STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

February 5, 2008 - 10:23 a.m. DAY II
Concord, New Hampshire

REDACTED FOR PUBLIC USE

RE: DT 07-011
VERIZON NEW ENGLAND, ET AL:
Transfer of Assets to FairPoint Communications, Inc. (Hearing regarding the Settlement Agreement filed by FairPoint, Verizon and the NHPUC Staff)

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

Jody O'Marra, Clerk

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

Reptg. Verizon New England, et al:
Victor D. Del Vecchio, Esq.

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

Reptg. One Communications:
Ted Price, Esq.

Reptg. the N.H. Telephone Association:
Paul J. Phillips, Esq. (Primmer, Piper...)

COURT REPORTER: Steven E. Patnaude, LCR No. 52

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. Irene Schmitt:
Alan Linder, Esq. (N.H. Legal Assistance)

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.

I N D E X

E X H I B I T S

EXHIBIT NO.	D E S C R I P T I O N	PAGE NO.
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P R O C E E D I N G S

CHAIRMAN GETZ: Okay. Good morning. We'll reopen the hearings in docket DT 07-011. Let's begin with appearances for today.

MR. McHUGH: Good morning, Mr. Chairman, Commissioner Below, Commissioner Morrison. Pat McHugh, from Devine, Millimet & Branch, on behalf of FairPoint Communications. With me at counsel table is Attorney Frederick Coolbroth, Attorney Kevin Baum. In addition, we have up in the panel Mr. Nixon and Mr. Leach, from FairPoint, and Mr. Newitt is at counsel table as well. Thank you.

CMSR. BELOW: Good morning.

CMSR. MORRISON: Good morning.

CHAIRMAN GETZ: Good morning.

MR. DEL VECCHIO: Good morning, Mr. Chairman, Commissioner Morrison and Commissioner Below. Victor Del Vecchio, representing Verizon. With me at counsel table is Robert Kenney, and in the witness box is Stephen Smith.

CHAIRMAN GETZ: Good morning.

CMSR. MORRISON: Good morning.

CMSR. BELOW: Good morning.

MR. PHILLIPS: Good morning,

Mr. Chairman, Commissioners Below and Morrison. My name is Paul Phillips, from the law firm of Primmer, Piper, Eggleston & Cramer, here on behalf of eight independent incumbent local exchange carriers who are members of the New Hampshire Telephone Association.

CHAIRMAN GETZ: Good morning.

CMSR. MORRISON: Good morning.

CMSR. BELOW: Good morning.

MR. PRICE: Good morning, Mr. Chairman and Commissioners. My name is Ted Price. I represent One Communications.

CHAIRMAN GETZ: Good morning.

CMSR. MORRISON: Good morning.

CMSR. BELOW: Good morning.

MR. MANDL: Good morning, Mr. Chairman and Commissioners. I'm Alan Mandl, representing the New England Cable & Telecommunications Association and Comcast Phone of New Hampshire.

CHAIRMAN GETZ: Good morning.

CMSR. MORRISON: Good morning.

CMSR. BELOW: Good morning.

MR. RUBIN: Good morning. Scott Rubin, representing the Communications Workers of America and the International Brotherhood of Electrical Workers. With me at the table is our consultant, Randy Barber. And, immediately behind me, from IBEW, Robert Erickson, and from CWA, Cassandra Xintaras.

CHAIRMAN GETZ: Good morning.

CMSR. MORRISON: Good morning.

CMSR. BELOW: Good morning.

MS. HATFIELD: Good morning, Commissioners. Meredith Hatfield, from the Office of Consumer Advocate, on behalf of residential ratepayers. And, with me is Rorie Hollenberg.

CHAIRMAN GETZ: Good morning.

CMSR. BELOW: Good morning.

MS. FABRIZIO: Good morning, Commissioners. Lynn Fabrizio, on behalf of Staff. And, with me at the table today is David Goyette of the Telecom Division. And, on the stand, Kate Bailey, Director of the Telecom Division, and John Antonuk and Randy Vickroy of Liberty Consulting.

CMSR. BELOW: Good morning.

CHAIRMAN GETZ: Okay. Good morning, everyone. I believe we left off yesterday with the beginning of Ms. Hatfield's cross-examination. We're trying to resolve the issue of, I guess, coordinating the run that was the subject at the technical session last week and the so-called "confirming run" that was circulated, I guess, to everyone yesterday that was dated February 1. Do we have some resolution about this?

MS. FABRIZIO: Yes, Mr. Chairman. Yes, we did discuss it yesterday, and everyone now has come to a common understanding of the document itself. In fact, the two-page document, which we distributed yesterday morning to Labor and the OCA, is a highly confidential summary of a financial scenario that reflects certain assumptions that Staff thought would provide a sanity check, if you will, to the terms of the Settlement Agreement as signed.

Staff did not run the model itself. Rather, we asked FairPoint to generate the output sheet, with Staff's assumptions regarding savings, TSA length, TSA backstop contingencies, and Maine and Vermont service quality/broadband contingencies. And, while this output was created after we had signed the Agreement, the discrepancy of dates was just Mr. Newitt, I think, completed the -- changed the footer at two minutes to midnight, so the date of the final sheet happened to be the following day, February 1st. And, we did not consider this to be integral to our decision to sign the Agreement. But we are happy to provide copies. You have before you copies of highly confidential Staff Exhibit 64HC, which includes the assumptions considered in this docket.

CHAIRMAN GETZ: Okay. Do we need any further discussion about the runs?

(No verbal response)

CHAIRMAN GETZ: Okay. Are there other preliminary matters, before we turn to Ms. Hatfield's cross-examination?

(No verbal response)

CHAIRMAN GETZ: Okay. Hearing nothing, then, Ms. Hatfield, please.

MS. HATFIELD: Thank you, Mr. Chairman. I think the bulk of my early questions are based on financial matters, so I think they would be directed at Mr. Leach. But, if there's a better witness, please feel free to answer the question.

(Whereupon Peter Nixon, Walter Leach, Stephen Smith, Kathryn Bailey, John Antonuk and Randall Vickroy were recalled to the stand as a panel.)

PETER NIXON, PREVIOUSLY SWORN

WALTER LEACH, PREVIOUSLY SWORN

STEPHEN SMITH, PREVIOUSLY SWORN

KATHRYN BAILEY, PREVIOUSLY SWORN

JOHN ANTONUK, PREVIOUSLY SWORN
RANDALL VICKROY, PREVIOUSLY SWORN
CROSS-EXAMINATION (resumed)
BY MS. HATFIELD:
Q. Starting on Page 7 of the Settlement Agreement, Section 2.1.1 specifies that "FairPoint agrees to expend a minimum of $52 million in capital expenditures in New Hampshire during each of the first three years", and I think we had prior testimony on that amount. I'm wondering if you could just briefly describe the type of expenses that are included in that amount and the types that wouldn't be allowed to be included in that amount.
A. (Leach) Yes. The $52 million represents what we refer to as kind of "run-rate capital expenditures", basically normal, recurring capital expenditure items required to run the day-to-day business. It would not include the broadband commitments, for example, which are discrete commitments made to expand the broadband network. But, basically, everything else, in terms of day-to-day, typical capital expenditures required to deal with the existing plant, expand the existing plant, due to customer growth, etcetera, would be included if the 52 million.

Q. So, would that include expenses that you've committed for double pole removal?

A. (Leach) There is a -- The answer is, part of that would cover double pole removals. We actually layered in a separate line item for double poles, as a result of the negotiations, and added two and a half million dollars per year over and above this number to deal with double pole issues. So, the answer is, there was some in there, but we concluded that we needed to increase that by $5 million.

Q. So, is that 5 million included in the 52, or in addition?

A. (Leach) It's in addition.

Q. Okay. Section 2.1.3 specifies that FairPoint must "spend a minimum of $45 million in capital expenditures during each of the fourth and fifth years following the Merger, until the Commission approves a reduction."
So, Mr. Leach or Ms. Bailey, what types of reductions do you see as possibilities or what type of event could trigger a possible reduction?

MR. McHUGH: I'm sorry, Attorney Hatfield, just for clarification, in 2.1.3, it's "49 million", not "45".

MS. HATFIELD: Excuse me. Thank you.

BY THE WITNESS:
A. (Leach) The reason that was added is this is a continuation of the same sort of commitments that are referred to in 2.1.1, recurring day in/day out kind of capital expenditures. However, we all agree that, if we got, in the first three years, the whole network and plant in such good shape that it didn't make sense to keep spending more money, we didn't want to just waste it. And, that was the reason for adding the provision that, if we can make a legitimate case, even though today we wouldn't expect that to be the case, that we just don't need to spend the money, we could make our case before the Commission, so that we weren't just wasting dollars that didn't need to be spent.
BY MS. HATFIELD:
Q. So, would you contemplate making a filing with the Commission to seek approval for such a reduction?
A. (Leach) We have no expectation of doing that today.
A. (Bailey) I think, if they were going to invoke the provision to spend less than $49 million, it would require a filing with the Commission, and an explanation of why the money didn't need to be spent.
Q. Thank you. Sections 2.1.5 and 2.1.6 deal with the event of a shortfall in the minimum required capital

expenditures, and in each one creates an adder. I'm wondering if you could just briefly describe how those are intended to work?
A. (Leach) Well, the purpose of these two provisions is to make sure FairPoint is accountable for meeting the capital expenditures that it has committed to spend over the five-year period. So, the incentive here is, if we don't, if we're short, then two things would happen. Not only would we have to make up the difference, but there would be a penalty imposed that, in terms of this "50 percent adder", that could be used for two things. If FairPoint could present a plan to use that adder for capital requirements or it could be determined that the adder would go to the applicable state program for telecommunications infrastructure.
But the whole point here is, you've got to do what you say you're going to do. If not, there will be a penalty imposed, and we'll decide how that penalty would be spent, either by FairPoint or for this telecommunications infrastructure support in New Hampshire.
Q. And, Ms. Bailey, similar to the prior question, because both of these provisions require that such expenditures by approved by the Commission, would you envision some

type of process taking place?
A. (Bailey) Yes.
Q. Section 2.1.8 requires that "FairPoint provide quarterly reports detailing capital expenditures". And, I'm wondering if that report to be provided to the Commission and the parties who are entitled to it or did you envision that simply going to Staff?
A. (Bailey) I don't think that the reports that are required in this Agreement will be filed forever as part of this docket. I think, once the final order is issued, if the Commission approves the Settlement Agreement, then these will be implementation details. And, right now, Staff receives quarterly reports from Verizon. And, we used to receive capital expenditure reports from Verizon, and they were filed with the Staff.
Q. Thank you. Turning to Page 10, and looking at Section 2.4, this references when the requirements and conditions in the two prior paragraphs, dealing with debt reduction and dividend reductions, can terminate. And, I'm wondering, does Staff or does FairPoint contemplate a process where the Commission determines that FairPoint has satisfied those requirements, and, therefore, the prior conditions no longer apply?

A. (Bailey) Well, I think the Leverage Ratios will be probably included in the quarterly reports, the quarterly financial reports that are required. And, I think that they will probably be evident. Did you have anything else?
A. (Leach) Our assumption is that this would work like it does in a typical credit agreement, where you have similar kinds of tests, and we would provide quarterly financial statements, with the explanations for how the calculation was made and if the test was actually achieved or not. So, we would assume that we do the same sort of reports for the Commission through this provision.
Q. So, the Commission wouldn't be required to take action or to notify the Company that they were relieved of the prior two conditions?
A. (Leach) No. It's our view that, once we have provided the reports that indicate that we have met the conditions, that there's no official action required by the Commission.
Q. Thank you. Turning to the next page, Section 2.5.2 discusses the contribution of working capital from Verizon and a total of $50 million. And, I believe, Mr. Leach, that yesterday you testified that those

monies would be used for network infrastructure problems that are not known at the time of close, but which might surface after the merger, is that correct?

A. (Leach) Yes.

Q. And, I think one example that you suggested the money might be used for is fiber investment. Can you describe any other possible uses?

A. (Leach) To the extent it's not used to remediate problems, which is the first and most important use of the funds, then it would be available for infrastructure improvements that we would sit down with Staff and suggest would be beneficial to the state. That could be more fiber to the premises, it could be more fiber built into the core backbone to get further into more remote locations. But it would be anything that was over and beyond that plan that we've already submitted to date, but would, in fact, benefit the infrastructure throughout the State of New Hampshire.

Q. And, my understanding is that those funds do not lapse, so they will be available to FairPoint at any point in the future?

A. (Leach) Those funds are in a -- The answer is "yes". Those funds are in a separate, discrete bank account. And, to the extent that interest accrues over time,

that also stays in the account. And, all of that money can only be used as approved by the Commission for the purposes described herein.
Q.   In 2.5.3, it discusses a plan that FairPoint needs to develop to spend the funds. Does the Company or does Staff envision a public process to determine how best to spend those funds?
A.   (Bailey) Well, the language here says "as the Commission determines appropriate". So, that will be up to the Commission.
Q.   So, the earlier language says "Within one year following the Closing Date, FairPoint shall develop and present for such review and approval as the Commission determines appropriate". So, it sounds like FairPoint will present a plan to the Commission, then the Commission can determine how it -- what type of process it wants to use to approve it?
A.   (Bailey) Yes, I think so. There are a number of possibilities. And, we really don't know what they're going to find in the first year. So, you know, it could be a plan that says "We ran into this problem in this central office, and it's going to cost this amount of money." And, if the Commission accepts that as a good use, then they may just let it -- let FairPoint do

that. Or, they could say "Staff, have you looked into this? Do they really need this much money to do this?" And, we would probably file a memo with a recommendation on what to do.

In the alternative, they may say something like "We haven't run into any unexpected issues, and here's what we're thinking now. But let us update the plan a year from now, because we're really focused on getting the things achieved that we said we were going to achieve initially." And, so, it's possible that they may not spend this money until the third or fourth year, if they don't run into any unexpected problems.

And, so, the Commission wouldn't really need to, I think, have a process to say "yes, that's a good idea." But I'm sure that, if the Commission thought that there should be a discussion about it, then they would take the appropriate steps.

Q. And, Mr. Leach, is it your understanding that this language would require the Company to file the plan with the Executive Director of the Commission?

A. (Leach) Well, it's certainly my understanding that it has to be filed with the Commission. I'm not sure it says "Executive Director". But, if that's how we do

it, then we'll follow the normal process, yes.
Q. Turning to Section 2.7, on Page 13. This section requires that FairPoint file the final copy of their Credit Agreement with the Commission within ten days before the closing date. And, that, at that point, the Commission has to determine whether a hearing is warranted. And, I'm wondering, is it FairPoint's understanding that they would provide that near-final Credit Agreement to the parties who are entitled to it or is it their plan to provide it to Staff only?
A. (Leach) Let me clarify the question. You referred to the "near-final" version, which has already been provided to Staff, and to which you, as you know, you have had a chance to review as well. So, the reference really, I believe, is to the "final copy"?
Q. Yes. Thank you for clarifying that.
A. (Leach) Okay. And the final copy, the expectation is that would be delivered to the Commission for their review, and not to other parties.
Q. And, when you say "to the Commission", are you referring to "Staff and the Commissioners"?
A. (Leach) Yes. I would think -- I would include "the Commission" as "Staff and the Commissioners".
Q. And, you would actually -- might be providing a copy of

both the near-final and the final, because it's -- I think it's in order to show changes from the near-final to the final, is that correct?
A. (Leach) Not exactly. The near-final has already been provided to Staff. So, this is just an opportunity for the Commission to make sure there have not been any material changes in what they have already seen, versus the final version. So, there will be one final provision of something to look at, and that would be the final Credit Agreement.
Q. And, the language here actually specified that it would be a "redline" to show any changes?
A. (Leach) That's correct.
Q. So, although the OCA had a chance to review the near-final version for three hours last Friday, what you're proposing is that only Staff and the Commissioners would get to review the final?
A. (Leach) That's correct.
Q. Turning to Section 2.8, which is similar in that it requires a copy of near-final description of notes to be provided to Staff, just to clarify, the Company means "Staff and not other parties"?
A. (Leach) That's correct.
Q. Turning to Page 15, which, in Section 3, describes the

Company's broadband commitment. Sections 3.1 through 3.3 require FairPoint to provide certain levels of broadband availability in this state. And, my question is, who will verify that these percentages have been met?
A. (Nixon) We, FairPoint -- Excuse me. FairPoint will provide the information to Staff, for them to then verify and confirm, but we will provide the initial information.
A. (Bailey) And, Paragraph 3.8 says that "FairPoint will provide reports on broadband expansion, in a manner approved by the Commission, every six months, beginning six months after close."
Q. And, in terms of those reports, would those be provided to the parties in the docket or just directly to Staff?
A. (Bailey) Well, again, the docket will be closed, because this is post order. And, this paragraph doesn't specify.
A. (Nixon) There may be competitively sensitive information being provided in our build-out plan, which is, as you know, of key importance to us. So, we'll certainly provide the information to the Staff. But there may be, and probably will be, information that we'd consider to be very competitively sensitive.

A. (Bailey) And, I think, just to add to that, this paragraph says "provide reports...in a manner approved by the Commission". And, that was one of the things I think we had in mind. There could be a confidential report that shows what they're planning for the future, and a public report that shows what they have achieved, and the public -- and, you know, that's to be determined.
A. (Nixon) We would be happy to provide what we've achieved and we'll be marketing it very aggressively.
Q. Mr. Leach, yesterday, I'm looking at Paragraph 3.4, which discusses the amount that FairPoint has to spend within 60 months to get to 95 percent availability, and that amount is 56.4 million. And, I believe that you talked about where that number comes from, and you talked about $16.4 million was FairPoint's plan for broadband. And, was that the number that we discussed at the final hearings in this case?
A. (Leach) Yes.
Q. So, that 16.4 million in that broadband plan, that number hasn't been increased?
A. (Leach) That number represents an increase from the initial number, but it was -- it has not been increased from what we last presented.

Q. Thank you.
A. (Bailey) The total of that amount has been increased, by 15 million.
Q. And, that's a term of the Settlement Agreement?
A. (Bailey) Yes.
Q. Turning to Section 3.7, which is on Page 16, this section requires FairPoint to continue to offer stand-alone DSL, among other things, unless otherwise approved by the Commission. So, do you contemplate that it's possible that FairPoint would request that the Commission release them from that requirement?
A. (Nixon) No, we do not. I do not now anticipate or would predict that would be the case.
Q. But this language allows you to do that, if you think it's necessary?
A. (Nixon) Some day in the future, if conditions change, it has that provision, but it would have to be approved by the Commission. And, that's not a unilateral action.
Q. Turning to Paragraph 3.9, on Page 17, and this was briefly discussed yesterday that there is a process where FairPoint agrees to pay certain penalties if it doesn't meet its broadband commitments. And, this paragraph specifies that any such penalties will go

into the New Hampshire Telecommunications Planning and Development Fund. And, I'm wondering how those funds might be used and who would decide how those funds would be used?

A. (Bailey) That is -- My intention with that provision was to have the Telecommunications Advisory Board, which is a board of -- a board appointed by statute, that includes users, providers, and state government officials, charged with developing ways to improve broadband deployment in the state. And, so, it's sort of as close to an equivalent to the Connect Maine Fund that we have. And, I think it's a -- it's a well represented board that will be able to figure out a way to spend this money, if it -- if FairPoint is required to pay these penalties, in the best interest of the state.

Q. Thank you. Moving onto Section 4, on Page 17, which discusses the "Transition Services and Cutover" process. I wanted to follow up on a couple of questions yesterday on this issue. Liberty Consulting has been serving in this function for several months at this point, is that correct?

A. (Bailey) Correct.

Q. And, just recently, the Commission posted on its

website two of the public reports from Liberty to the three state Commissions, is that correct?
A. (Bailey) Yes, that's correct.
Q. The Exhibit 1, I believe, to the Settlement Agreement is the Cutover Monitoring Statement of Scope?
A. (Bailey) Yes.
Q. And, that calls for several reports from Liberty at key intervals. And, I'm wondering, will those larger reports also be posted on the Commission's website?
A. (Bailey) Yes. There was one report that even was going to be delivered as a draft report, and parties were going to have the opportunity to comment on it, and then it was going to be finalized. Of course, we will protect confidential information. Thus far, there hasn't been any confidential information in any of the reports, so that hasn't been an issue. The only two reports that we have thus far are the ones that are posted on the Web.
Q. And, my understanding is that there are weekly telephone status conferences with state regulators. Have those been occurring?
A. (Bailey) Yes, they have.
Q. And, is it staff from the three state Commissions who participate?

A. (Bailey) Yes.
Q. And, I'm wondering if perhaps one of the Liberty witnesses could answer a question about the most recent status report. I don't know if maybe the witnesses have a copy with them?
A. (Antonuk) I don't have a copy of the report.
A. (Bailey) I don't have a copy.
MS. HATFIELD: I do have one copy with me, if I could approach the witness?
(Atty. Hatfield handing document to Witness Antonuk.)
BY MS. HATFIELD:
Q. Mr. Antonuk, if you would look at that document, which is the January 14th, 2008 Liberty Consulting report that has just recently been posted on the Commission's website. If you could just look, at the end of the report, you give an overall evaluation of the process thus far. If you could just read that for us please.
A. (Antonuk) The last paragraph, with the bullets, do you mean?
Q. Just the -- Not including the bullets, just the overall, your overall assessment.
A. (Antonuk) Under the "Evaluation of Status" paragraph?
Q. Yes.

A. (Antonuk) Okay.
Q. Please.
A. (Antonuk) I'm sorry. I'm just trying to track with you.
Q. Sure.
A. (Antonuk) "Given the systems development delays they are experiencing, FairPoint and Capgemini have revised the projected cutover date from May 30 to July 31. Their new plans also assume a new close date of February 29. However, the new schedule Capgemini has proposed that includes these new dates is still very aggressive and continues to include inconsistencies between the development, systems testing, and cutover readiness dates. Unless the project goes considerably more smoothly than it has so far, Liberty doubts that FairPoint can meet a July 31st cutover date."
Q. Thank you. What is Liberty's role in trying to address the issues that you raise in that evaluation of the current status?
A. (Antonuk) Well, through interaction with the parties, we're making observations about status, discussing ways of making better progress. Ultimately, we don't have the ability to say what this schedule shall be. But we have continued to address areas where we think there

has been slippage or is the potential for slippage and to discuss ways to improve them.

And, in doing that, obviously, we have to recognize that this is a very complex and dynamic process, which can't ever go completely smoothly. And, also, that we're early enough in the process so that, if we, and more importantly the parties, can identify where there are gaps and weaknesses and improvement areas, can we get those identified quickly enough to make sure that we minimize time loss as the project continues. And, as this report says, we think that work needs to be done to meet that schedule, which we consider to be very aggressive.

Q. Thank you. Ms. Bailey, you just referred a moment ago to the fact that you would be providing publicly available reports, but that there could be reports that contain confidential information. And, who would those confidential reports be delivered to?

A. (Bailey) The state regulators.

Q. So, that would be both the Staffs and the Commissioners of the three states?

A. (Bailey) Well, the "state regulators" are defined in the opening paragraph as the "Maine Public Utilities Commission", the "New Hampshire Public Utilities

Commission", and the "Vermont Department of Public Service".
Q. So, broadly defined, the "New Hampshire Public Utilities Commission" would include the "Staff and the Commissioners"?
A. (Bailey) Yes.
Q. I'd like to move now to Section -- oh, excuse me. Excuse me, I just do have one more question on Cutover. Yesterday there was testimony that one of the other two Commissions, in its order, had made requirements regarding its ability to delay Cutover, if reports to that Commission indicated that the Companies weren't ready. I don't believe that that exists in this Settlement Agreement or does it?
A. (Nixon) That does not. I think there was a question asked by the Chairman yesterday for us to take that under review, and I'd be happy to address that now, if you'd like?
CHAIRMAN GETZ: Please.
BY THE WITNESS:
A. (Nixon) I believe your question was with regard to Final Condition Number 26 in the Maine order, which required Verizon and FairPoint, within 14 days, to provide a process by which the three states could work

in a coordinated fashion. We believe that would indeed be appropriate. And, it's very consistent with the way the Liberty single monitor was approached. That the three states had a single monitor. And, it would seem to us, and we would agree, that the follow-up to that would be then that there be a common approach used to take any action that might be required as a result of those orders, if the result and the recommendations and conclusions were ones of material defect in nature, which is what this refers to.

Our approach right now is that we'll be working to conform and comply with this requirement. And, as such, we'll be delivering to you all our plan and process going forward. So, we think this would be exactly the right way to do it, that it's a common approach across all three states.

BY MS. HATFIELD:

Q. And, would that plan and process that you're working on, would that include the ability for the Commission to require a delay in Cutover, if they didn't feel as though the Companies were ready?

A. (Nixon) I think, if you take a look at the way it says, it's very clear here, there has to be material defects or deficiencies. And, so, what we're trying to do,

again, in the spirit of the Liberty third party monitor, is that there needs to be room for the situation where there be material deficiencies and defects for the Commissions to take the appropriate action, to seek a delay or whatever their appropriate stance would be. Not that they would go back and revisit the entirety of the testing process and the acceptance criteria. That's what Liberty is working on with FairPoint today. So, this is really designed to meet those cases of material defect in nature. And, that, I think, is very appropriate. And, so, that's our plan, to come back to you with the plan and process how to do that, of course, subject to your approval.
Q. So, it sounds like you're contemplating a process that would involve some of the parties in this case?
A. (Nixon) I believe it goes on to say "deficiencies identified by the consultants or comments received by the parties". And, so, there are processes, as Witness Bailey indicated, where the parties can make comments. And, those would be expected to be included as part of the outcome.
Q. And, the document that you're reading from is the Maine final order?
A. (Nixon) Yes, ma'am.

Q. Thank you. Turning now to Section 5.1, which details "Staffing Reports". And, Mr. Nixon, this section requires FairPoint to provide monthly reports. And, those appear to be filed with the Commission. Is that correct or are those intended to go directly to Staff?
A. (Nixon) If you bear with me for one second while I turn to the page please. Those go to the Commission.
Q. And, yesterday, Mr. Smee was asked about the number of new technicians that FairPoint would be hiring in New Hampshire. And, I believe he gave some updated numbers, perhaps, you know, updated since the final hearing in the case. And, because of that, I'm wondering if you wouldn't mind just taking a moment and giving us any updates that you have on the number of technicians that you're planning to hire and the number that you already have hired to address some of your commitments in the Settlement Agreement?
A. (Nixon) Sure. Thank you. To date, FairPoint has hired just at 200 employees across the three states to work on this initiative. That is part of the -- It's a beginning part of the commitment to publicly address the total of 675. And, as you recollect, of the 675, there are 280 that were initially scheduled for New Hampshire. Of that, 50 would be in Littleton. We

believe now, based upon the requirements to meet the service level objectives, to meet the dual pole commitments that Mr. Smee was addressing yesterday, that number will exceed the 280.

I would also note that the Data Center that we're constructing and have constructed, indeed, is up and running in the third floor of the building in Manchester, is singularly the largest investment the Company will make in the three states, in terms of one location. So, our Network Operations Center, the NOC, will be located in Manchester in a different facility. And, as I said, the Data Center is located in a current Verizon building, soon to become a FairPoint building at the completion of the transaction, also in Manchester. So, we're -- the personnel that we're hiring there, of course, would be those that would be IT-related skills, high skills. We're working with some of the local colleges to help us recruit locally to attract the local personnel.

As Mr. Smee indicated, though, as we address the wire center remediation concerns, as well as the dual pole, we will need to place additional personnel out into the market, if you will, into the state. So, they will be spread throughout the state proximate to where those conditions arise. So, as we do our inventory for the dual pole, we will locate those workforces as close as we can to the appropriate garage. And, the ancillary benefit of that is, one of the concerns that the electric utilities expressed was the timeliness with which the Company responds to emergency calls for a pole -- a wreck at night and a pole in the road, by having these forces dispersed through the state, we believe we will have the secondary benefit of having more employees on-site to be able to respond to that, as well as the dual poles.

So, again, long answer. We are well on our way to meet our commitment. We are staffing up in the Data Center aggressively right as we speak. And, we will, based upon the commitments we've made for service quality and dual pole, we will exceed the 280 that we have already committed on for New Hampshire. We do not have the precise numbers, but I'm highly confident that the numbers that Mr. Smee indicated are based on what we know today. And, of course, as we complete the full infrastructure plan, which I believe is due in August 31st, that we will have even a better idea of the precise numbers.

Q. Thank you. And, Mr. Nixon, the positions you were just discussing, those are all new positions related to the transaction?

A. (Nixon) Yes, ma'am. That would be, in the total, the 675 total, the 280 in New Hampshire are all new. And, over and above the 280 would be the technicians and the construction for the pole removal and the service quality remediation.

Q. So, those are in addition to the commitments that you have to maintain the workforce that Verizon has been required to maintain in the usual course of business?

A. (Nixon) Yes, ma'am. That would be correct.

A. (Bailey) Could I make a point about that? You've suggested that "Verizon has been required to maintain a workforce". And, I am not sure that that's been a requirement. We have, in OCA Exhibit 2C, which is Ms. Baldwin's testimony, a copy of a memo that Ms. O'Marra, from my staff, wrote, that indicated that Verizon had been reducing its workforce significantly in the years that this memo covered. In fact, from 2000 to 2001, they reduced the workforce by 9.6 percent in New Hampshire; 2001 to 2002, by 9.5 percent; and they had proposed an additional 2.7 percent reduction in the next year. The memo indicates that the quality of service was declining, and Verizon's response was to reduce the standards.

Contrary to that, what FairPoint has agreed to do, and is willing to do, is increase the workforce on day one, meet the standards, and, in some case, even meet higher standards than Verizon wanted to cut. And, on top of that, they have to continue filing these staffing reports, so that we can see, if they're cutting staff and their service quality is declining, we'll know it a lot sooner than we knew it when Verizon held the reins, because they weren't required to file any reporting on staffing. They only gave it to us if we asked for it.

A. (Nixon) If I might follow up on that? FairPoint has been providing multi-staffing reports to Liberty, as required, along with the resumés of the senior personnel. So, they can, you know, they can do the work that's required under the scope, which is to look not only at the total, but at the acumen of the personnel that we're hiring. So, we're well along in fulfilling that requirement.

Q. So, will the reports, the monthly reports contemplated in 5.1, and then, in 5.2, there are semi-annual staffing reports by function. Ms. Bailey, do you see those as serving to help Staff assess whether or not

FairPoint is maintaining an appropriate workforce?
A. (Bailey) Yes, I think that's -- and, I don't think, that is exactly the point of that annual report -- semi-annual reporting, is so that we can track the staffing level to the service quality result. And, as long as they can maintain the service quality at the standards, then they should, I think, be allowed to run their business as efficiently as possible. But, to the extent that their service quality is declining, and it looks like there's a relationship between declining staff and declining service quality, we'll know about it almost real-time. So, I think this is much better than the regime that we've been dealing with.
Q. Thank you. Moving onto the next paragraph, which is Number 6, on "Financial Reports". This requires "FairPoint to provide detailed quarterly and annual financial results in a manner to be approved by the Commission." Do the parties contemplate that these reports should be filed with the Commission and available to other parties?
A. (Bailey) Well, I think I answered that question yesterday. And, I think my answer was that these quarterly and annual financial reports are reported to the Telecom Division today, and that's what we had

expected when we -- when we wrote this paragraph.
Q. Thank you. Moving along to Section 8, which is on Page 21. Section 8 deals with "Retail Service and Rates". And, this was discussed yesterday, that, going onto Page 22, there is a five-year period during which both FairPoint and the Commission both agreeing not to seek to either raise or lower rates. But, just to be clear, I think, at the end of Paragraph 8.1, there's actually a reference to a rate change taking place not before the "fourth anniversary of the Closing Date". And, I'm just wondering if someone can please clarify whether it's four years or five years?
A. (Bailey) The intent is five years, unless something extraordinary happens. And, we wrote a provision in this paragraph that allows the Company to come in if they believe that they have excessively low earnings, and we also can ask that the Commission look at a rate case if we believe that FairPoint's earnings are really excessive. And, the Commission would ultimately determine if it was excessive enough to have a rate case prior to the five years.
A. (Nixon) May I add a clarification? I think you indicated that the Company would not "seek to increase the rates within five years". I believe it's the

effective date will be five years. But we would have the ability to seek to increase the rates before five years, as long as they're not effective until the fifth anniversary. And, I believe that's --
A. (Bailey) That's my understanding as well, including temporary rates. And, so that, if you filed the rate case at the beginning of the fifth year, expecting it to take a year to get through it, --
A. (Nixon) That's right.
A. (Bailey) -- so rates could be effective at the end of the fifth year, the beginning of sixth year.
A. (Nixon) End of the fifth year, right.
Q. Unless there are exigent circumstances as defined here, then that could be moved up a year to the end of the fourth year?
A. (Nixon) Right.
A. (Bailey) Yes.
Q. And, yesterday, the Company also provided an overview of the Settlement Agreements or the orders as they currently stand in Maine and Vermont. And, can you just remind me, can rates change prior to five years in either of those other two states?
A. (Nixon) Again, subject to check, I believe the Maine AFOR is five years. And, I believe the Vermont AFOR

expires December 31st, 2010.
Q. Thank you. 8.5 requires FairPoint to redirect all calls from New Hampshire customers that are placed to Verizon numbers to a FairPoint 800 number. And, when does that provision take effect?
A. (Nixon) That will actually take place at close, when FairPoint is operating the call centers. And, the way it's set up is that the FairPoint personnel can only answer those calls that are destined and originating within the three states. And, Verizon would answer those that originate within the two states of Massachusetts and Rhode Island.
Q. And, Provision 8.6 deals with what the signatories believe is the way to address the Yellow Pages case. And, just to be clear, the last sentence states that this agreement "renders unnecessary any treatment at this time of the consequences of the spin-off by Verizon of the directory publishing business to Idearc." And, if it's not necessary at this time, I'm wondering what the parties had in mind in terms of when it would be necessary to make that, a determination or to deal with the treatment of those consequences?
A. (Bailey) Well, FairPoint agreed today to treat the Yellow Pages revenue exactly the same way that Verizon

does now. So, we've agreed that the rates are going to remain in place for the next five years. And, they have agreed that they will count the -- they will count the imputation that Verizon has been required to make for purposes of their annual assessment. So, the next time that this would come up would be in a rate case, just like it would have if Verizon remained.

Q. So, that would be a FairPoint rate case?

A. (Bailey) Correct.

Q. And, what type of information do you think you might need from Verizon in order to make that determination, if FairPoint's rate case is five years from now?

A. (Antonuk) I'm not sure there would be any information from Verizon that would be needed at that time.

Q. So, it's your view that, without additional information from Verizon, the Commission could make the determination of the consequences of the spin-off?

A. (Antonuk) Yes.

MS. HATFIELD: One moment please.

BY MS. HATFIELD:

Q. I'm going to jump to Section 10.8, which is on Page 29. And, this section deals with limits on FairPoint's future acquisitions, if they are not in compliance with both financial and service quality limits. And, my

general question is, what type of a process does either Staff or the Company envision for the Commission to determine that whether or not FairPoint has satisfied those financial and service quality limits that they would be able to take another acquisition?
A. (Bailey) Again, FairPoint will be routinely reporting the Leverage Ratios and the service quality measurements. And, so, unless we say, you know, "we want to investigate the report", if the tests have been addressed, there is no process. If their financial report says that they have been -- that their Leverage Ratio has been 4.5 times or lower for three quarters in a row, and their service quality standards have been achieved, then they can make an acquisition up to 250 million, in an aggregate, for the first -- during the first three years after closing.
Q. And, the reports that you were just referring to are some of the reports we just discussed earlier that the Company would be providing to Staff?
A. (Bailey) Yes.
MS. HATFIELD: If I could just have one moment please.
BY MS. HATFIELD:
Q. Turning to Page 33, Section 12 deals with "Subsidiary

and Transfer Obligations". And, we did touch on this yesterday. Paragraph 12.1 is a requirement that, if FairPoint establishes a separate subsidiary in either Maine or Vermont, that they would do so also for New Hampshire at the request of this Commission. I'm wondering, has this provision already been triggered by the Vermont requirement that there be a separate entity for the State of Vermont?

A. (Leach) It has not yet been triggered.

MS. HATFIELD: Mr. Chairman, that completes our public questions. We do have some highly confidential questions.

BY CMSR. BELOW:

Q. On Page 16, 3.7 details FairPoint's commitment to maintain prices and speeds offered by Verizon for broadband Internet access over certain periods of time, well, a period of two years following the Closing Date. And, the commitment to expand broadband access has a significant number of lines being added within 18 months of closing, more 24 months, and more -- the last increment within 60 months. And, my question is, if FairPoint would consider, for customers who do not now have broadband access, if you would consider extending the availability of these rates for a period of up to two years, once a customer initially gets -- is advised that broadband access is available? Or, would your expectation be that it will be whatever the rates might be at the time?

A. (Nixon) In many of the markets that we're in, this is a highly competitive business, and we continue to look for ways to promote our products. And, whether that's a bundling process or whether it's a price-driven process, increasing speeds, there are many different ways to do it. I'm a little, I don't want to say "unwilling", reluctant, if you will, may be the better word, to want to try to predict how we might do that in the future, and what approach we might take.

We believe that it's unique that -- for a company to provide this kind of assurance for a couple years, much less trying to project out for what could be up to five years. So, I think five years is an awful long reach. We do not have any indication what the underlying costs might be between now and then. We hope that the prices will continue to come down as technology continues to improve. However, I just, for us to make that kind of prediction on what our underlying costs of goods sold would be is awful -- awful hard for me to do at this time.

A. (Bailey) May I add a comment to that? I thought about extending the term of the price, but I thought that this was a more balanced approach, because there are competitors in the market that aren't FairPoint that are going to unserved areas. And, prices at this level may deter them or slow them down from going into unserved markets, because FairPoint has agreed that they're going to go into every market. You know, the competitors don't know where they're going to go first. But I think it would chill competition, it may chill competition, if we required FairPoint to keep these prices for five years.
Q. Okay. Another question. This language differs somewhat from the Maine Settlement, with regard to FairPoint agreeing to adhere to all the rates, terms and conditions of Verizon's "for life" service offerings for existing subscribers. I think the Maine Settlement only -- the commitment is only for the 768 kpbs offering. So, what you're stating here is that you'll honor those offerings as they exist for Verizon customers for -- I believe it's for two different tiers, the 768 and up to 3 Mbps per second?
A. (Nixon) That's correct. That was over and above what you might find in the other states.

Q. Okay. And, also, would you consider, without specifying the price, but at the time that new customers who have not had broadband availability, that when you first make it available, a promotional period in which you would offer a price for life with the price to be, you know, determined at that time for customers who have not had access to DSL to date? Realizing that, you know, for everybody who has that, they had up until -- I think Verizon discontinued this on or about the fifth of last month, about a month ago. But, for anybody who had DSL up until the end of last year, they could have locked into a price for life, if they, you know, chose to do so. My question is, not for the existing customers, but for new customers, when they initially have broadband availability, if you'd consider making such an offering, you know, based on a price that you could determine at that time, when new customers are first offered DSL availability?
A. (Nixon) Good question. That is, as you know, a Verizon promotion. And, we agreed to honor those customers who subscribed to that promotion for the duration of their service, as long as it didn't lapse, of course. We did not make the election to continue to offer that promotion. We said we'd do our own promotions. And,

you know, I'm not -- we are not in a position, nor do I think we'd probably want to adopt all Verizon's historical promotions and we say "we'll adopt those as our own." That would be over and above the administrative problem of tracking that, which would be pretty difficult. My reaction, again, would be, maybe similar to what Witness Bailey just indicated, in terms of perhaps a chilling effect on one side, difficult administration on the other, and that's a Verizon promotion that FairPoint has, you know, we'll honor those current customers, but we did not indicate we would take it beyond that.
Q. Okay. As you may be aware, we've left the docket open to public comment. And, so, we've had a whole series of people who have sent letters or e-mails, all of which have been put in the public docket book, so all of which have come through our in-boxes. And, I think that maybe, I don't know if some of the communications reflect accurate information or sometimes perhaps misunderstandings. But I just want to ask you a couple of questions that various members of the public have commented on for you to clarify. And, one of them, as I recall, is that several people have suggested or stated is that your financial projections don't provide

for any raises for employees, that you're not anticipating wage increases over time. Could you comment on that?
A. (Leach) Yes. That's not a true statement. We have modeled in a continuing -- the same level of increases over the last two years that have occurred in the past is what we have modeled going forward. So, we have modeled wage increases in every year in the future.
Q. And, what you actually do would be subject to negotiation or business considerations at the time, presumably?
A. (Leach) And the new Collective Bargaining Agreement, yes.
Q. Another comment or question that's come up is that FairPoint has been investing in remodeling the COs in Portland, Maine and in Vermont. Could you comment on that?
A. (Nixon) Sure. Let me take that one. As well as Manchester. And, we need places for our 200 employees to be located up and to the point when we -- the acquisition is concluded. And, we have an arrangement with Verizon whereby we'll lease those facilities. And, we then had to, if you will, fit those facilities, so we could have our employees occupy them. We have

just started the -- most of that fitting work, if you will, has been completed, much has been completed. We are beginning to occupy the space with our employees, as we get closer to the conclusion of the -- and approval of the merger.

Q. So, this is for accommodating employees that you're starting to hire in anticipation of approval. It's not actually investment in the equipment in the CO at this point?

A. (Nixon) Yes, sir. That would be correct.

Q. And, if, for some reason, the deal doesn't close, those lease arrangements would terminate, and that would just be a lost investment on your part?

A. (Nixon) That's the provisions within the lease.

Q. Okay. Another question that's been raised is that the Verizon network operates on outmoded or manufacturer-discontinued equipment. And, a question that those parts, to the extent they're available, perhaps have been stocked from locations other than northern New England. Do you have any observations on how you anticipate having adequate supplies or parts to maintain the system, to the extent there's manufacturer-discontinued equipment?

A. (Nixon) Certainly. A couple of things. The entire industry, whether it's Verizon or all the other telephone companies in the country, all have to maintain and utilize and continue to stock and seek equipment that may or may not be what we call "manufacturer-discontinued". That's not to say it's not in the marketplace and it's not available. What we try to do then is anticipate and work with the vendors as it moves into maybe that kind of a category, that we look at other opportunities within the marketplace to purchase the equipment, or that we begin to migrate out of that equipment and then transition. As that equipment becomes available, we use that as spare to continue. We have made arrangements with a company to have a warehouse for our stocking needs. It's a company that does it across the country in a very similar way. We have worked very closely with Verizon to obtain from them their purchase list, if you will, their stocking list. And, it's a comprehensive list, that we have then turned that over to our supply chain group. They have gone out into the marketplace, both through our third party vendor, as well as in the marketplace themselves, to look at the availability of that equipment. And, we're confident that we can pick up and continue to operate the network.

Q. Will you -- Refresh my memory on the TSA. Will you need to be up and running at close with that warehouse inventory operation or does the transition -- TSA period partially help you in that, in bridging that?
A. (Nixon) Great question. The TSA does not accommodate for the supply chain. That warehouse is up, running, and is fully stocked, ready to go.
Q. Okay.
A. (Nixon) In New Hampshire.
CMSR. BELOW: That's all I had.
BY CMSR. MORRISON:
Q. This question is for the representatives of the Company. How many new jobs are going to be created in New Hampshire in the next 24 months?
A. (Nixon) We're on record saying that there will be at least 2 -- there will be 250 as the initial one, and then we went on to say that, in addition to that, that we would have to add -- I'm not able to give you a precise answer, so if you'll let me do the math --
Q. Sure.
A. -- and sort of build my way up with that part, I'm sorry. In addition to that, we'll have to add Staff, as Mr. Smee indicated yesterday, for the pole removal, as well as for the remediation. So, you know, our view

is -- So, we're looking now at at least 280, probably north of that right now, because of our need -- the commitments for the pole removal. If you remember, initially we had proposed a 42 month pole removal.
Q. Yes.
A. (Nixon) We moved that down to a total of 30 months now. So, that's going to accelerate some additional hires, if you will. And, with the change in some of the metrics, the way they're now being constructed, and the penalties associated with them, will probably stimulate some additional hirings for those personnel as well. So, again, right now the view is it's going to be at least 280.
Q. Okay. Thank you. Would the Company agree to a stipulation that said "none of these new jobs to be created would not be moved out of the state without prior Commission approval"?
A. (Nixon) I think as, if I might, as Witness Bailey indicated, that as long as we are operating our business, meeting the standards, meeting the requirements, meeting the service quality commitments, meeting our customers' needs, that we should retain the ability and flexibility to run the business. And, certainly, with the commitments that we've made with

regard to rate stability, with regard to broadband capital improvements, to now put a constraint on the Company to run the business would be difficult.

Now, having said that, we don't have any plans to do otherwise. But, you know, once you put that on, it would be hard to remove that type of a constraint. We do not have any plans to do to the contrary. As a matter of fact, you know, we are, as I indicated earlier, we are staffing up a very sizable workforce in the network operations that, for me, to move a data center, for instance, is extremely expensive, extremely onerous, and would be very difficult. So, once you put that kind of facility in place, it's pretty hard to pick it up and move it.

Q. I'm thinking more of some of the back office people. Commitments -- excuse me, statements have been made throughout this process to certain constituencies that "jobs will be created in New Hampshire." We've seen an erosion of jobs in New Hampshire as industries have moved out or they have found that it would be cheaper to do business elsewhere. And, that's why I asked the question, because, frankly, a lot of people have counted on some of these proposals the Company has made. And, to have those jobs, a lot of the back office or clerical jobs or health jobs be allocated outside of the state, would be it to Maine or to Bangladesh, would be very difficult for some of these people, and would be -- the Company would be, in essence, breaking faith. And, that's why I asked about the Stipulation.

A. (Nixon) And, I understood the sincerity of the request. And, the Company has no plans to do otherwise. But, again, as I indicated, put a hard stipulation in the order would really take away the ability of the Company to run their business. You have an expectation of us to operate the business in a construct that provides high quality service at affordable rates. And, to do that, we will need to use the technology, we'll need to use the expertise of our people. And, we don't have any plans to do to the contrary. I'm just thinking of the unintended consequences of that might be down the road, someday to constrain us to the point that limits our ability to fulfill those commitments.

Q. And, that does affect a lot of businesses, certainly yours. And, certainly, a lot of companies take infrastructure and costs very seriously, while trying to maintain their company infrastructure and their company success. Well, let's move off of that for now.

FairPoint and Verizon and Staff, everyone concedes that the landline business is eroding. Would you still agree with that?
A. (Nixon) I do.
Q. Okay. Thank you. Does FairPoint envision that DSL deployment and customer acceptance of DSL will, in part, make of for the erosion, revenue erosion?
A. (Nixon) Yes, sir.
Q. Is the mere adoption of the DSL lines for Internet service the only new revenue stream that you envision to be derived from DSL?
A. (Nixon) No, sir.
Q. And, please tell me more.
A. (Nixon) I just didn't know if you had a quick follow-up?
Q. No. Please tell me more.
A. (Nixon) There are several ways that you can utilize the broadband connection and the bandwidth opportunities for the customers. Let me go down a couple areas. First would be in vertical services that one can add on top of a broadband service or Internet service, whether it's through a portal and into revenue-producing opportunities, depending on somebody's subscription on what services they would like to purchase through the

portal, and how there might be a revenue-sharing opportunity.
Q. What services are those? I'm really looking for specifics here, because there's been a lot of wrangling over "Is the revenue sufficient?" Are the opportunities sufficient to generate revenue, you know, to make this deal work? So, I'm looking for specifics here. I've got a DSL line in my home. I'm paying you a dollar figure for that DSL line. It, in part, is making up for the landline erosion and revenue erosion that the Company will experience, and Verizon has experienced. How are you going to get -- How are you going to derive more revenue from that DSL line?
A. (Nixon) The first one that comes to mind would be video over DSL. And, we've talked about --
Q. Entertainment?
A. (Nixon) Sir?
Q. Entertainment?
A. (Nixon) Yes, sir.
Q. Okay.
A. (Nixon) And, we've talked about that in the past of the fact that we have that -- we're offering today in our markets. And, our plan is to offer it in these markets as well. That is a significant opportunity, and it is

conditioned upon having the DSL and the broadband capacity, therefore, the customers.

If we then move to the business community, and talk about what opportunities are there within those communities, as we -- as Witness Brown has indicated in prior hearings, what this allows us to do with the MPLS and IP network infrastructure is to offer high speed and higher speed services and applications for the community, such as telemedicine, distance learning, and others. We have recognized early on that the community-based approach to development is key to our success. We have, therefore, funded and initially staffed an Economic Development group, who will be working with the communities, with the economic development agencies, with the chambers of commerce, to work with the communities. It's one thing for us to be an infrastructure provider. We believe an alternate role, and maybe a greater role, is for us to also be an application developer working with the communities.

And, if we take a look at the number of your constituents who work where they live and live where they work, they have unique needs, and how can those needs meet -- how can the broadband help them meet their needs with their small office/home office provider. And, how can they give them greater access to the world. If it's a hospital clinic, if it's a school that has people of need that they want to have an educational environment from their home, because they can't get into the school, many different ways to do that.

We have been in the market now since August, working with the communities and the economic development agencies to get their input on how can those communities utilize broadband and the applications that broadband can bring to them to enhance their quality of life in the businesses they operate.

Our approach has historically been one, and we're trying to move to the approach, whereby we will build a network to meet the needs of the customers, as opposed to "we'll build the network and then tell the customers what they can buy." And, that approach means that you have to work very closely with the communities to develop -- help them develop the application, the application needs.

So, as you take a look at "how does broadband allow us then to replace the revenues lost by the erosion of the landline business?" It becomes such things as entertainment, telemedicine and education, distance learning.

Q. Okay. I just want to interrupt you for just a moment, because you mentioned "entertainment, telemedicine and distance learning". The entertainment package you would be providing and selling to the end-user, in the circumstance of telemedicine, as I understand it, and with distance learning, as I understand it, you would be provisioning the bandwidth only, because there are very large, well-appointed, and very seasoned companies that both market telemedicine applications and the hardware, as well as, in the distance learning field, there are companies who produce the distance learning opportunity, the actual course layer work. So, for those -- So, we're kind of mixing apples and oranges, I understand it. You will be providing the entertainment. People will say "I want HBO" or "I want Showtime". Versus a hospital that says "I need this pipe to be fat enough to get -- to be able to move radiological images." Patient information is small data. Radiological image is much, much larger. So, in one circumstance, you'll be provisioning bandwidth fat enough, and, in the other circumstance, you're going to be provisioning content.

A. (Nixon) That's exactly right. So, --
Q. Okay. So, you're still an infrastructure provider to business, unless you're going to -- unless you're planning on becoming an SAP or an Oracle, and I don't think you're going there.
A. (Nixon) We are not a -- right.
Q. And, it's unlikely you're going to be Yahoo or Microsoft, well, they could be the same soon. But let's -- I just want to keep the buckets clean and clear. One circumstance you are providing content that someone will acquire or purchase the use of over the wire. The other one you're providing fat bandwidth, if the requirement is there?
A. (Nixon) Exactly.
Q. Okay. Thank you. So, other than bandwidth, right know I'm hearing one major opportunity for additional revenue, and that is the entertainment package. If there's something else, please tell me. Because I'm looking for ways your revenue is going to increase, other than by providing bandwidth.
A. (Nixon) Well, again, if we're limiting the discussion to just broadband, if we can get on to some other areas within the business that have opportunities to replace that revenue stream, --

Q. Please. Go ahead. That's why I asked the question.
A. (Nixon) Sure. So, first of all, I think it's important to note that, if you take a look at the -- and I don't want to trip over some information that may be confidential as --
Q. We can clear the room if it's confidential.
A. (Nixon) I think we can do this. If you take a look at the penetration rates -- the take rates, if you will, that Verizon has today, the take rates that FairPoint has today across its other properties, there is the opportunity -- just increase just demand and dollars. Then, back to the conversation we were having with what more services that you put on top, such as entertainment. I would not minimize the opportunity for, as you call, the fatter pipe into a business climate, business environment to meet the needs of the business. We do not envision going in and being that back office provider, if you will.
We also know, we believe, that, and we've staffed for a significant outreach to small and medium size businesses. And, again, it's just a different approach that FairPoint has elected to take. This is not to say it's not being done --
Q. To compete in the CLEC environment?

A. (Nixon) Exactly. We happen to believe that there is opportunity for us to win back customers and significantly increase the opportunities of the businesses by, literally, feet on the street. And, we have staff today, that sales force, and we are ready -- that sales force is ready to go. So, we have significant, we believe, upside there.
Q. Let's talk a little bit about that, that service you can provision and drain revenue from -- draw revenue from, the entertainment world. As I'm sure you're aware, you're going to have to go town-by-town and city-by-city to get approval to do that. What have you put in place or what will you be putting in place to undertake that task?
A. (Nixon) We will have a team of people, and I'm reviewing a plan in two weeks, as a matter of fact, they will put in place those that are required to do a couple things. First, obtain the necessary franchises. Two, to determine what's the best delivery methodology for that content. We are doing it a couple different ways at FairPoint today. One way is we build it head-end, digital head-end, and it's 145 channel, high definition, and we build it actually in the community. And that, because of the cost of doing that, of course,

it limits the size of the community you can offer to. We're just now finding ways that we can take a head-end signal and transport it at some distance. And, through a resale arrangement, whereby we can have one super head-end then, as opposed to a numerous head-end spot around the country. So, we're looking at different delivery mechanisms. And, we've had experience now with both. And, so, now we have that kind of experience we can bring to bear here.

So, it's going to be a combination of getting the franchises in place, developing a channel line-up, and the services to be made available. And, three is, "what's the infrastructure required to carry that?"

Q. As I understand it, part of that infrastructure is ADSL2. Is that how you understand it as well?

A. (Nixon) That is correct. I think it's ADSL2 and ADSL2+.

Q. Right. And, Mr. Brown told me yesterday that that rollout is envisioned to begin in the fourth quarter of 2008. Is that what you understand as well?

A. (Nixon) For our new broadband expansion, that would be correct.

Q. Okay. I want to be specific, on the ADSL2?

A. (Nixon) Yes, sir.
Q. Okay. So, then, I would assume at that point you're going to go for communities of density, if you are going to try to roll out entertainment services?
A. (Nixon) We would seek those communities that have the infrastructure available, with the greatest number of people, so we could, as quickly as possible, roll that out. And, I'm trying to answer that without saying where.
Q. I understand.
A. (Nixon) Yes.
Q. I'm just trying to make sure I understand. If you run into problems, and the cities do not approve, or they approve with such circumstances as to make them onerous, which is certainly possible, that really impacts the financial viability of this project, doesn't it?
A. (Nixon) I would tell you that across the three states, with the number of communities who are seeking -- short answer to your question, it could, depending on the number of. But, if I might follow up, with the reception we've had thus far, and with the communities who are seeking a competitive provider, so far we believe that we will not have those type of onerous

conditions put on us that would dissuade us from offering the service.
Q. Would you envision that you would start offering these competitive alternative services within two years of the close?
A. (Nixon) Yes, sir.
CMSR. MORRISON: Thank you. I've got no other questions.
CHAIRMAN GETZ: Well, I've got a handful of questions. It's quarter of 12 right now. I'm wondering if it might be better to take the recess, the lunch recess, and then start after lunch with the confidential materials, do that in one piece. And, I guess, barring, of course, when we get to Mr. Barber, there may be some confidential materials then. But is there any objection to that process, that, when we come back from the lunch recess, we'll go to Mr. Leach's confidential direct, and then allow for the confidential cross? Does that make sense?
MR. McHUGH: Mr. Chairman, I would only add that I probably have a limited amount of public redirect. But we can certainly do that after lunch and after you finish with your questioning.
CHAIRMAN GETZ: Well, I guess what I was

thinking now is we would, after lunch, we'd come back, do the piece on the confidential record that would require folks to be out of the room, then come back, finish with questions, then the public questions from the bench, and then we'd allow the opportunity for redirect.

MR. McHUGH: That's fine, Mr. Chairman.

CHAIRMAN GETZ: Okay. It's ten of 12:00 now. Let's break and resume at 1:00.

(Lunch recess taken at 11:50 a.m. and the hearing reconvened at 1:08 p.m.)

CHAIRMAN GETZ: Okay. Good afternoon. We're back on the record in DT 07-011. And, I believe we're prepared to move into the highly confidential portion of the record. Is there anyone in the room who shouldn't be the room?

MR. LINDER: No, but I'd just like to enter my appearance, if I may. On behalf of Intervenor Schmitt, Alan Linder from New Hampshire Legal Assistance.

CHAIRMAN GETZ: Good afternoon.

MR. LINDER: Thank you.

(Whereupon the hearing moved to a HIGHLY CONFIDENTIAL session, which is contained under separate cover so designated.)

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(Hearing reconvened at 3:08 p.m. and
returned to the public session.)

CHAIRMAN GETZ: Okay. Good afternoon. We're back on the record in DT 07-011, and back with the first panel. I believe we had a question for the panel that Mr. Del Vecchio wanted to ask?

MR. DEL VECCHIO: Yes, sir.

CHAIRMAN GETZ: Let's address that at this point.

MR. DEL VECCHIO: Thank you, Mr. Chairman.

DIRECT EXAMINATION

BY MR. DEL VECCHIO:

Q. Mr. Smith, directing your attention to what I understand will be marked for identification as Labor Exhibit 14HC, specifically, on Page 2, Footnote 3. Mr. Barber states in the body of the footnote that "it would appear that Verizon misled FairPoint with respect to the normal net turnover rate that it experienced over the past three years." Are you with me?

A. (Smith) Yes, sir.

Q. And, without seeking to determine FairPoint's state of mind, could you please comment on the accuracy of Mr. Barber's assertion.

A. (Smith) Certainly. The short answer is that it's inaccurate. You know, I'm very disappointed to read the word "misled". Actually, personally offended, given that I had the responsibility for making the diligence -- the diligence material variable to FairPoint throughout this process. Early this afternoon, when Mr. Leach was asked a question about something that Mr. Barber had asserted in one of his filings, he characterized it as "perhaps a misunderstanding on the part" -- he professionally characterized it as "perhaps a misunderstanding on the part of Mr. Barber." The facts of the matter here are that, in June of 2006, we created a data room about the business for FairPoint. And, that data room included extensive material about our employees, an employee matters section, if you will.

In the Summer and Fall of 2006, while FairPoint was conducting its diligence, we spent many hours with FairPoint and its consultants, describing our workforce, how they're organized, both the direct field people, as well as the support people who perform the allocated functions of what would be the TSA functions.

In the November/December time frame, as

we were negotiating the Employee Matters Agreement, that ultimately was signed in January of 2007, we shared still more information about the employee base with FairPoint, including listings, full listings of all of the employees that would be part of the "Spinco" business. We signed in January of 2007. By March of 2007, we were providing FairPoint with monthly reports about the inward and outward movement of the employees, in addition to what we had provided during the diligence period. And, we were also making those reports available to each of the Commissions.

The facts just aren't true. Mr. Barber notes that there were a number of programs, I think he cites half a dozen here. I think what he misunderstands is that, while there may be IPP and Employee Protection Plan offerings for the associates, or RIF plans offered to the management, there's no obligation that employees take those plans. So that, while many may be offered, they are not all fully subscribed to.

When you take the numbers for our Nor'easter employees, our Spinco employees for 2004, '05 and '06, if you look at the outward movement, and you back out the outward movement related to these programs, what you end up with is an outward movement that is a percentage of the base equal to the range that FairPoint used in its planning model.

MR. DEL VECCHIO: Thank you, Mr. Smith. Thank you, Mr. Chairman.

CHAIRMAN GETZ: All right. The last two items, unless there's other questions from the Bench, I had a handful of questions, and then we'd go to redirect. Is everybody on the same page here?

(No verbal response)

CHAIRMAN GETZ: All right. Thank you.

BY CHAIRMAN GETZ:

Q. Let me start with, and I guess this is to either Ms. Bailey or Mr. Leach, Section 13.6 of the Settlement Agreement, I'm going to try to make sure I understand what this is about. Page 36. It appears to be kind of laying groundwork for a Commission condition, but it says "If regulator approvals from the FCC, the Maine PUC, the Vermont Public Service Board are subject to conditions imposed after the date of this Agreement", being the Settlement Agreement, "then any approval by the Commission is conditioned upon its subsequent review of the conditions imposed by those other regulatory bodies." We do have, I guess the FCC final order, as I understand it, was issued on January 9, and looks like the Maine final order was issued on February 1. But there does not appear to be a Vermont final order yet. So, with that context, and it mentions any approval by the Commission, I'm taking that to be a final order of the Commission, is that a fair conclusion?

A. (Bailey) Yes.

Q. And, then, it says "In the event the Commission determines further review is necessary as a result of these other regulatory conditions, the Signatories request that the Commission notify the parties to the docket within three days of such regulatory decision." I mean, it seems to me that practically this doesn't really come into play, except with" respect to the Vermont order, and only if the Vermont order comes out after we issue our written order, is that --

A. (Bailey) Yes.

Q. -- what you were trying -- where this was headed?

A. (Leach) That's correct, yes.

Q. And, then, it says, the last sentence, "In the event of such notice, the Joint Petitioners may not close the transaction". Was that intended to mean that they "cannot close it", are "forbidden from closing it", or

they just "might not close it"?
A. (Bailey) My understanding is, if you decided -- if you issue your final order, and then Vermont issues a final order that puts some condition on it that you believe warrants further review, because it's changed the financial picture, then you would notify everybody within three days that you want -- that further consideration is appropriate. And, in the event of that notice, the Joint Petitioners won't close until you've completed the review.
A. (Leach) So that word could be "cannot", I think would be the same, that would be the message, we "cannot close".
Q. All right. And, then, basically, this is a proposal or a suggestion to the Commission that, if we're going to put some kind of condition of this sort in the docket, that we bind ourselves to some time period?
A. (Bailey) Yes.
Q. Which does raise, in terms of conditions, raise an issue about the -- what Maine did on Page 18 of its order from February 1st. Well, first of all, let me just, you know, read the condition. It says "In order to ensure that the decision we have reached today is not adversely impacted by decisions made by the FCC or

in Vermont or New Hampshire, we impose the following condition: No other state or federal decisions approving the transaction may materially and negatively impact FairPoint's financial condition." I guess, Mr. Leach, is there any concern on FairPoint's part about a condition of such a nature?
A. (Leach) One moment please. No, I'm sorry, could you ask the exact question.
Q. Does that condition that Maine has imposed cause you any concern?
A. (Leach) Does not.
Q. And, in some respects, inasmuch as it says that if they -- if Maine becomes aware of such a decision that would have a material and negative impact, it would reopen the proceeding, it's not terribly different, in effect, than this Section 13.6?
A. (Leach) I think, yes, sir, we're effectively trying to provide you the same last minute look that Maine has requested. We worked very hard to keep all three states aware of what's going on in the other two states, so that there aren't any surprises. And, so, we have no reason to be concerned here, but assume that you would want a similar sort of provision.
Q. Another line I want to pursue, there was -- the

Consumer Advocate had a lot of inquiry about the numerous references in the Settlement Agreement to reports and plans, and some of which are filed with the Commission in a more formal sense, some of which were filed with Staff. And, it seems like there's several issues underlying all of that. And, I want to see if I could sort out some of those.

I guess the first issue was whether any of these reports or plans are public or confidential. And, I think at least Ms. Bailey may have discussed this at one point, but, and I'll direct this to Ms. Bailey. My assumption is, and tell me if you agree, that anything filed, whether it's with the Commission in a formal way or with Staff through various reporting requirements, would be publicly available pursuant to the Right To Know law, unless there was some specific request and granting of that request on the basis of some confidentiality requirement. Is that fair?

A. (Bailey) It's fair, but there's a special provision for telecom companies in the statutes. And, I'm not a lawyer, so I don't know if I'm the best person to answer this question, but I'll answer it from my lay perspective.

Q. And, you're referring to RSA 378:43?

A. (Bailey) I am.
Q. Okay.
A. (Bailey) And that statute allows a telecom company to file anything that they deem competitively sensitive as confidential. So, if they did not, in the filing, identify it as confidential under that statute, then we would treat it as public information. And, if anybody asked for it, we would give it to them. If they represented that it was confidential, then, and we thought it wasn't confidential, then we may raise that to your attention through a memo.
Q. So, then, regardless of whether it's filed with -- assuming there's no confidentiality issue, regardless of whether it's filed with the Commission or with the -- with Staff, then it would be available to the public?
A. (Bailey) Yes.
Q. And, then, there seems to be, though, I mean, at least three categories of filings or plans or reports. Some of which it looks like the parties are specifically anticipating that the Commission will make a decision on, that may or may not be part of this particular case. It seems that there may be some things in the nature of compliance filings or reports that, so long

as there's an appearance that it's in compliance with the Settlement Agreement, then there would be no further action. And, a third category of reports that are prospective for a number years that would be on file in the Commission, and only would require some action if there appeared to be some negative trend. Is that a fair categorization of the types of plans and reports that the Settlement Agreement is dealing with?
A. (Bailey) I think so. A lot of the reports are information that we receive from Verizon or we're trying to duplicate information that we receive from Verizon. Some of the reports are compliance with the -- to verify compliance with the Settlement Agreement, and some of them are reports that we wished we had had from Verizon, and that FairPoint was willing to agree to provide.
Q. Okay. And, I guess from -- when I'm thinking of these things in terms of an administrative and a procedural perspective, the things that are going to require a decision on our part are the types of things that -- where due process is invoked, and there's going to be -- most likely become part of a case, where parties get to -- the information is available to the parties, and there will be hearings and written decisions by the

Commission. So, it may be helpful if you can take a look at the Settlement and specifically designate some of these areas. Because I think there is some kind of confusion in some parts about who gets what and when, and what flavor of treatment they get. And, if a letter or a memo among the parties could be filed by the end of the week just sorting those out, that would be helpful.

And, I think, just as an administrative matter, and I would like your opinion on this, Ms. Bailey, for a lot of these reports that we get are more of a prospective nature. I mean, there's no problem, and I think you may have, in your discussion with Ms. Hollenberg at one point, posting those, at least the category of what's available, what comes in, and coming up with some kind of mechanism, so that the Consumer Advocate or other public or interested parties could be aware of what's filed and when. Is there any problem with that approach?

A. (Bailey) No problem, sir.

CHAIRMAN GETZ: Okay. So, let me just make sure. Mr. McHugh and Ms. Fabrizio, do you understand what I would like to see in writing, --

MS. FABRIZIO: Yes.

CHAIRMAN GETZ: -- trying to lay out some of these different categories by the end week?

MR. McHUGH: Yes, Mr. Chairman.

CHAIRMAN GETZ: Okay.

BY CHAIRMAN GETZ:

Q. And, then, this is for you, Mr. Leach. And, this is following up on some of the discussion about the TSA Cutover and dealings with Capgemini, and what happens in the event of a delay in Cutover. And, there's been some approaches here to deal with deferral of costs, and I guess what's being called in the cover letter as a "backstop". But is it fair for me to assume that, in the event that the Cutover is delayed because of some failure to perform, pursuant to the contract on behalf of Capgemini or some breach of contract on their part, that you would seek to enforce your contractual rights vis-a-vis Capgemini, even if that involved litigation?

A. (Leach) I'm not sure I understand question. They have an obligation to make certain financial payments related to a delay in the TSA.

Q. Well, no, let me step back then. That looks like how you -- one of the ways you have tried to approach specifically some of the concerns I raised about the TSA. But, assume that the Cutover is the result of a

failure to perform by Capgemini. Can I safely assume that you will seek to enforce your contractual rights?
A. (Leach) Absolutely. Absolutely. We did not give up any rights, in terms of assuring their performance under the contract.
Q. And, I guess the last issue I wanted to address would go to you, Mr. Smith. Looking at the cover letter that was filed on the Settlement Agreement speaks to the fact that the parties were responding "to issues identified by the Commission in the preliminary deliberations" back on December 17. And, all three of us raised issues that day. And, I went back to look at those deliberations. And, I guess I would characterize, of the issues that I spoke to, there were essentially five issues, that it looks like the Settlement Agreement addresses four of them pretty directly or at least in some serious respect. But the one condition that I spoke to that day that does not appear to be addressed was with respect to the possibility of a financial condition that would create an assurance mechanism by Verizon through some form of letter of credit or other instrument that would backstop some objective metric, such as line loss.
And, I'm not going to ask you about, you know, what the

subject of the settlement discussions were. But I wanted to know if there's, from your perspective, some kind of structural issue with some kind of approach, is there some inherent problem or anything that would make such an assurance mechanism infeasible?

A. (Smith) We struggled with that one. We understood that was an important issue. I think the parties spent a good deal of time talking that issue through. From Verizon's perspective, we believe that the 235 and a half million dollars that we put into the working capital immediately up front goes a long way to strengthen the balance sheet of FairPoint and position them to deal with the uncertainty of the future. And, in addition, we address other concerns, added the additional 50 to correct perceptions that the network wasn't -- might not be as everyone would hope it would be at the time of handover.

The issue of guaranteeing the future, to us, seemed like it would be a very difficult thing to administer, to figure out actually how to do it. We hoped that, by putting real cash into the business now, that that was the best way to help FairPoint as it goes off in the future. We won't have a control right on how they manage their business. We won't be able to

influence what their response might be to line loss. And, so, you know, putting us under an obligation to take the result of something that we can't control, felt like a condition that we just couldn't live with. We tried to address that with, effectively, the cash concerns and with the TSA backstop, in the event that, you know, it gives them some comfort during the TSA period.
Q. Have you quantified either the value to the transaction or the cost to Verizon of backstopping on the TSA?
A. (Smith) You mean, did folks look at scenarios?
Q. No, I'm saying, in Verizon's perspective?
A. (Smith) No, we did not.
A. (Bailey) We did put a number value on it, if that's the question that you're asking. They're going to backstop three months, which is about $50 million, if they need to defer the three months. They do get paid back and they get paid back with interest, but it's a $50 million deferral.
A. (Smith) I agree with that number on the TSA. I thought the question went to "did we quantify the impact off the line loss and how we would address that?" I'm sorry.
Q. Okay.

A. (Smith) I didn't understand the question. I apologize.

CHAIRMAN GETZ: That's all I had. Redirect?

MR. McHUGH: No questions, Mr. Chairman.

MR. DEL VECCHIO: No thank you, sir.

CHAIRMAN GETZ: Ms. Fabrizio?

(No verbal response)

CHAIRMAN GETZ: Anything else for this panel then?

(No verbal response)

CHAIRMAN GETZ: Okay. Hearing nothing, then you're excused. Thank you, everyone. Mr. Rubin.

MR. RUBIN: The Labor Intervenors call Randy Barber to the stand. And, as he is making his way, I will note that we've distributed prefiled additional testimony of Randy Barber. We'd ask that that be marked as "Labor Exhibit 14HC", for the highly confidential version, and "Labor Exhibit 14P", for the public redacted version.

CHAIRMAN GETZ: Be so marked.

(The documents, as described, were herewith marked as Labor Exhibit 14HC and Labor Exhibit 14P, respectively, for identification.)

MR. RUBIN: Thank you. And, in addition, we've distributed Labor Exhibit 15HC, which are basically supporting workpapers for the tables that appear within Mr. Barber's testimony. Those are provided only in a highly confidential version. May that also be so marked?

CHAIRMAN GETZ: So marked.

(The document, as described, was herewith marked as Labor Exhibit 15HC for identification.)

MR. RUBIN: Thank you.

(Whereupon Randy Barber was duly sworn and cautioned by the Court Reporter.)

RANDY BARBER, SWORN

DIRECT EXAMINATION

BY MR. RUBIN:

Q. Mr. Barber, could you state your name and spell your last name for the reporter please.
A. My name is Randy Barber, B-a-r-b-e-r.
Q. And, do you have before you a copy of what has been marked as "Labor Exhibit 14HC"?
A. Yes, I do.
Q. And, do you also have a copy of "Labor Exhibit 14P"?
A. Yes, I do.

Q. Okay. Do those represent your prefiled additional testimony in this case?
A. Yes, they do.
Q. If I were to ask you the questions shown in those documents, would your answers be as contained therein?
A. Yes, they would.
Q. And, are those true and correct to the best of your knowledge and belief?
A. Yes, they are.
MR. RUBIN: Mr. Chairman, Mr. Barber is available for cross-examination. I'll note that we just distributed the written testimony yesterday. And, if the Commission prefers, Mr. Barber could give a brief summary. But, if you've had an opportunity to review it, then we can proceed to questions.
CHAIRMAN GETZ: A brief summary would be helpful.
BY THE WITNESS:
A. Certainly. In reviewing all of the documents that I've been able to have access to, in the Stipulations that have been filed in the three states or, in Maine, the approved Settlement, my view is that, in sum, they represent an improvement over the original transaction, and particularly the various requirements that make it

more likely that FairPoint will actually operate as a regional telephone company, and less like an acquisition-driven holding company, but far from perfect. And, there are certainly many other provisions that we believe are important, but, nonetheless, it, in sum, they definitely represent an improvement. But the fundamental issue to me is, do these changes and improvements represent a sufficient change in FairPoint's financial outlook to make it likely that it will meet the reasonable standards of financial fitness that I believe that a operating utility company should meet? And, in that respect, I continue to believe that they do not.

Specifically, FairPoint continues to rely on unrealistically optimistic assumptions with respect to employment levels, operating expenses, capital expenses, revenues. Particularly, with the first three -- first two, I would refer you back to my original testimony on this, these proceedings during the fall. In addition, even with its dividend cuts that it's committed to, FairPoint projects paying dividends that are well in excess of what it can earn by running its business. Even under its projection of not reinstating its dividends to the full level when it would have a right to, and under the projections that would be in 2012, it would still pay out almost twice the amount in dividends than it would earn in net income. And, again, I would actually refer you to the section of my testimony where I have a brief discussion of some of the findings in the Montana Public Utility Commission about the reasonableness of a public utility paying out in excess of 100 percent of earnings.

Further, with respect to the Other Post Employment Benefits, OPEBs, the liability for that, FairPoint is making no provision for funding those liabilities. And, under reasonable scenarios, it would lack the resources to be able to fund those liabilities as they came due. And, again, just overall, FairPoint will be unable, in my view, to withstand reasonably foreseeable adverse conditions.

In the end, FairPoint, in my view, is simply not going to be fit to own and operate the Northern New England properties of Verizon, absent a significant additional infusion from Verizon. Thank you.

CHAIRMAN GETZ: He's ready for cross, I take it?

MR. RUBIN: Yes, he is, Mr. Chairman.

Thank you.

CHAIRMAN GETZ: Thank you, Mr. Barber.

MR. RUBIN: Excuse me, before I do that, I should move into evidence Labor Exhibit 14, in both versions, and Labor Exhibit 15.

CHAIRMAN GETZ: Okay. We'll mark everything for identification, and then, when we close, we'll address any motions whether to admit or strike the pieces of testimony as evidence in this proceeding.

MR. RUBIN: All right. That's fine. Thank you.

CHAIRMAN GETZ: Okay. So, then, we'll give you the opportunity, Mr. Phillips, do you have --

MR. PHILLIPS: No questions.

CHAIRMAN GETZ: Mr. Price?

MR. PRICE: No questions.

CHAIRMAN GETZ: Mr. Mandl?

MR. MANDL: No questions.

CHAIRMAN GETZ: Then, Ms. Hatfield?

MS. HATFIELD: No questions.

CHAIRMAN GETZ: And, Ms. Fabrizio?

MS. FABRIZIO: Yes, I do have --

CHAIRMAN GETZ: Is there, I mean, among the Petitioners, is there an agreement on who's going to conduct cross in what order?

MS. FABRIZIO: I would recommend that Mr. McHugh go first.

MR. McHUGH: I'm happy to do it. I don't think it will take long, Mr. Chairman. Good afternoon, Mr. Barber.

WITNESS BARBER: Good afternoon.

CROSS-EXAMINATION

BY MR. McHUGH:

Q. On Page 2 of your prefiled testimony, and, so you know, I have the highly confidential version in front of me, but I don't think, in any of my questions, you're going to have to refer to the actual numbers, if that's fair enough?

A. I'm going to try not to. If I do, I will ask to go into a confidential session.

Q. Okay. On Page 2, you make reference to the Maine Hearings Examiner and the Office of Consumer Advocate witness David Brevitz making reference to reduce the purchase price by 600 million, do you not, sir?

A. Yes, I do.

Q. Mr. Brevitz also was retained by the Office of Public Advocate in the State of Maine proceedings, is that correct?

A. Yes, he was.

Q. And, the Maine Office of Public Advocate actually signed the Amended Stipulation calling for a purchase price reduction of -- equating to a purchase price reduction of about 200 --

MS. HATFIELD: Mr. Chairman, excuse me, I'd like to object, because I don't think it's relevant that a witness retained by one of the parties in this case was also retained by a party in another jurisdiction. I don't think it's relevant (a) that he was retained, and (b) that whether or not that person was a party to a particular agreement. I don't think that's relevant to what's before the Commission today.

MR. McHUGH: Well, he makes reference to it in his testimony, Mr. Chairman. I should be allow to ask him some questions on cross-examination.

MS. HATFIELD: I believe, though, that he's making reference to Mr. Brevitz's testimony in this jurisdiction, is that not correct?

WITNESS BARBER: Yes.

CHAIRMAN GETZ: Well, it certainly seems that Mr. McHugh can mention or raise the issues of Mr. Brevitz taking a position originally that the price be reduced by $600 million, and now has agreed to a price lower than that. I take that's what your --

MR. McHUGH: That's the point, Mr. Chairman.

MS. HATFIELD: Mr. Chairman, my objection is that Mr. Brevitz has not agreed, as far as I know, to that type of stipulation in New Hampshire. And, so, I'm not sure -- I don't think it's relevant. That he was part of a team of people working for the Maine Public Advocate, and I don't think any of us in this room can know what Mr. Brevitz's opinion was of the final Stipulation as it was filed in Maine. It's, as you said, it's perfectly appropriate to refer to Mr. Brevitz's testimony in this state. But it is not relevant, and I think it really crosses a line to make an assertion and try to get this witness to testify as to what Mr. Brevitz agreed to in another jurisdiction.

MR. McHUGH: I actually asked what the OPA agreed to in the other jurisdiction. I think it's both relevant and very persuasive. The Commission ultimately can decide what weight to give it, but it is very relevant to the proceedings.

MS. HATFIELD: Well, I would also object, I don't think Mr. Barber can testify as to what the OPA agreed to in Maine. He doesn't work for the OPA, and the OPA isn't a party in this case.

CHAIRMAN GETZ: Okay. Well, --

MR. McHUGH: Let me ask it this way, maybe Mr. --

CHAIRMAN GETZ: Well, I guess there's one issue here, too. And, let's at least clear this up. That, on Page 2, Line 7, you mention "OCA Witness Brevitz". He's also the OPA witness?

MS. HATFIELD: He was one of, --

MR. McHUGH: One of them.

MS. HATFIELD: -- I believe, three different financial witnesses that they had.

CHAIRMAN GETZ: And, in here, you did intend to refer to him as "OCA Witness Brevitz"?

WITNESS BARBER: Yes, because we're talking about New Hampshire.

CHAIRMAN GETZ: Well, I'm having a hard time making the distinction that you're raising here, Ms. Hatfield. But, Mr. McHugh, you said you have an alternative way of posing this question?

MR. McHUGH: I think you can -- I'd ask the Commission to take administrative notice of the Maine decision, which incorporates by reference the Amended Stipulation, the Settlement Stipulation in Maine that was approved.

MR. MANDL: NECTA/Comcast have marked the Maine decision as an exhibit for identification, so it is before you now.

CHAIRMAN GETZ: Yes. Well, and certainly our intention is to -- it's marked for identification, and I fully expect we'll enter it into evidence. And, certainly, it is -- I, myself, have referred to it several times, and we intend to take administrative notice of that, of that document as well. So, --

MR. McHUGH: Okay.

BY MR. McHUGH:

Q. And, so, we can agree then, Mr. Barber, that, as approved, the amended Maine Stipulation, in fact, calls for a $235 million effective purchase price reduction, does it not?

A. Yes, we can agree to that.

Q. Okay. Do you agree with Mr. Leach's testimony that there are no Verizon retirees that are going to be transferred over to FairPoint, in terms of their retirement obligations, at close?

A. I agree that there are no retirement obligations being transferred to FairPoint that are associated with

Verizon retirees.

Q. Okay. In your testimony, you make reference to a Verizon Corporate VEBA trust funding of $4.3 billion, do you not, sir?

A. Yes, I do.

Q. And, you say that that is roughly, on a Verizon Corporate wide basis, approximately 16 percent of the total potential Verizon liability, is that fair?

A. That was the calculation I made.

Q. And, if I equate then, it's subject to check, is the total Verizon Corporate wide obligation for OPEBs approximately $27 billion?

A. It's in that range. But I haven't looked it in maybe two quarters.

Q. Okay. On Page 19 of your prefiled testimony, Mr. Barber, and again I'm looking at the highly confidential version, but there's a chart of "Total Unfunded Pension and OPEB Liabilities as a Percentage of Net Debt". Do you have that?

A. Yes, I do.

Q. And, based on the way you set up the chart, is it not a fact that, as more debt is paid down, the percentage of unfunded pension and OPEB liabilities goes up?

A. Yes.

Q. And, you're not intending by this chart to imply any criticism of FairPoint, in terms of it paying down debt, are you?
A. The intention of the chart is simply to show the proportion of total outstanding debt in the time frames referenced to the unfunded post employment benefit obligations that FairPoint would have.
Q. Okay. Do you know what the balance in the Northeast VEBA trust fund is for Verizon as of December 31, 2007?
A. I do not.
Q. Do you know what it's projected to be as of the midpoint of 2008?
A. I heard purportedly confidential testimony to that effect, but I do not have any independent knowledge of that.
Q. Okay. Fair enough. On Page 4, going back, I'm sorry, Mr. Barber, on Page 4 of your testimony, towards the bottom, on Line 21 and 22, you make reference to FairPoint agreeing "to almost 200 million in increased contingent expenses". Do you see that, sir?
A. Yes street.
Q. Now, the great bulk of that, as I understand your testimony makes is referenced in this $150 million promise to pay down debt as agreed to by FairPoint in

the Maine proceedings, is that right?
A. Correct.
Q. I guess I just don't understand, and so I want to ask you, though. In terms of a "pay down in debt", when you say it's an "expense", you're not intending to imply that it's a reduction in revenue, are you?
A. No.

MR. McHUGH: Very good. I don't have anything further, Mr. Chairman.

CHAIRMAN GETZ: Mr. Del Vecchio?

MR. DEL VECCHIO: I have no questions, Mr. Chairman.

CHAIRMAN GETZ: Ms. Fabrizio.

MS. FABRIZIO: Thank you, Mr. Chairman. Good afternoon, Mr. Barber.

WITNESS BARBER: Good afternoon.

BY MS. FABRIZIO:
Q. I wanted to refer you to the same Page 2 that Mr. McHugh referred to earlier. On Line 7, you refer to "OCA Witness Brevitz having noted", on Page line -- on Line 9, that "Verizon should have reduced the price by more than 600 million".
A. Yes.
Q. When, in this proceeding, in New Hampshire, did Mr.

Brevitz use that figure?
A. I'm not sure when or where he used that figure. I know that I totaled up a number that exceeded that.
Q. Okay. Thanks. And, are you familiar with the OCA brief filed on November 21st in this proceeding?
A. I'm sure I've read it.
Q. Will you accept subject to check that the first financial condition that they list in their brief on Page 65 reads as follows: "FairPoint's debt upon closing but be reduced by 200 million by Verizon without contingencies or limitations". Do you recall that statement?
A. I recall that being part of what they suggested.
Q. So, can you reconcile that with the 600 million figure?
A. I believe there were other considerations that they proposed or conditions they proposed. As I just told you, I took a look at those conditions, added, whether it was that, that statement, or if it was Mr. Brevitz's testimony, in one place or the other, I concluded that the value of the conditions were it was in excess of $600 million, and was roughly comparable dollar-wise to the Maine Hearing Examiner's proposal.
Q. Thank you. So, perhaps --
A. You've read one specific provision in those conditions.

Q. Right. And, perhaps your testimony is maybe inaccurate in saying that -- that "Verizon should reduce the price by 600", that seems to me a single element. But you're saying, in effect, there are additional financial conditions that add up --
A. Well, there are different ways of reducing price. One of them is reducing debt, one of them is providing cash or a reserve, which I believe was another part of the proposal. Another would be to fund anything above a certain dollar amount in TSA costs. There are different ways of reducing the price.
Q. Okay. Thanks. Let's move onto Page 10 and 11 -- or, Page 11, I think. On Page 11, you sort of sum up your arguments made in earlier pages. And, you describe on these pages a run of FairPoint's financial model that you, yourself, conducted, that assumed no cost synergies.
A. I'm sorry, which line are we on?
Q. I'm referring generally to your discussion on Pages 10 to 11 of your testimony.
A. Oh.
Q. Is that correct, the model that you're describing assumes no cost synergies?
A. Yes.

Q. Okay. And, on Page 10 -- I think I've got the wrong page reference here. You refer to "Leverage Ratios". Page 18. Sorry, bad handwriting.
A. Page 18, you said?
Q. Yes.
A. Okay. There are two charts on that page.
Q. The top of the page.
A. I don't believe -- I rely on help to tell me which of those columns are public?
MR. RUBIN: The only -- The chart at the top of Page 18, the only published information is the last column.
WITNESS BARBER: Yes.
BY MS. FABRIZIO:
Q. What is the range of Leverage Ratios that you're using in your assumption of no synergies in what you describe on Pages 10 and 11, let's put it that way?
A. I can't tell you what the range was based on this document. I can certainly go to another document, which was filed as part of my confidential testimony. And, I can -- again, that would be a confidential number, I believe. But I can certainly point you to where you can see the Leverage Ratios for each of the years 2008 to 2015 that were generated by that

particular run of the model.
Q. And, are those -- would that range be considered highly confidential? I think this is why I was messing up on the page numbers, --
A. I believe it is, but --
Q. -- it's Page 10 of the working papers, and that's --
A. -- I will rely on the document.
CHAIRMAN GETZ: Well, there's too many people talking. But I think it really gets back to --
MR. McHUGH: It's highly confidential, Mr. Chairman.
MS. FABRIZIO: Okay.
MR. RUBIN: And, just for some clarity of the record, I believe Ms. Fabrizio is referring to Page 10 of Labor Exhibit 15HC, which are the supporting workpapers of Mr. Barber. And, our understanding is that everything in Labor Exhibit 15 is highly confidential.
MS. FABRIZIO: Okay. I will reserve that line of questioning.
BY MS. FABRIZIO:
Q. So, let me turn to Attachment 1P, which is public.
A. Yes.
Q. Okay. You refer to this, I believe, -- Mr. Barber, you've referred to this particular table as a "balance

sheet of sorts", is that correct?
A. Of sorts.
Q. Okay. And, you have stated, I believe, that this is a balance sheet of sorts which tally how FairPoint will use the money that Verizon will contribute under the terms of this transaction, is that correct?
A. I would say, more accurately, my understanding of the commitments, either firm or contingent, that FairPoint has made, and the countervailing commitments that Verizon has made.
Q. Uh-huh. Okay. And, on that note, with regard to commitments, if I look at the first figure, you've got a hard commitment in Maine of 110 million?
A. Yes.
Q. Could you tell us how you derived that figure?
A. I took a public number that was the expected rate of line loss in the time frame mentioned. I took a further statement, I believe, in Mr. -- I believe it was from Mr. Leach's Vermont testimony, which stated that the $18 million annualized commitment to reduce rates was to begin the middle of 2008, which meant, for 2008, it would only be $9 million. And, I projected that through the life of the model, through 2015, and I tabulated it.

Q. Now, you, again, referring to the "hard commitment" term that you use there, --
A. Uh-huh.
Q. -- my understanding is, under the Maine Agreement, FairPoint actually made a hard commitment to a five-year rate reduction totaling 18 million, 18 million annually?
A. I believe that the AFOR has a five year, has a five-year term.
Q. So, 18 times five would be 90 million?
A. If you did not reduce it by line loss.
Q. So, really, this number should be even lower, lower than 90 million even, and 110 million is incorrect, in terms of portraying a hard commitment on the part of FairPoint?
A. I don't believe it's incorrect. I believe it's a projection based on no indication on FairPoint's part that it would seek a rate increase during the, you know, the period of the projection.
Q. But it's also not based on a commitment on FairPoint's part that it will extend the rate reduction for the life of the model, as opposed to five years?
A. This gives the best number, I believe, that can be used based on, not only my understanding of that, but also

the methodology that I believe was used by FairPoint in its own model, projecting the cost of this particular provision.
Q. Okay. So, a five-year commitment, plus a projected assumption of continuation?
A. No. I've already answered that.
Q. Okay. Thanks. And, when you developed this table tallying, in effect, a balance sheet of FairPoint commitments and Verizon contributions, did you take into account the cash that FairPoint, in effect, is contributing by cutting its dividends by 50 million a year?
A. That's not the purpose of this table. I recognize it elsewhere. And, I also discuss the issue of whether or not FairPoint's actually committing to reduced dividends over eight years or over four, under its basic model. But it's not the purpose of this table.
MS. FABRIZIO: Thank you. That's all of my public questions.
CMSR. BELOW: Yes.
BY CMSR. BELOW:
Q. Mr. Barber, one of your concerns is that, even under the Settlements, proposed Settlements, FairPoint would be paying out dividends in excess of earnings, correct?

A. Yes.
Q. Now, earnings are, in a simple way, can be thought of income less expenses, correct?
A. Yes.
Q. And, one of the expenses is depreciation, which is not a cash expense, but a book expense, is that correct?
A. That is, that is certainly correct in any.
Q. Did you look at the dividends compared to earnings, plus depreciation?
A. I think the better way to look at that would be not just depreciation, there are various kinds of non-cash items. In fact, I think we talked about non-cash items the last time. If you were -- the answer is, I actually believe I even have a table in there on Free Cash Flow versus dividends. But I also looked at that.
Q. Are there proposed or projected dividends in excess of earnings, plus depreciation?
A. Not under their base model, no.
Q. Okay. So, their -- another way to look at that, factoring the other non-cash items, is how do their projected dividends compare to their Free Cash Flow?
A. Certainly, that's another way. But, if I could, I believe that that is a -- that's a very imprudent way of looking at cash available to pay out from an

enterprise. And, again, I would refer you to my testimony with the, you know, with the findings of the Montana PUC, specifically on the point of the prudence of paying out in excess of net income. Obviously, net income does not include the non-cash charges. I simply believe it's imprudent to be looking at paying out or how much you can pay out based on the cash that you're generating in an enterprise.

Q. Could you repeat that last part?

A. I said, I think it's imprudent to determine the amount of money that you should or could be paying out, based on cash flow, as opposed to based on income. Because income is fundamentally what supports the sustainability of the firm.

Q. And, other than the Montana -- recent Montana decision, do you cite other sources in support of that position?

A. No, I don't.

CMSR. BELOW: Okay. That's all.

CHAIRMAN GETZ: Ms. Fabrizio, you wanted to ask some highly confidential questions?

MS. FABRIZIO: I have changed my mind. I have no further questions.

CHAIRMAN GETZ: Okay. Well, then, are there any other questions for Mr. Barber, before we allow the opportunity for redirect?

(No verbal response)

CHAIRMAN GETZ: Hearing nothing, then, Mr. Rubin.

MR. RUBIN: Thank you, Mr. Chairman. Just a couple of brief questions.

REDIRECT EXAMINATION

BY MR. RUBIN:

Q. Mr. Barber, you indicated that the retirement obligations for Verizon retirees were not being transferred to FairPoint. Do you recall that?

A. Yes, I do.

Q. Are the retirement obligations for current Verizon employees being transferred to FairPoint?

A. Yes, they are. And, they're captured on a balance sheet, and that's a fairly large number. It's a confidential number, but they're there.

Q. All right. Does that include both pension and non-pension benefits for current Verizon employees?

A. No, it really includes, my understanding of that balance sheet item, it includes only non-pension, basically, retiree health care. But the benefits that currently active Verizon and then to be FairPoint employees have earned, but have yet to start collecting, because they're still active.

Q. Okay. I think we might be talking about two different things. And, your jumping ahead of me a little bit, which is okay. But, just as a general matter, is FairPoint assuming both pension and non-pension benefit obligations for current Verizon employees?

A. For those that go over to FairPoint, yes.

Q. And, are the non-pension benefits being funded in any way at closing?

A. No.

Q. If you could look at Page 19 of your testimony, I think this will get at what you were just talking about. There's a confidential figure on Line 4. And, if that confidential figure were subtracted from the public figure on Line 3, would that give us the amount of the liability at closing that FairPoint is assuming for non-pension benefits?

A. That's correct. That represents the unfunded OPEB liability.

Q. All right. Now, you were also questioned about Attachment 1P, which appears on Page 24 of your testimony.

A. Yes.

Q. And, you indicated that that did not recognize any

funds available from FairPoint's reduction of its
dividend at the outset, is that right?
A. That is correct.
Q. Does Attachment 1P recognize FairPoint's commitment to
pay down $45 million per year in debt?
A. No.
Q. In your opinion, if someone wanted to include
FairPoint's dividend reduction in the table, would they
also have to include the debt repayment obligation?
A. I would think so.

MR. RUBIN: Thank you. That's all I have, Mr. Chairman.

CHAIRMAN GETZ: All right. Then, it appears to be all for Mr. Barber. So, you're excused. Thank you, sir.

WITNESS BARBER: Thank you.

CHAIRMAN GETZ: I guess there's one administrative matter to take care of. Is there any objection to striking the identifications to the exhibits submitted in the last two days and admitting them into evidence?

(No verbal response)

CHAIRMAN GETZ: Hearing no objection, they will be admitted into evidence. Is there anything else to address, before we provide the opportunity for closing statements?

(No verbal response)

CHAIRMAN GETZ: Okay. Hearing nothing, we'll give the proponents the opportunity to go last. So, we'll start, Mr. Phillips, do you have a closing?

MR. PHILLIPS: Thank you, Mr. Chairman. NHTA declines the opportunity to make closing statements.

CHAIRMAN GETZ: Mr. Price?

MR. PRICE: Yes, I do have a statement. Thank you, Mr. Chairman. The record in this proceeding indicates that this transaction would not be in the public interest without conditions that, among other things, ensure New Hampshire consumers continue to benefit from competition in the telecommunications market. The Staff Settlement would impose a set of conditions that go a long way toward protecting competition and providing oversight for the Cutover. However, the Settlement simply attaches a Joint Stipulation on wholesale issues between FairPoint and three CLECs. It does not state explicitly that it will be enforceable by all CLECs in New Hampshire. Any final order needs to be clear that these conditions are for the benefit of all CLECs.

Moreover, there are a handful of

conditions that the Maine PUC has imposed in its order, that the Vermont PSB has said it will impose, and that FairPoint has agreed to in Vermont, that are not contained in the New Hampshire Staff Settlement.

First, the Maine and Vermont conditions do not require that CLECs or the Commissions refrain from seeking wholesale rate reductions for any period of time. The New Hampshire Staff Settlement, however, requires that the Commission not impose a rate reduction for three years after closing. To be consistent with Maine and Vermont, this provision should not be adopted in New Hampshire.

Second, both the Maine and Vermont conditions explicitly say that the Maine PUC and Vermont Board may suspend the Cutover if FairPoint isn't ready. This Commission should also have that explicit authority, however, this is not provided for in the New Hampshire Staff Settlement.

Third, the Maine and Vermont conditions state that CLECs are entitled to petition the Commission for reimbursement if they incur substantial costs as a result of the Cutover. There is no such provision in the New Hampshire Staff Settlement. The Commission should consider adding this condition to ensure that competitors are not disadvantaged by this transaction.

Fourth, the Maine and Vermont conditions require that the Performance Assurance Plan apply to FairPoint without a grace period. The Joint Stipulation attached to the New Hampshire Staff Settlement, however, provides for a grace period of one month. There's no reason for wholesale customers and their end users in New Hampshire not to have the benefit of the PAP during this time, particularly if the PAP will apply in Maine and Vermont.

Fifth, and finally, in Maine, FairPoint is required to participate in Maine's Rapid Response process for wholesale disputes. In Vermont, FairPoint has agreed to consult with its wholesale customers and to file a proposal with the Board for a Rapid Response team to address wholesale issues arising from the transaction. The New Hampshire Staff Settlement contains no similar provisions. One Communications, therefore, suggests that this Commission include a requirement for a Rapid Response process or team within the limits of its statutory authority.

In summary, One Communications requests that the Commission consider imposing these further conditions that have been approved in Maine and agreed to by FairPoint in Vermont, in addition to the conditions contained in the Staff Settlement, assuming that those conditions are explicitly made enforceable by all CLECs. This will help ensure that competitive carriers and consumers in New Hampshire have the same protections that they will in Maine and Vermont following this transaction. Thank you.

CHAIRMAN GETZ: Thank you. Mr. Mandl.

MR. MANDL: Thank you, Mr. Chairman, and thank you, Commissioners, for the opportunity to make closing remarks. The Staff Settlement, Section 9.3, which, in turn, wraps around a portion of the 3-CLEC Settlement filed earlier in this proceeding, simply does not, on its face, clearly and unambiguously provide for conditions applicable to wholesale customers who did not enter into the 3-CLEC Settlement. We've heard some expressions of intent, but the language of this document simply does not carry out that intent.

Moreover, a number of provisions in this Stipulated Settlement have no bearing on this proceeding. Sections 4(f) through (h), for example, contain bilateral undertakings by the three CLECs who signed the Settlement, with regard to the FCC, the Maine proceeding and the Vermont proceeding. You know, they simply aren't appropriate for a stipulation or any merger condition in this proceeding. Section 5(c) requires CLECs not to advocate a decrease in certain special access rates. You know, this is a provision that non-signatories never agreed to and should not be forced to accept.

The Sections 8 through 11, which were referenced in part by the proponents of this Settlement, contain provisions, again, that are bilateral, mutual obligations to support the Settlement Agreement, as between FairPoint and the three CLECs, to support the merger transaction. These, again, are provisions that need not be merger conditions and should not be binding on any party who has raised issues in this proceeding during the evidentiary phase.

What it boils down to, and I think Mr. Price has hit a number of the high points, is that it's incumbent on this Commission to issue a clear and unambiguous order, which provides for a reasonable set of conditions to safeguard competitors from negative impacts associated with this transaction. A number of those provisions have been referred to by the Vermont Commission in its order, and have been required by the Maine Commission in its February 1st order. In Vermont, in FairPoint's revised filing with that Commission, which is now pending, FairPoint accepted those conditions as transaction conditions. However, only in this state has FairPoint failed to include those conditions as part of a bundle of conditions that would apply to this transaction.

As Mr. Price indicated, and I think as was evident during the hearings yesterday, the Settlement doesn't expressly provide for Commission authority to direct the deferral of a Cutover, if, based on independent monitor reports and other information, it believes that the Cutover would be premature. And, it's critical to both retail and wholesale customers that this Commission expressly and clearly retain that authority, consistent with what Maine has ordered and which Vermont, in its December 21st order, indicated it would require.

Similarly, interconnection agreements now in effect or in effect on a month-to-month basis should be extended for three years for all CLECs, regardless of whether they have signed the 3-CLEC Settlement. And, that's precisely what the Vermont condition did -- the Vermont Public Service Board did. It took the same 3-CLEC Settlement that you have before you, embedded a number of its terms into its order as merger conditions, and then, where it differed from those conditions, as in the case of the PAP waiver, it rewrote that condition to eliminate the PAP waiver. Where it believed that additional conditions should be required, such as the Rapid Response process, and the ability of wholesale customers to seek recovery of extraordinary costs due to the Verizon-to-FairPoint transition, it added those conditions and said those are conditions that it would likely require if it were to approve the transaction. FairPoint accepted those conditions in its revised filing with the Vermont Commission. And, those same conditions have been required by the Maine Public Utilities Commission.

I guess we submit that the adoption of additional conditions by this Commission would not disturb this Settlement. This Settlement itself recognizes that this Commission might modify or add to the wholesale conditions that have been provided. It gives the settling parties the right to crater the Settlement if they wish to do so. But, given that these conditions that Mr. Price has mentioned, that I've mentioned, have been accepted by FairPoint in Vermont, and ordered by the Maine Commission, the likelihood of the Settlement evaporating, you know, due to improvements in the conditions, additions to the conditions, is unlikely.

Lastly, in this Staff Settlement, FairPoint changed its position regarding the retail rate freeze. You may recall that originally FairPoint had offered a one-year retail rate freeze, now it's agreed to a five-year retail rate freeze. That's new information, which makes it all the more important that wholesale interconnection agreements be extended for three years for all wholesale carriers, not just the three that signed the 3-CLEC Settlement.

So, in closing, I'd simply urge this Commission to follow the same approach taken in Maine and taken in Vermont to date. There's an ample record before this Commission to support such actions through the hearings in this case. All of the issues that have been mentioned here have been argued by NECTA and Comcast Phone in their brief. And, we believe that the Commission should address those arguments in its decision. Thank you.

CHAIRMAN GETZ: Thank you. Mr. Rubin.

MR. RUBIN: Thank you, Mr. Chairman. On behalf of the Communications Workers of America and the International Brotherhood of Electrical Workers, I'd offer the following brief summary. We submit that FairPoint is not financially fit, even under the terms of the proposed Settlement. We offer four criteria to assess that.

First, the ability of the business to

pay dividends reflecting the value of shareholder investment and what the business can earn. FairPoint fails that test. Its dividends will greatly exceed earnings, continue to reduce shareholder equity each and every year. They are simply not sustainable, and the mark of a business that is very risky. We call to your attention in our initial brief in this matter a decision from the Montana Public Service Commission this past summer, which rejected a merger transaction precisely because the business plan of the acquiring company was to pay dividends greatly in excess of what the business could earn. And, we commend that decision to you. It explains in some detail why that is not an acceptable business plan for a public utility.

Second, the business must be able to meet its obligations to lenders and employees. FairPoint also fails this test. FairPoint's obligations to retirees will grow significantly. FairPoint will not be able to pay them. By 2015, that obligation will be well in excess of $400 million. FairPoint continues to assume that it will -- or, in addition, FairPoint continues to assume that it will somehow be able to provide reliable service, while losing hundreds of employees over the next few years, investing far less than Verizon has invested historically, and seeing its operating expenses defy inflation. None of those are reasonable assumptions.

Third, a public utility must be able to invest in new plant and equipment. FairPoint also fails this test. If we compare FairPoint's commitment in the three states, even under the proposed Settlements, to what Verizon actually invested in those three states, from 2001 through 2006, FairPoint will be spending substantially less, 50 to $60 million per year less than Verizon's actual investment in the three northern New England states. This is particularly pronounced in New Hampshire, where, even with the Settlement, FairPoint will be spending tens of millions of dollars per year less than Verizon has invested in the state during the last few years.

Fourth, a public utility must be able to perform under a reasonable projection of adverse circumstances. FairPoint also fails this test. Mr. Barber's analysis, as well as the analysis performed for Commission Staff, both show that, if FairPoint's overly optimistic assumptions do not come to pass, FairPoint will be in serious trouble, with the potential for dividend cuts, debt increases, borrowing to meet the debt repayment requirement, and so on. All of these could impede FairPoint's ability to raise capital and continue providing safe and reliable service to the public in New Hampshire.

Since we were here in October, Verizon has made a substantial financial commitment. FairPoint has used up most of that money through various promises to one constituency or another. The result is that FairPoint's financial condition remains substandard. FairPoint will not be able to meet reasonable standards of financial fitness. And, therefore, we ask the Commission to reject the proposed Settlement and reject the proposed transaction. Thank you.

CHAIRMAN GETZ: Thank you. Ms. Hatfield.

MS. HATFIELD: Thank you, Mr. Chairman. The OCA would like to begin by noting our appreciation for the efforts, particularly on behalf of Staff, to consider and include many of the issues that the OCA raised during these proceedings in the proposed Settlement Agreement. The OCA is pleased that FairPoint has agreed to service quality metrics comparable to those in Maine and Vermont, and that the Company has agreed to automatic penalties for service quality violations. We are also pleased that the Company has agreed to provide service quality information publicly, and it is our hope that the Commission will provide this information on its website so that consumers can access it.

There are a few issues that we would like to focus on and bring to the Commission's attention at this time. First, we believe that the Cutover monitoring process is critically important and warrants the Commission's close attention to ensure a seamless transition that does not impact customers negatively. We have heard today Liberty Consulting's current assessment of that process, and we think that their assessment bears out our concern.

Second, we do not believe that it is in the public interest for the Commission to authorize Verizon to be relieved of its legal obligations in New Hampshire before the issues associated with the spin-off of its directory publishing business are resolved. Those issues should be addressed while Verizon is under the jurisdiction of the Commission.

Third, as the Chairman discussed in his cross-examination a few minutes ago, from a procedural perspective, there are many aspects of the Settlement which create additional processes for the review of new and/or additional information, and which create reporting requirements for FairPoint. The OCA requests that it receive copies of all filings made to either the Staff or to the Commission pursuant to these numerous provisions of the agreement. We also request that the Staff provide copies to the OCA of all communications from it to the Commission on these processes and reports as they are filed. We are not prepared to provide an exhaustive list of all of these reports and processes in the Settlement Agreement, but in the document there -- in an attachment, there appeared to be at least 15 separate processes, which either will take place or which may take place after a final order is issued, and the OCA believes that we are entitled to participate in all of those processes, as are other parties.

The existence of some of these additional processes, including review of final debt agreements, also raises issues regarding the process that the Commission will undertake to review these documents and to determine whether further process is required. By statute, our office represents the interests of residential ratepayers in New Hampshire, and we are statutorily authorized to participate in any proceeding which may impact these interests. This authority includes the ability to initiate proceedings. Therefore, in order to fulfill our duties, the OCA requires access to any information filed by FairPoint with the Commission or provided to Commission Staff. To deny the OCA access to this information would be to unlawfully limit the OCA's authority and effectiveness.

We thank the Chairman for his framing of the three different types of documents that are required within the Settlement Agreement. And, we think that the letter that the Chairman has requested from the parties will be very helpful. We would request that that letter would be provided to all parties, so that there is a full understanding on behalf of everyone in this docket of what is expected and what will happen as next steps.

With respect to one of those or two of those items, we specifically request the Commission require that FairPoint provide the final Credit Agreement, with attachments, and the description of notes to the OCA. By specifying these documents, we don't intend to waive our rights to other documents, but those particular documents are of particular importance. And, because it is our understanding that the Company intends to provide them directly to the Commission, we believe we're entitled to review them as well.

Finally, based on our review of the

proposed Settlement and all of the information filed in the last 13 days, the OCA believes that this Settlement proposal does appear to address some of the issues raised by the OCA during the hearings and in our brief. But we continue to have concerns about the ability of FairPoint to undertake this transaction financially, managerially and technically. For our specific positions on these issues, we direct the Commission to our case as presented in our prefiled testimony in the October hearings and as well in our brief. Thank you for the opportunity to make a final statement.

CHAIRMAN GETZ: Thank you. Ms. Fabrizio.

MS. FABRIZIO: Thank you, Mr. Chairman. In this Agreement, FairPoint has made serious commitments to invest in the network, improve service quality, resolve the double poles issue, and expand broadband throughout the State of New Hampshire. We do not have those commitments from Verizon. FairPoint has agreed in this stipulation to automatic penalty provisions that are designed to ensure that the Company meets the commitments it has made. With FairPoint's agreement to those penalties, this Commission will have the authority to enforce the commitments made here. Under the statute, the

Commission does not have that authority with respect to Verizon, because Verizon would not agree to automatic penalties.

Staff believes that the totality of the commitments FairPoint and Verizon have made in Maine, Vermont, and New Hampshire ensure that the public interest will be served by this Commission's approval of the New Hampshire Agreement. Staff signed off on this agreement because it believes that it will ensure that FairPoint will have the managerial, technical and financial capabilities to assume ownership and operation of Verizon's landline assets in New Hampshire.

The financial provisions of this Agreement are designed to ensure FairPoint's financial viability in assuming Verizon's operations. Verizon's contributions to working capital, and FairPoint's agreement to significantly reduce dividends, have resulted in large reductions in FairPoint's overall debt levels. These provisions, combined with the Capgemini and Verizon backstops to the TSA, are all geared to ensuring that FairPoint has the cash to pay its lenders, achieve its CapEx commitments, and pay dividends.

Staff asked FairPoint to run a confirming financial scenario, based on very conservative assumptions. That scenario assured us that, given all the factors that will or could arise under the three different state agreements, FairPoint would remain financially viable.

Staff believes that Verizon's sale of its landline assets in New Hampshire to FairPoint, under the conditions provided in this Stipulation Agreement, is in the public interest. On behalf of Staff, I recommend that the Commission approve the Agreement. Thank you.

CHAIRMAN GETZ: Thank you. Mr. Del Vecchio.

MR. DEL VECCHIO: Thank you, Mr. Chairman, Commissioner Morrison, Commissioner Below. I'd like to thank you for the opportunity to speak on a matter of great importance to the parties, and particularly to the State of New Hampshire. First, we've heard today from the Labor Intervenors during the closing argument that, as a general proposition, "the sky is falling", and the Stipulations in New Hampshire and the other states are inadequate. They have argued that, while good, the New Hampshire Stipulation is just not good enough. They argue that the Hearing Examiner's report in Maine recommended a 600 million to $700 million reduction in debt, even though the Labor Intervenors themselves did not argue for a specific $600 million reduction. And, more importantly, the Maine Public Utilities Commission approved the Maine Stipulation with no such larger figure. They have also spoken in terms of FairPoint purportedly being unable to pay its lenders, to pay its promised dividend to stockholders, to invest in the network in New Hampshire, and to meet its obligations to its employees.

Don't believe it. Nothing has changed in Labor's position in this case, and no reasonable concession would, under any circumstance, likely change it. Simply stated, no reasonable concession is good enough for Labor. While they have picked amounts that they claim would satisfy them, Labor knows full well that the parties could never and would never agree with those amounts. Their willingness to reach consensus is illusory.

Labor's dire warnings in the three New England states thus should be taken with a large grain of salt. The Labor Intervenors have been against the transfer of Verizon's operations in New England for almost one full year, as early as May of 2006, before a specific agreement was ever reached between FairPoint and Verizon. The details of the transaction, frankly, such as who the purchaser might be, were largely irrelevant to Labor then, and they remain so today, nearly two years later.

Labor's own words ring with resounding clarity in its May 12, 2006 taped message to its membership, which Verizon introduced as Verizon Exhibit 20P, wherein they announced: "CWA, along with IBEW, along with the state AFL-CIOs, are coordinating an all-out effort to bury and defeat the sale of the Upper States' landlines. We will be contacting politicians, PUCs, the PUC" -- I'm sorry, "and the media, to name a few."

They have indeed, Commissioners, waged a war of attrition and are continuing their unrelenting campaign to bury this transaction with their arguments today. In light of the Stipulations before you, that campaign should now finally be rejected.

Second, in preparation for today's closing, I reviewed again portions of the evidentiary hearings held in October of 2007. I must admit that, having worked in this state for nearly 18 years, it was with some difficulty at times for me to sit and hear some of the things that were said about the company that I've represented during those many years. Like most things in life, it's probably fair to say that some of the statements were not true, some of them were taken out of context, and some may, in fact, be correct. I'm not here, however, to argue the merits of the testimony, per se. I am here to say that, as the Company's representative in this and many other cases in which I've had the pleasure to participate, I and the Company heard what the Commissioners had to say. Sometimes when arguing a position, a party is required to maintain his or her game face, regardless of how challenging a position. That can be and sometimes is part of the process.

This, however, is not one of those instances. I'm proud of the fact that the Company took seriously the Commission's admonitions and participated in a process that addressed those concerns head-on. I'm proud of the fact that Verizon, as a result of the New Hampshire, Maine and Vermont Stipulations, participated in a dialogue that produced Verizon's nearly $300 million in financial contributions, which, in large part, substantially reduced FairPoint's debt; Verizon's $50 million TSA deferral backstop, in the event Cutover does not occur within ten months; Verizon's contribution of $50 million of the $300 million for capital and operating expenses in excess of what FairPoint anticipates spending in New Hampshire, a fund that is solely intended to be used in New Hampshire to improve and enhance infrastructure in the state; FairPoint's rapid expansion of broadband throughout the state made more likely because of the financial flexibility afforded by the above; and the removal of double poles in a reasonable time frame.

Because of the supplemental conditions set forth in the New Hampshire Stipulation, not the least of which result from my Company's commitment to leave a legacy of good as it largely discontinues operations in the state, the Commission is in a far better position to conclude that this transaction is in the public interest. The supplemental conditions significantly strengthen FairPoint's financial posture, result in a substantially improved debt leverage ratio, provide FairPoint with increased financial resources to satisfy its commitments and the conditions imposed on the transaction, and further ensure that the transaction will promote the public good in New Hampshire.

Staff agrees that, with the incorporation of the terms and conditions contained in the Stipulation, it has determined that the merger is in the public interest and recommends Commission approval. Verizon supports Staff and FairPoint in that request.

Verizon, therefore, respectfully requests that the Commission approve in their entirety the transfer of relevant assets and related transactions, as modified, as soon as possible, so that the proposed three-state transaction may close promptly.

Finally, Mr. Chairman and Commissioners, I would like to publicly thank Staff for all of its hard work over the last few months in negotiating this Stipulation. I can assure you, having participated in it, Commissioners, that it was by no means easy, and took political courage. And, it would not have been at all possible if Staff had not be willing to go many hours, including nights and weekends, during sometimes stressful periods, to forge a reasonable compromise that reflects the needs of all parties and, most importantly, from your perspective, the people of New Hampshire. It's been a pleasure working with you all over these many years, Commissioners. Thank you very much.

CHAIRMAN GETZ: Mr. McHugh or Mr. Coolbroth.

MR. COOLBROTH: Thank you, Mr. Chairman. It's been a long year. It was just over a year ago that we filed the Joint Petition seeking approval of this transaction. I've been in this business for 30 years, and I can't remember a transaction more closely scrutinized than this one. The Commission has an extensive record before it upon which to decide the issues that it faces.

We originally felt that the petition that we had filed, the proposal that we had made, met all of the statutory requirements. We went further. We addressed the needs of low income customers through a settlement. We addressed the joint pole arrangements with electric utilities by entering into agreements with New Hampshire's electric companies, including addressing double pole issues. We entered agreements with many CLECs and with New Hampshire's independent ILECs, and presented that total package to the Commission.

The Commission held its deliberations on December 17, and pointed out items that it felt needed to be addressed further. First, the Commission pointed out that the evidentiary record was not complete at that point. It required the filing of a Disaster Recovery Plan and evidence of changes in the transactions resulting from the Stipulated Agreement reached in Maine. We have filed the preliminary Disaster Recovery Plan, and we have filed the Maine and New Hampshire Stipulations. And, we, as the Commission is aware, the Maine PUC has, in fact, approved the Amended Stipulation in Maine. In Vermont, the Stipulation reached with the Department of Public Service has been submitted to the Public Service Board, hearings have been held, the matter has been further briefed, and is awaiting decision by the Vermont Public Service Board.

In its December 17th deliberations, the Commission also addressed additional concerns that were -- that the Commission felt needed to be met in order to find this transaction in the public interest. The Commission pointed out that those conditions needed to be addressed both from the perspective of FairPoint's request to commence providing service and from Verizon's request to discontinue. We have now filed the Settlement Agreement with the Commission Staff, and it clearly addresses the issues from both perspectives.

First, the Commission indicated that the proposal needed to address FairPoint's debt level, and the Settlement Agreement does address this issue. Verizon is contributing an additional $235.5 million to the transaction. FairPoint has agreed to reduce its dividend by 35 percent. These changes result in a $235.5 million reduction in debt out of the gate, and a long-term increase in Free Cash Flow to pay down debt. As the evidence shows, over time, these changes dramatically reduce FairPoint's debt, and put FairPoint on a course to achieve ratios consistent with an investment grade rating over time.

The Commission indicated that the

parties should address limits on future acquisitions by FairPoint, and the Settlement Agreement addresses that, both from -- with criteria that are both based on financial considerations and quality of service.

The Commission expressed concern about the transition process, and making sure that there would be a smooth transition. And, the parties have addressed that issue with backstops, both from the primary vendor that FairPoint is using, Capgemini, and from a deferral mechanism agreed to by Verizon.

The Commission indicated a need to address assurance of the condition of the network that Verizon will be turning over to FairPoint. The Settlement Agreement does that as well, through Verizon's contribution of $50 million, 25 million at closing and $25 million two years later, for the specific purpose of addressing adverse conditions that may be discovered regarding the network at the time that the closing occurs. We believe that this Transition Services Agreement backstop and the 50 million also address the general concern that the Commission had with regard to other contingencies, for instance, line losses and what have you. This is an additional major set of financial assurances that were provided by Verizon, and we believe that they address the Commission's condition appropriately.

The Commission indicated that parties should address the remediation of double poles in New Hampshire. The Settlement provides clear requirements in that regard, a clear timetable and penalties for failure to perform. And, the funding for that is reflected in the financial forecasts that have been presented to the Commission.

The Commission required that the parties provide a quality of service plan, with metrics and with penalties, and that is contained within the Settlement Agreement.

Broadband has been addressed, in terms of availability, as the Commission indicated, and the Settlement Agreement provides clear requirements to achieve 95 percent statewide availability of broadband over a five-year period. The costs of doing so are reflected in the financial projections. The broadband expansion plan is primarily based on DSL, but it is a flexible plan; one that will accommodate both DSL and fiber solutions over time.

There was never any evidence in this case that a statewide deployment of a fiber-to-the-premises approach was economically feasible in New Hampshire. The testimony of Verizon Witness Stephen Smith was that Verizon did not plan to make such a deployment. The FairPoint plan maximizes the network and provides the maximum broadband benefit throughout the state, and provides a flexible platform that will meet broadband needs in the future. No one produced a technology witness to criticize the Verizon -- the FairPoint broadband plan. The FairPoint plan is the one that is supported by the evidentiary record in this case.

The Settlement addresses wholesale issues as well, and it does so through the incorporation of the CLEC Settlement that had been presented previously to the Commission. We believe that the concerns of the wholesale community are fully addressed by that approach. And, in terms of reworking it to rewrite it to be the Maine or Vermont version, we don't think that's necessary. We think that what we have done is perfectly workable.

The question with regard to whether the approach that we took imposes obligations on people who did not sign the Stipulation can be answered, we think, by an example. In Maine, there are two conditions, Final Condition Number 11 and Final Condition Number 19, that freeze UNE rates and freeze special access rates for terms of three years. Well, a rate freeze applies to the CLECs, as much as it applies to FairPoint. We have taken the approach that we have an agreement that says that FairPoint will not increase, and we have a corresponding stay-out approach, so that other parties will not initiate proceedings to decrease rates, which behaves like a freeze. The one difference is, is that FairPoint is accorded the opportunity to voluntarily reduce rates. That is the one difference between the approach that we have taken, and the approach of a fixed freeze by the Maine and Vermont Commissions. We think it's the only -- the only difference in the two proposals is one that could potentially result in a reduction in those rates over the time, a voluntary one by FairPoint. So that we think that the approach that we've taken works, and it's in the best interest of the wholesale community.

FairPoint also would like to take the opportunity to express it's appreciation for the hard work and professionalism shown by all parties in this case. This has been a difficult case, it's been a long case. The parties, as they have appeared before this Commission, have not allowed the issues to gravitate to personality problems or animosity. Parties have worked very well together. Parties have done their best professionally to resolve and work through a challenging transaction, and we appreciate that.

In particular, we also would like to commend the Commission Staff for the effort, which, over the past few weeks, has been nothing but remarkable. This was very hard work, this was very long work. It was over weekends, it was evenings. It was a tremendous effort. And, this wouldn't have happened without a staff willing to work very hard, and we appreciate that effort.

FairPoint is excited and enthusiastic regarding this transaction and the prospect of serving the people of New Hampshire. We request that the Commission approve the Settlement Agreement and approve the transaction as now proposed. And, we also ask, respectfully, that the Commission expedite the issuance of an order in this case. We note that the Maine order has been released. We have been advised by the Vermont Public Service Board that an order is expected in mid February. We would urge this Commission to see what it could do to meet that kind of a schedule as well. There are many things that need to be accomplished in order to close this very complicated transaction, many steps that need to be taken. FairPoint is carrying the overhead of 200 employees that have been retained for this transaction.

I'd like to give them the business to operate. We believe that prompt approval of this transaction and closing of it will also help resolve the uncertainty that is faced by existing Verizon employees. In short, we want to get on with the business of serving the people of New Hampshire, and request approval. Thank you.

CHAIRMAN GETZ: Thank you. Okay. One item is with respect to the letter I've asked for further clarification of, with respect to the reports and the plans. Of course, that should be filed and made available to all the parties to this docket. And, then, I guess the last thing is to close the hearing, and let you all know we'll take the matter under advisement and move to a final order as quickly as we can. Thank you, everyone.

MR. McHUGH: Thank you.

(Whereupon the hearing ended at 4:45 p.m.)