9 Q. And those prefiled testimonies also include a series of
10 attachments, 1 through 51; is that correct?

11 A. That's correct.

12 Q. Was your public -- or were your public and confidential
13 direct testimonies prepared by you or under your
14 direction and supervision?

15 A. Yes, they were.

16 Q. Do you have any corrections to those documents?

17 A. I do not.

18 Q. And you adopt both the public and confidential versions
19 of your testimony as your direct testimony in this
20 proceeding?

21 A. I do.

22 Q. Okay.

23 MR. MANDL: NECTA and Comcast phone
24 would request that Dr. Pelcovits be allowed to offer some

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1 brief testimony regarding Staff Exhibit 61, which was the
2 FairPoint cutover monitoring statement of scope. This was
3 a document that was not made available until October 29th,
4 well after Dr. Pelcovits' testimony was submitted. There
5 was testimony on this document from its sponsor, the
6 Liberty Group consultants, retained by the Staff, as well
7 as by a FairPoint witness. And I don't believe this will
8 take very long, but I'd just like to ask permission for
9 Dr. Pelcovits to offer a few brief comments on that
10 document.

11 CHAIRMAN GETZ: Any response from the
12 parties? Any objections?

13 (No verbal response.)

14 CHAIRMAN GETZ: Okay. Then you may
15 proceed with what you characterize as "brief comments" on
16 the proposal.

17 MR. MCHUGH: Which was the basis for the
18 non-objection, Mr. Chairman.

19 MR. MANDL: We'll keep our fingers
20 crossed.

21 BY MR. MANDL:

22 Q. Dr. Pelcovits, have you had an opportunity to review
23 what was marked as Staff Exhibit 61, the FairPoint
24 cutover monitoring statement of scope?

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1 A. Yes, I have a document. It's about five pages long.
2 So that's the document I have.

3 Q. Okay. And based on your review of that document, can
4 you provide some brief comments and observations?

5 A. Yes. I will be brief. Firstly, I have reviewed the
6 document. I was not here for the testimonies
7 yesterday, but I was briefed on them by counsel.

8 And let me just start off by saying that
9 I think it's really a very, very strong, excellent
10 effort by the parties involved in developing this scope
11 of the third-party involvement in the transition from
12 the Verizon to the FairPoint system. So I certainly
13 give a -- really commend the people that put the work
14 into this and think that it really addresses quite a
15 number of the concerns that were raised in my
16 testimony.

17 I do have certain both combination of
18 questions and suggestions for refinement. And maybe
19 they just reflect that I don't fully understand what's
20 in the document. But I would say one of the issues
21 that came to my mind as I reviewed it is what is the
22 timeline involved in doing these tasks and activities
23 on behalf of Liberty? Where does everything fit in?
24 Is there enough time for Liberty to both be involved

1 with FairPoint, with the staff of the commissions in
2 reviewing the process, the testing, and the entire
3 steps that they spell out here? Is there time? And
4 where do the reports fit in? Where are the draft
5 reports, the comments on the reports, and the final
6 reports? So I don't see a specific timeline. And in
7 the absence of that, I certainly have some concern
8 whether everything can be done if FairPoint wants to
9 proceed with its schedule to do the cutover on May 1st.

10 Second issue specifically is the concern
11 of wholesale, of my clients as a wholesale customer. I
12 think that their role in the process is quite limited.
13 And as I understand it, their role is to essentially
14 talk and comment to FairPoint and not directly to
15 Liberty. And I am concerned that the lack of some sort
16 of a mechanism for regular interaction between Liberty
17 and the wholesale customers could create some problems.
18 I think it's much better not to go through a filter of
19 what FairPoint might say about what the wholesale
20 customers are concerned about.

21 And third, and last point. It isn't,
22 again, clear to me how this all fits in with the
23 process of making a final decision on whether FairPoint
24 is ready to cut over or not to its own systems. I

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1 think, and what I believe it is saying, is that's still
2 FairPoint's decision. There will be comments and
3 reports by Liberty. But it doesn't say what happens
4 if, let's say, Liberty raises a whole bunch of problems
5 that they feel have not been addressed and might be
6 disruptive in the cutover, and FairPoint disagrees with
7 that. So I'm not sure at what point and where in the
8 process that type of sort of conflict of view points
9 would actually be resolved. Would it go to the
10 commissions? Or how would it be dealt with? And
11 without sort of knowing where the buck stops and how
12 things get resolved, I think it leaves open a potential
13 for sort of a weakening of Liberty's role, or at least
14 a significant amount of uncertainty for everyone
15 involved. So that really sums up, based on my initial
16 review and understanding of the scope.

17 Q. Thank you very much.

18 MR. MANDL: Dr. Pelcovits is available
19 for cross-examination.

20 CHAIRMAN GETZ: Thank you. Ms.
21 Hatfield?

22 MS. HATFIELD: Thank you, Mr. Chairman
23 Actually, that answered my question. I just wanted to
24 note for the record that OCA has marked five different

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1 exhibits that are various data responses of Mr. Pelcovits
2 to be entered as exhibits. But I don't have any
3 questions.

4 CHAIRMAN GETZ: Okay. Thank you.

5 All right. Then I think that's all the
6 questions for Dr. Pelcovits. No need for redirect, I take
7 it?

8 So you're excused. Thank you, Doctor.

9 Okay. Let's talk about tomorrow. My
10 understanding is we're going to start with Ms. Baldwin,
11 and then we'll be going to Mr. Lippold to hear about some
12 of the other CLEC MOUs.

13 Is there anything else, Ms. Hatfield?

14 MS. HATFIELD: Mr. Chairman, I'm
15 assuming you don't want to discuss this today, but just to
16 raise it in advance of tomorrow. I think that one of the
17 things we need to discuss is the briefing schedule. And I
18 did want to mention the fact that back a few months ago
19 when the parties discussed a schedule that we proposed to
20 the Commission, at least the OCA was under the impression
21 that we would be receiving transcripts before now. We
22 haven't received any transcripts for any of the days of
23 the hearing. So I just want to raise that issue, that
24 when the parties discussed a potential briefing date of, I

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1 think it's November 16th, we believed that we would be
2 getting transcripts much more quickly. And I'm not aware
3 of when we will be receiving them. But I did just want to
4 raise that. And a related issue is when we would receive
5 record request responses. And I think FairPoint has been
6 doing them on a daily basis. And Verizon, I believe, has
7 said they will provide them within a week after the
8 hearing is closed.

9 MR. RUBIN: Mr. Chairman, on that same
10 note, I agree completely with what Ms. Hatfield said. I
11 had a brief conversation with the court reporter this
12 morning, and they indicated the transcripts would be
13 provided. I believe they said all of them should be out
14 within seven days after the last day of hearings,
15 certainly which would put us around, I guess, November 8th
16 to receive the transcripts. And trying to produce briefs
17 just a week after that would be extremely burdensome. So
18 I think we do need tomorrow to address what we do with the
19 briefing schedule.

20 CHAIRMAN GETZ: Well, let me make sure I
21 understand. You've been getting daily rough drafts?

22 MS. HATFIELD: No. I believe the
23 Staff -- the OCA hasn't.

24 MR. RUBIN: And neither has Labor.

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1 CHAIRMAN GETZ: All right. Well, I
2 guess the first thing is if there's a meeting of the minds
3 on a proposal for a briefing schedule, then I guess that
4 would be the better result. If there's not a meeting of
5 the minds, then I'll hear the various proposals and we'll
6 make a ruling on a briefing schedule tomorrow.

7 MS. HATFIELD: And one other procedural
8 question. Is it your expectation that all of the parties
9 tomorrow would have available a complete listing of all of
10 our exhibits?

11 CHAIRMAN GETZ: Well, that's where I was
12 going to go next is with exhibits. I thought the attempt
13 was to try to come to agreement as we went along what was
14 getting entered. And I haven't been taking it that
15 there's a lot of debate about what goes in and what might
16 be kept out. Is there -- can folks enlighten me on
17 whether there is serious debate about what's in and out of
18 the record?

19 MR. MCHUGH: From FairPoint, Mr.
20 Chairman, I don't think so. We just want a final list to
21 make sure we have everything captured to make a final
22 decision.

23 CHAIRMAN GETZ: So it's more of a
24 ministerial matter rather than, as in a very recent case,

1 we had to have a hearing about what was in and what was
2 out. Is that a fair characterization?

3 MR. DEL VECCHIO: No monumental battles
4 that I'm aware of at this point, Mr. Chairman. Although,
5 we would like to see the final list, because some
6 documents were not actually referenced, and I'm not
7 certain whether they're still exhibits. I think, for
8 example -- and I don't mean to dredge up the past -- but
9 Unitil has some exhibits that they actually didn't
10 produce. So we'd like to actually see what the final list
11 is.

12 CHAIRMAN GETZ: So I guess I would
13 suggest then, it's really rushing it for tomorrow, but if
14 folks can do it tomorrow, fine. If it takes an informal
15 meeting to come to some conclusion and it gets submitted
16 later, great. And if there's some debate about what
17 should be entered, then I'll be prepared to sit at a
18 hearing on what should be admitted into evidence and what
19 should be excluded.

20 Any other procedural issues? Mr. Mandl.

21 MR. MANDL: Just a brief question. I
22 understand that Mr. Lippold will be participating in a, if
23 you will, a CLEC panel on a settlement agreement. I just
24 wanted to clarify whether that was the earlier settlement

1 agreement filed publicly with three CLECs or whether this
2 pertains to the highly confidential settlements, or both.

3 CHAIRMAN GETZ: My intent was this would
4 be a hearing for us to, or anyone else who's in the highly
5 confidential record, to inquire of Mr. Lippold about the
6 other MOUs -- not the BayRing, segTel MOUs, but the MOUs
7 that have been, for the time being at least, classified as
8 highly confidential.

9 MR. MANDL: I guess that leads to a
10 further question. If after your examination you decide to
11 re-classify any of that material, you know, what process
12 might be adopted. You know, from a timing standpoint, if
13 all that could get done tomorrow, that would be great.

14 CHAIRMAN GETZ: Okay. Well, we're going
15 to have to take it one step at a time, I'm afraid. And
16 we'll examine them tomorrow and discuss it with Mr.
17 Lippold and then we'll see what the appropriate next step
18 is.

19 MR. MANDL: Thank you.

20 CHAIRMAN GETZ: Thank you. You're going
21 to be here, anyways, for the Baldwin questioning?

22 MR. MANDL: Yes.

23 CHAIRMAN GETZ: All right. Anything
24 else?

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(No verbal response)

CHAIRMAN GETZ: All right. Then we'll
recess for the day and resume tomorrow morning at
9:00 a.m. Thank you, everyone.

MR. McHUGH: Thank you.

(Hearing adjourned at 5:45 p.m.)