

1 STATE OF NEW HAMPSHIRE

2 PUBLIC UTILITIES COMMISSION
3 (Redacted - Confidential Pages Removed)

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5 Concord, New Hampshire

Day IX

6 RE: DT 07-011
7 VERIZON NEW ENGLAND, ET AL: NHPLC NOV07'07 PM 1:58
8 Transfer of Assets to FairPoint
9 Communications, Inc.

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

Jody O'Marra, Clerk

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

17 Reptg. Verizon New England, et al:
18 Victor D. Del Vecchio, Esq.
19 Sarah B. Knowlton, Esq. (McLane, Graf...)

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

23 Reptg. One Communications:
24 Ted Price, Esq.

COURT REPORTERS: Steven E. Patnaude, LCR No. 52
Alix M. Godbout, LCR No. 29

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

2
3 **Reptg. Communication Workers of America,**
4 **IBEW Locals 2320, 2326 & 2327, and**
5 **IBEW System Council T-6:**

6 Scott Rubin, Esq.

7 **Reptg. Residential Ratepayers:**

8 Meredith Hatfield, Esq., Consumer Advocate

9 Rorie Hollenberg, Esq.

10 Kenneth E. Traum, Asst. Consumer Advocate

11 Office of Consumer Advocate

12 **Reptg. PUC Staff:**

13 Lynn Fabrizio, Esq.

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I N D E X

Witness	DIRECT	CROSS	REDIRECT	RECROSS
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Susan M. Baldwin

4	By Ms. Hatfield	7		41
	By Mr. Rubin		8	
5	By Ms. Fabrizio		9	
	By Mr. Del Vecchio		22 (c)	

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Michael Skrivan

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P R O C E E D I N G S

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2 CHAIRMAN GETZ: Okay. Good morning,
3 everyone. Let's take appearances for the record please.

4 MR. McHUGH: Good morning, Mr. Chairman.
5 Patrick McHugh, from Devine, Millimet & Branch, on behalf
6 of FairPoint Communications. And, with me today is
7 Attorney Fred Coolbroth and Attorney Kevin Baum, from
8 Devine, Millimet. Mr. Nixon, so the Commission knows,
9 needed to attend a meeting this morning and was not able
10 to join us.

11 CHAIRMAN GETZ: Okay. Thank you.

12 CMSR. MORRISON: Good morning.

13 CMSR. BELOW: Good morning.

14 MR. DEL VECCHIO: Good morning, Mr.
15 Chairman, Commission Morrison, Commissioner Below. Victor
16 Del Vecchio and Sarah Knowlton, representing Verizon.
17 And, with us Sheila Gorman, Shawn Nestor, and Alan Cort.

18 CHAIRMAN GETZ: Good morning.

19 CMSR. MORRISON: Good morning.

20 CMSR. BELOW: Good morning.

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

24 CHAIRMAN GETZ: Good morning.

1 CMSR. MORRISON: Good morning.

2 CMSR. BELOW: Good morning.

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

5 CHAIRMAN GETZ: Good morning.

6 CMSR. MORRISON: Good morning.

7 CMSR. BELOW: Good morning.

8 MR. RUBIN: Good morning. Scott Rubin,
9 representing the International Brotherhood of Electrical
10 Workers and the Communications Workers of America.

11 CHAIRMAN GETZ: Good morning.

12 CMSR. MORRISON: Good morning.

13 CMSR. BELOW: Good morning.

14 MS. HATFIELD: Good morning,
15 Commissioners. Meredith Hatfield, for the Office of
16 Consumer Advocate. And, with me, I have Rorie Hollenberg,
17 Ken Traum, and our expert, Susan Baldwin.

18 CHAIRMAN GETZ: Good morning.

19 CMSR. MORRISON: Good morning.

20 CMSR. BELOW: Good morning.

21 MS. FABRIZIO: Good morning,
22 Commissioners. Lynn Fabrizio, on behalf of Staff. And,
23 with me today are Kate Bailey, David Guyette, of the
24 Telecom Division, and Anne Ross, Director of the

1 Commission's Legal Division, who has agreed to take my
2 place during the cross-examination of Mr. Lippold this
3 morning.

4 CHAIRMAN GETZ: Good morning.

5 CMSR. MORRISON: Good morning.

6 CMSR. BELOW: Good morning.

7 CHAIRMAN GETZ: Anything we should
8 address before we hear from Ms. Baldwin?

9 (No verbal response)

10 CHAIRMAN GETZ: Okay. We have a couple
11 of outstanding procedural matters, but I guess we'll deal
12 with them later.

13 MS. FABRIZIO: Mr. Chairman, I'd just
14 like to note for the record that Staff Exhibit 26, which I
15 had originally distributed as the full text of the Vermont
16 DPS initial brief, I am actually going to withdraw the
17 full text and submit only an excerpt that refers to the
18 issue that we raised in cross-examination.

19 CHAIRMAN GETZ: Thank you. If you can
20 swear the witness please.

21 (Whereupon **Susan M. Baldwin** was duly
22 sworn and cautioned by the Court
23 Reporter.)

24 **SUSAN M. BALDWIN, SWORN**

DIRECT EXAMINATION

1
2 BY MS. HATFIELD:

3 Q. Good morning, Ms. Baldwin.

4 A. Good morning.

5 Q. Would you please state your full name for the record.

6 A. Susan M. Baldwin.

7 Q. And, by whom are you employed?

8 A. I am self-employed.

9 Q. And, what is your business address?

10 A. 17 Arlington Street, Newburyport, Massachusetts.

11 Q. And, did you file prefiled testimony in this case on
12 behalf of the OCA on August 1st of 2007?

13 A. Yes, I did.

14 Q. And, that testimony has been marked as "OCA
15 Exhibit 2P", "2C" and "2HC". Do you have a copy of
16 that with you?

17 A. Yes, I do.

18 Q. And, are there any changes or corrections to your
19 testimony?

20 A. Yes, there's one correction I'd like to make. And, it
21 begins on Page 5, Line 17, and continues to Page 6,
22 Line 15. In that excerpt I discuss different redacted
23 versions of my testimony. Since I filed my testimony,
24 there are now simply three versions, public,

1 confidential, and highly confidential.

2 Q. Thank you. And, do you adopt your prefiled testimony
3 fully today as your testimony?

4 A. Yes, I do.

5 MS. HATFIELD: Thank you. The witness
6 is available for cross-examination.

7 CHAIRMAN GETZ: Thank you. I understand
8 it's Staff, Verizon, and FairPoint that intend to
9 cross-examine, is that correct?

10 MR. RUBIN: I also have a couple of
11 questions for the witness, Mr. Chairman.

12 CHAIRMAN GETZ: Okay. Well, would you
13 like to start, Mr. Rubin?

14 MR. RUBIN: Sure. Thank you. Good
15 morning, Ms. Baldwin.

16 WITNESS BALDWIN: Good morning.

17 **CROSS-EXAMINATION**

18 BY MR. RUBIN:

19 Q. Have you reviewed the testimony that David Brevitz
20 filed on behalf of the OCA?

21 A. Yes, I have.

22 Q. Can you explain for us how your recommendations should
23 be considered in conjunction with Mr. Brevitz's
24 recommendations?

1 A. Yes. In my testimony, throughout my testimony, I
2 believe I made quite clear that, although I discuss
3 various conditions the Commission may want to consider,
4 I do not think that there's any set of conditions that
5 would make the transaction in the public interest.
6 And, that relies, in part, upon the testimony of Mr.
7 Brevitz, who's demonstrated the serious financial
8 concerns with the way the transaction is structured.

9 MR. RUBIN: Okay. Thank you. That's
10 all I have.

11 CHAIRMAN GETZ: Ms. Fabrizio.

12 MS. FABRIZIO: Thank you, Mr. Chairman.
13 Good morning Ms. Baldwin.

14 WITNESS BALDWIN: Good morning.

15 **CROSS-EXAMINATION**

16 BY MS. FABRIZIO:

17 Q. Now, in your prefiled testimony, beginning on Page 51
18 and continuing through Page 56, you've expressed
19 concerns about whether, because of high employee
20 turnover, Verizon will be able to transfer to
21 FairPoint, at closing, a workforce that will allow
22 FairPoint to operate business as usual. Have you
23 received any new information since you filed your
24 testimony that either supports or alleviates your

1 concerns?

2 A. Yes. The record continues to be updated. And, in
3 fact, the OCA asked various questions of Verizon,
4 following up on responses Verizon had given to Staff,
5 in fact. And, these responses show continuing
6 departures of potentially critical employees from
7 Verizon during this period. And, so, my concerns are
8 not the least bit alleviated, in fact, they're further
9 heightened by the evolving record.

10 Q. Thank you. And, on Page 67, again of your testimony,
11 beginning at Line 9 and going through Line 16, you
12 express concerns about FairPoint's plan to address
13 existing network service quality problems, primarily
14 through staffing increases at the technician level.
15 Have you learned anything since the date you filed your
16 testimony that either supports or alleviates that
17 concern?

18 A. For sake of clarification, are you asking specifically
19 about service technicians or generally about --

20 Q. Well, generally about FairPoint's plans to address
21 network service quality problems?

22 A. The way that I understand the oral testimony we've all
23 been hearing over the last couple of weeks, there's
24 critical information that Verizon has that FairPoint

1 indicates it's not yet in a position to get, that has
2 to do with root cause analysis conversations that
3 FairPoint needs to have with key Verizon employees that
4 FairPoint doesn't, as I understand it, consider
5 appropriate to have at this point. And, until
6 FairPoint can get from lower than 30,000, lower than
7 15,000, and right to the ground, I cannot be entirely
8 comfortable that FairPoint has enough information to
9 know that it is fully prepared to fix the outside plant
10 that Verizon has neglected for a number of years.

11 Q. Thank you. Now, on Page 64, beginning at Line 15, and
12 going through to Page 67, Line 3, in your testimony,
13 you express concern about the level of due diligence
14 that FairPoint has performed to ascertain the condition
15 of the Verizon network in New Hampshire. While this
16 portion of your testimony is actually confidential,
17 could you please summarize what you believe to have
18 been lacking in FairPoint's due diligence, without
19 delving into confidential detail, and explain how this
20 may impact the Company's ability to develop an accurate
21 and comprehensive network quality improvement plan?

22 A. As I understand FairPoint's due diligence, there were a
23 lot of drive-bys. The identification of numerous rural
24 communities that have been suffering from poor service

1 quality for many years do not seem to have been
2 encompassed by FairPoint's due diligence until quite
3 late in the game. And, I'm not aware of them having
4 made site visits to the small rural communities that
5 are particularly enduring poor service quality.

6 Q. Thank you. Now, for my next couple of questions, I'm
7 going to refer to the rebuttal testimony, the Joint
8 Rebuttal Testimony of Mr. Smee and Mr. Harrington. Are
9 you familiar with those testimonies?

10 A. Generally, yes.

11 Q. Thanks. In his rebuttal testimony, on Pages 11 and 12,
12 Mr. Smee of FairPoint states that "as a result of
13 FairPoint's initial and ongoing due diligence work,
14 FairPoint is confident that the network infrastructure
15 in New Hampshire is fundamentally sound." And, in
16 Mr. Harrington's rebuttal, on Page 10, he states that
17 he believes "FairPoint will receive a network over
18 which it will be able to provide high-quality
19 communications services." Based on your review of
20 Verizon's performance results, which you explore on
21 Pages 71 through 73 of your testimony, would you agree
22 with these statements?

23 A. Absolutely not. I think the numbers speak quite loudly
24 and clearly. And, if you look at my testimony and the

1 various confidential exhibits to my testimony, it's
2 quite clear that Verizon's service quality has been on
3 the decline for a number of years, lack of attention
4 either through personnel and/or lack of attention to
5 capital improvements, such as outside plant. So, I
6 continue to have grave concerns.

7 Q. Thank you. Now, actually turning to your testimony,
8 beginning at Page 87 through Page 94, you've expressed
9 the need for a service quality assessment plan in New
10 Hampshire that provides financial accountability for
11 not meeting service quality standards. Could you
12 please explain why you believe this is necessary and
13 summarize for us the general characteristics of a plan
14 that you believe would address these concerns?

15 A. This is a very important topic, I believe. And, I
16 think that what's happened since we first heard from
17 FairPoint, and what we're hearing now, is there is
18 definitely progress. FairPoint has begun to roll up
19 its sleeves. It's begun to identify the parts of the
20 state that particular need attention. And, I think
21 that's headway that should be recognized.

22 On the other hand, we're also in a
23 situation where FairPoint is seeking regulatory
24 approval. My concern comes after, if and after the

1 transaction occurs, what kind of economic incentives
2 will FairPoint be facing? And, as I understand it,
3 it's going to be under intense pressure to increase
4 revenues to lower expenses. And, it may not pass a
5 solid business case, net present value type of business
6 case to invest in small rural communities. So, I would
7 urge the Commission to recognize the need for some kind
8 of financial accountability after the fact, and it
9 could take the form of an across-the-board credit for
10 consumers, if FairPoint fails to meet the standards
11 that the Commission has already established. It could
12 take the form of particular consumer credits, so that
13 those consumers who are particularly suffering from
14 service quality, delayed dial tone installation and
15 delayed repair of dial tone receive specific consumer
16 credits. And, finally, a third element, I believe, is,
17 again, if you look at statewide averages, they're going
18 to look much better than if you look at performance on
19 a wire center level. So that it's critically important
20 to have any kind of incentive plan create the
21 accountability for addressing the communities that
22 would get lost in the wash of the statewide average.

23 Q. Thank you. Now, in your testimony, beginning on
24 Page 110, excuse me, you express concerns about

1 FairPoint's broadband development or deployment plans.
2 Have the updates to FairPoint's broadband plan, as
3 provided on -- through Mr. Brown's rebuttal, alleviated
4 these concerns?

5 A. Not entirely. With each broadband plan that we get, we
6 get more detail. I think the concern that I have about
7 the most recent round is two-fold. On one hand, a
8 major correction was made to the number of additional
9 lines that will be able to have broadband, relative to
10 the versions that I relied upon in preparing my
11 testimony, and apparently that has to do, in part, with
12 erroneous information provided by Verizon. So that is
13 of concern to me, because it suggests, until FairPoint
14 -- if FairPoint does acquire Verizon's property, until
15 they do, they really won't know exactly what they're up
16 against. And, the second concern I have about
17 FairPoint's plan is more general. As I state in my
18 testimony, broadband is really becoming almost a
19 necessity in today's society. And, we really have too
20 little, too late under FairPoint's plan. We're talking
21 about, in the year 2010, 71 percent of New Hampshire's
22 consumers can pick up the phone and order DSL. And, if
23 you compare that to what the nation had last year, in
24 June of 2006, on a national average we had 79 percent,

1 some states as high as 88 percent. So, in my mind,
2 71 percent is not enough to aspire to. And, I
3 understand that they have a range of up to 83, but I
4 think we have to assume at best 71 percent. So, not
5 only do we need accountability, but it may be that
6 Verizon needs to be matching FairPoint's commitment,
7 and there needs to be some more money from Verizon,
8 because Verizon has clearly left New Hampshire way, way
9 behind the rest of the country.

10 Q. Thank you. On that note, you included in your
11 testimony Footnote, I think it was number 230, you
12 referred to an FCC table?

13 A. Yes.

14 Q. Are you familiar with this table?

15 A. Yes, I am. I relied on this table in part for my
16 testimony.

17 Q. And, what is your opinion of FairPoint's broadband plan
18 in relation to the information you reviewed in the
19 table?

20 A. Well, again, Verizon has put FairPoint in a tough spot
21 by neglecting to take -- add the incremental investment
22 over the public network to allow New Hampshire
23 consumers to join the rest of the world in using
24 broadband. So, I think we have to understand that some

1 of the accountability does need to be linked to
2 Verizon. And, then, secondly, I would say that, if
3 we're looking at this transaction from the perspective
4 of the consumer, are the consumers' interests
5 adequately represented? Again, I don't think FairPoint
6 is taking us far enough soon enough.

7 Q. Thanks. We can switch gears for a second to go back to
8 service quality issues. Are you familiar with Mr.
9 Nestor's testimony in this proceeding?

10 A. Generally, yes, I am.

11 Q. I'd like to refer you to Page 7, Lines 13 to 14, of Mr.
12 Nestor's rebuttal testimony. On Lines 13 to 14, do you
13 have that in front of you?

14 A. No, I don't.

15 Q. I will put it on the screen, actually. Is that
16 visible? Would you read the first sentence of the
17 answer beginning on Line 13 please.

18 A. "No. Ms. Baldwin and Dr. Peres each assumed that the
19 service quality metrics that have been reported to the
20 Commission for many years remain relevant in today's
21 telecommunications marketplace, despite the significant
22 legal and structural changes that have occurred in New
23 Hampshire's telecommunications landscape over the past
24 decade."

1 Q. Thank you. And, do you agree with Mr. Nestor that
2 "service quality metrics are no longer relevant in
3 today's telecom marketplace"?

4 A. No, if anything, in the last decade, there's been
5 improvements in the network. And, I would assume that
6 it would be easier to meet the objectives -- the
7 standards, excuse me, that the Commission established
8 many years ago.

9 Q. Thank you. Now, I think I heard you saying earlier
10 that "there are no set of conditions which could make
11 this transaction in the public interest." Is that a
12 correct understanding of what you said earlier?

13 A. Yes.

14 Q. And, is that because, in your opinion, FairPoint is not
15 managerially competent?

16 A. The concerns that I raise along those lines have to do
17 with the departure of many employees from Verizon.

18 Q. So, are you saying that FairPoint is not technically
19 competent?

20 A. I believe that how my -- the concerns that I raise in
21 my testimony go to the fact that we're talking about a
22 company -- a small company acquiring a company that's
23 five times its -- the operations are five times its
24 size, measured by access lines, measured by revenues.

1 And, so that it's a large undertaking for FairPoint to
2 operate Verizon's Spinco in a manner that serves the
3 consumers.

4 Q. Okay. It sounded to me as though you're thinking maybe
5 both managerially and technically that FairPoint might
6 not be capable of assuming Verizon's operations?

7 A. I think the risks are great. And, I think that this is
8 a tough decision for the Commission in recognizing
9 those risks. If they were to consider approving it,
10 there's -- a lot of safeguards would need to be in
11 place.

12 Q. Is it your opinion that Verizon should remain the
13 provider in New Hampshire, because it's better equipped
14 to improve service quality and to expand broadband?

15 A. Verizon's track record in that regard, as I discussed a
16 few moments ago, is not very encouraging. And, I
17 understand that FairPoint has expressed the
18 willingness, the interest, to improve service quality
19 to address long-standing problems in that area, and
20 that FairPoint has expressed it's interest and
21 willingness to deploy broadband at a greater rate
22 perhaps than Verizon has been doing. My concerns go to
23 the lack of accountability, the lack of enforcement for
24 follow-through if the transaction were approved. Would

1 FairPoint have the ability and the accountability to
2 follow through on the promises it's making here now
3 today.

4 Q. Was that a "no", that it's not your opinion that
5 Verizon should stay? And, yet, there are no conditions
6 that would make it workable for FairPoint? Is that the
7 essence of your positions?

8 A. Could you restate the question.

9 Q. Sure. Is it your opinion that Verizon should remain or
10 should not remain? I think I heard you say that
11 Verizon should not remain, and yet FairPoint is not
12 capable of taking over.

13 A. I think this is a -- I do not think the transaction
14 should be approved as it has been structured. And, so,
15 that leaves us with Verizon. I believe then that the
16 Commission should make crystal clear to Verizon that,
17 before it seeks to sell off its operations, that it do
18 its homework. That it fix the neglected network, that
19 it pay attention to critical concerns, such as
20 deploying broadband. And, then, after such time, it be
21 permitted to sell off its operations to another
22 company.

23 MS. FABRIZIO: Okay. Thank you. That
24 concludes my questions.

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1 CHAIRMAN GETZ: Thank you.

2 MR. MCHUGH: No questions, Mr. Chairman.

3 CHAIRMAN GETZ: Mr. Del Vecchio?

4 MR. DEL VECCHIO: Yes, sir. I have
5 questions about three proprietary, confidential documents.
6 So, I would ask that the Commission do the usual clearing.

7 CHAIRMAN GETZ: Okay. If I could ask
8 anyone who's not privy to the public -- or, to the
9 confidential portions of this record, if they could please
10 leave the room at this time.

11 (PUBLIC HEARING RESUMES AT PAGE 35)

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1 (PUBLIC HEARING RESUMES FROM PAGE 21)

2 CHAIRMAN GETZ: Ms. Carmody, could you
3 let the folks outside know that it's permissible to come
4 back in the room?

5 MS. CARMODY: Timing is everything.

6 CHAIRMAN GETZ: Thank you.

7 **EXAMINATION BY CMSR. BELOW**

8 BY CMSR. BELOW:

9 Q. So, Ms. Baldwin, the material that Verizon has agreed
10 -- the confidential material that Verizon has agreed to
11 update, reflected in your Exhibits SMB-15, Confidential
12 15 and 16, does that information, in part, address your
13 suggestion in Footnote 125, on Page 48 of your
14 testimony?

15 A. Yes, it does, in part. And, you also, Commissioner,
16 referenced Page 51 of my testimony, where I recommend
17 that the Commission seek to obtain information from
18 Verizon, which, in response to an OCA data request,
19 Verizon indicated it could not provide, because it did
20 not "routinely track the information", and that has to
21 do with the sentence beginning at Line 11, going
22 through Line 14. Where I state "However, if the
23 Commission is contemplating approving the transaction,
24 I urge the Commission to seek routinely updated

1 information, not only about the existing employees, but
2 also about those who have left SpinCo, those who are
3 eligible either for full or reduced retirement benefits
4 as of year-end 2008 and year-end 2009." The OCA
5 specifically requested that information, and Verizon
6 said it couldn't provide it. And, I would think, in
7 this day and age of sophisticated databases, perhaps,
8 if the Commission were to request the information,
9 Verizon might be able to provide it.

10 Q. What's your understanding as to the employee transfers
11 from Spinco into FairPoint? Will the Verizon New
12 Hampshire employees that currently are part of the New
13 Hampshire and Northern New England workforce that will
14 be transferred to FairPoint be employees of Spinco and
15 actually be transferred at the time of closing?

16 A. It's my understanding that those employees will be
17 transferred, yes, at the time of closing.

18 Q. And not at the time of cutover?

19 A. Yes. Yes.

20 Q. And, so, what would be the relevance of those who are
21 eligible for retirement after close?

22 A. In my mind, the relevance is that employees who may not
23 be eligible for retirement now may hang on until they
24 are eligible for retirement. And, then, as soon as

1 they're eligible, they may decide to leave the Spinco.
2 And, so, we know about those who are retiring, as you
3 pointed out, before the transaction, but after the
4 transaction there would still be people who may be
5 close to retirement, and that represents the loss
6 potentially of seasoned employees, who would indirectly
7 or directly contribute to the technical and managerial
8 expertise of the acquiring company.

9 Q. And, in the information you've gotten so far, there is
10 some analysis that presents projections of the portion
11 of Verizon employees that are eligible for retirement
12 as of a date in this current -- as of some date in this
13 current year, correct?

14 A. That's correct.

15 Q. Were those forward-looking at the time you received
16 them?

17 A. Let me, if I may, Commissioner, look back perhaps a
18 page, that would be Page 50, and without divulging
19 confidential information, Table 4-C does summarize data
20 that Verizon has provided, and that's through year-end
21 2007. So, that just takes us another month -- another
22 two months.

23 CMSR. BELOW: Right. Well, could I make
24 a record request of Verizon for information for those

1 Verizon employees that would be part of Spinco, I guess
2 similar to the Table 4-C, who would be eligible for full
3 or reduced retirement as of the projected close date and
4 by year-end 2008.

5 MR. DEL VECCHIO: I have no objection to
6 trying to obtain that information, Commissioner Below. My
7 only concern is, we use an outside consultant, Hewitt, and
8 it takes some time to get data from this outside
9 consultant with respect to projections on pension
10 eligibility. So, we'll make the request. I had earlier
11 committed to the OCA that we'd get things in by the end of
12 next week. I'm not confident -- or, I should say I'm not
13 sure whether or not I could get that same data within that
14 prescribed period, given that we have to rely on a vendor
15 to provide it to us. So, we'll do our best. But I will
16 also represent that we'll get back to the Commission with
17 some more information, if we have it prior to then, as to
18 the availability.

19 CMSR. BELOW: Okay. Thank you.

20 BY CMSR. BELOW:

21 Q. My papers got shuffled a little bit here, so bear with
22 me just a moment. On Page 13 of your testimony, and
23 summarizing what you go into more detail later on
24 concerning broadband deployment, you point out, in

1 Lines -- starting at Line 15, that the cost of the
2 local loop, which provides the platform for DSL, is
3 already recovered through intrastate and interstate
4 regulated rates that consumers pay. DSL rides over
5 this network and, therefore, if the broadband market
6 were competitive, the rates for DSL would be aligned
7 closely with the incremental cost of adding DSL
8 capacity. And, you make a recommendation that there
9 should be a commitment to offer DSL at rates that are
10 aligned closely with the incremental cost of adding DSL
11 capacity. And, as you, you know, discuss later in your
12 testimony, this Commission has limited jurisdiction
13 over DSL and DSL rates. I wonder if you could
14 elaborate a bit and, in particular, comment on the
15 statement "if the broadband market were competitive".
16 Do you consider that the broadband market is not
17 competitive in New Hampshire, even where there's a
18 cable modem alternative?

19 A. I don't think the broadband market is competitive in
20 New Hampshire or elsewhere in the United States,
21 because, in my view, it consists of a duopoly, and I
22 don't consider a duopoly to be effective competition.
23 I think it's better than one provider to have two in
24 town, obviously. But I don't think that the rates that

1 result from the presence of one large cable company and
2 one large phone company are those that would prevail in
3 a truly competitive market.

4 Q. So, how do you see -- I'm still trying to understand
5 your suggestion that FairPoint should "commit to
6 offering DSL rates" -- "DSL at rates that are aligned
7 closely with the incremental cost of adding DSL
8 capability", when we don't have regulatory authority
9 over such rates, and when you're also recommending that
10 the transaction not go forward?

11 A. Well, let me answer that, starting with the last part
12 of your question and then moving from there. I
13 understand that, although I specifically recommend that
14 you reject the transaction, that the Commission, faced
15 with this very difficult decision, may come to a
16 decision different from mine. And, so, my interest is
17 in ensuring that consumers are looked out for to the
18 best possible. And, I understand that, while you
19 couldn't at a later date direct FairPoint how to price
20 DSL, it's my belief and recommendation that, within the
21 context of weighing the risks and benefits of this
22 transaction, that you could indicate to FairPoint and
23 to Verizon "This doesn't cut it. But, if you did the
24 following ten things, we could find it in the public

1 interest." And, one of those 10, 15, 20 things might
2 be, we -- my understanding is that they have committed
3 to one year, which is no great shakes to maintain
4 Verizon's rates. Why not commit to five years to not
5 raise DSL rates. Ideally, they would be even lower.
6 But they have done very little in terms of committing
7 to the price for this broadband that's the cornerstone
8 purportedly of this transportation.

9 CMSR. BELOW: Okay. Thank you. That's
10 all.

11 CHAIRMAN GETZ: Redirect, Ms. Hatfield?

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

13 **REDIRECT EXAMINATION**

14 BY MS. HATFIELD:

15 Q. Ms. Baldwin, Mr. Del Vecchio asked you to read a few
16 lines from your testimony on Page 58. Could you turn
17 to that page.

18 A. Yes.

19 Q. And, he had you read two sentences, one on Line 6 and
20 one on Line 7 that are part of a paragraph. And, I'm
21 wondering, can you just read the sentence that starts
22 on Line 8?

23 A. Reading on Line 8, of Page 58: "As a result,
24 regulatory intervention is essential to protect

1 consumers from long waits for repairs on out-of-service
2 lines, delayed service installation, and other service
3 quality problems."

4 Q. And, is it safe to say that that sentence should be
5 read in conjunction with the prior two sentences?

6 A. Absolutely. What we're concerned about is the service
7 that the consumers actually see, not the debates about
8 competition.

9 Q. And, turning to Page 48, Commissioner Below was asking
10 you some questions about Footnote 125.

11 A. Yes, I see that.

12 Q. And, you discuss the importance of additional
13 up-to-date information from Verizon, is that correct?

14 A. Yes, I do.

15 Q. And, then, at the end of that footnote, there's a
16 clause that references FairPoint. And, I'm wondering,
17 can you talk about that piece of your recommendation
18 and its importance?

19 A. Yes, I can. The latter part of the footnote I
20 recommend that the Commission seek a detailed plan by
21 FairPoint on how it intends to attract and retain
22 qualified employees. And, in my testimony, I mentioned
23 as a possibility bonuses for people who stay with the
24 Company. It seems to me this is an area where

1 FairPoint could elaborate on how it would address the
2 possible departure of employees who may be critical to
3 the day-to-day operation of Spinco after, if the
4 transaction were to occur.

5 MS. HATFIELD: Thank you. That
6 completes my questions.

7 CHAIRMAN GETZ: Anything further for
8 this witness?

9 (No verbal response)

10 CHAIRMAN GETZ: Hearing nothing, then
11 you're excused. Thank you, Ms. Baldwin.

12 WITNESS BALDWIN: Thank you.

13 CHAIRMAN GETZ: I want to go to one
14 procedural issue, because I think we're going to need to
15 take a brief recess and then resume with the highly
16 confidential examination of Mr. Lippold. But the briefing
17 question, was there a meeting of the minds as to briefs
18 yesterday? And, I'd also, I guess, need some
19 clarification, because I may have been operating under the
20 wrong premise. I thought that the point of having three
21 court reporters was there was going to be rough drafts of
22 transcripts available every day to parties. And, I guess
23 that's not been the case, that they haven't been
24 available, or what's -- can somebody please report on

1 that?

2 MR. COOLBROTH: Mr. Chairman, it has
3 been available. Some of the parties are choosing not to
4 avail themselves of that resource.

5 MS. HATFIELD: Mr. Chairman, I would
6 disagree. And, we -- I was told that they were being made
7 available to Staff, but I didn't realize they were being
8 made available to all of the parties. And, I want to say
9 that, when all of the parties got together and agreed upon
10 a very tight briefing schedule, of having the first briefs
11 due on November 16th, it -- we never, at least the OCA
12 never contemplated that we would get the last official
13 transcript on November 8th, 8 days before the briefs are
14 due. And, we also thought that having three court
15 reporters would mean that at least we would have the
16 official transcripts, you know, within a week of the day
17 of the hearing, but here we are on the last day and we
18 haven't seen drafts, and we don't have any of the actual
19 complete, official transcripts. And, so, now we're facing
20 briefs due two weeks from today, and we haven't seen any
21 transcripts, and that just isn't reasonable in our view.

22 MR. COOLBROTH: Mr. Chairman, I simply
23 don't understand that. What I have been advised is that
24 those transcripts have -- the rough transcripts have been

1 made available. And, I don't understand how a party can
2 claim they didn't get them, because they have been made
3 available, that's my understanding.

4 MS. HATFIELD: Well, okay, I guess we
5 can discuss what "made available" means, but we haven't
6 gotten them in paper form and we haven't gotten them in
7 e-mail form, so I'm not quite sure how they have been made
8 available to us. And, I would also say that rough
9 transcripts are not acceptable for a two-week brief
10 turnaround period, because they're not final, and we can't
11 write a brief based on draft transcripts. We need the
12 final.

13 MR. DEL VECCHIO: Mr. Chairman, if I
14 might just note, these so called "rough samples" or
15 "drafts" have been made available from day one. And,
16 they're not that rough. Parties have been reading from
17 them in questioning witnesses on cross-examination during
18 the course of this proceeding. And, secondly, if the OCA
19 thought there was some question as to availability, having
20 seen three stenographers sit before us every day over the
21 past nine days, after day one, one would think that one
22 would ask "is that going to be made available to us?"

23 MS. HATFIELD: And, I don't know --

24 MR. DEL VECCHIO: And, I don't hear that

1 that was even asked.

2 MS. HATFIELD: We could call the --

3 MR. DEL VECCHIO: So, it's unfair now --
4 if I may finish -- it's unfair now to place in jeopardy
5 the briefing schedule based on one party's failure to
6 actually try to obtain that which we had agreed would be
7 made available now over two weeks, approximately.

8 MS. HATFIELD: And, we could call the
9 court reporter as a witness, if we need to, but I have
10 spoken with him several times to ask him when things would
11 be available. So, this was -- And, we raised this
12 yesterday, it wasn't the first time that I raised it.
13 I've also raised it previously with Mr. Coolbroth, to find
14 out when we would be getting transcripts. And, my
15 understanding is that they would be -- that they're coming
16 out a week after the last day, which would be today, and
17 that just simply wasn't the agreement that we reached.
18 And, I would also point out, there is no statutory
19 requirement for the Commission to decide this case on a
20 particular schedule. And, so, we're driven by the
21 Companies' dates. And, frankly, that, you know, that's
22 not our concern.

23 CHAIRMAN GETZ: Was there anybody else,
24 Mr. Mandl, Rubin, anyone else that needs to or wants to

1 address this issue?

2 MR. RUBIN: Well, Mr. Chairman, I agree
3 with what Ms. Hatfield said. We were aware that draft
4 transcripts, or at least I was aware that draft
5 transcripts would be available. But, frankly, a draft
6 transcript doesn't do me any good. It means I would have
7 to review the transcript twice. And, there simply isn't
8 time for that in this schedule. So, we have chosen not to
9 receive the draft transcripts and deal with the official
10 transcripts, and use that in the preparation of the
11 briefs. I'm very concerned that we're not going to see
12 the official transcripts, and, as I understand it, we'll
13 start seeing them next week. And, we should have all of
14 them by the end of next week. But, then, to try to turn
15 that around for a brief due on November 16th is
16 burdensome.

17 And, I would suggest, and I have
18 suggested to counsel for FairPoint, that we simply move
19 back the date for the initial brief by a few days, to give
20 the parties an extra weekend, and that we not change the
21 date for the reply brief. And, apparently, that's not
22 acceptable.

23 MR. COOLBROTH: We would accept that. I
24 would just point out, that's over Thanksgiving Weekend.

1 We'll work Thanksgiving Weekend. But, if that's what the
2 other parties want to do --

3 CHAIRMAN GETZ: Okay, let me -- Let's
4 make sure I understand. If I go back to the -- looks like
5 the August 7 secretarial letter, that set out the
6 tentative dates for briefs and reply briefs of November 16
7 and November 28, which I take it that both FairPoint and
8 Verizon would like those dates to be the operative dates.
9 We have one counterproposal from Mr. Rubin that the
10 briefing date of November 16 be moved back several days,
11 but we keep the reply brief date to the 28th.

12 Ms. Hatfield, your recommendation or
13 proposal is that, my understanding from the court
14 reporters is we should have the last day in final form a
15 week from today, which would be November 8. So, what's
16 your proposal?

17 MR. RUBIN: Just to be specific, I
18 recommended the initial brief on November 20th, which was
19 the Tuesday after it's due -- yes, it's, sorry, it's a
20 Tuesday, it would be, I guess, the Tuesday before
21 Thanksgiving.

22 MS. HATFIELD: I guess, to throw another
23 issue into this, I think we heard from Verizon that we're
24 not going to get their record request responses until the

1 end of next week, is that correct, on Friday,
2 November 9th?

3 MR. DEL VECCHIO: I think we said
4 yesterday to Ms. Hatfield that we would provide them as
5 they are available. So, they would not all be there by
6 the end of the week, and that's what I told her. Some,
7 one may be, but I need to leave this hearing room,
8 actually, to work on the production of those record
9 responses, and I will do so immediately. But that
10 shouldn't be a reason for delaying the brief.

11 CHAIRMAN GETZ: Well, I guess, while
12 you're thinking, Ms. Hatfield, Mr. Mandl, did you want to
13 say something on this issue?

14 MR. MANDL: Yes. Just as a -- and I
15 share the concern that there's a -- there may be a
16 difference between the rough transcripts, which we have
17 been receiving, and the final versions. You know, it is a
18 laborious process to add cites to the record, and we can't
19 really do that until we have the final transcripts and
20 final pagination. So, that's kind of a question in my
21 mind of how useful will the transcripts be for purposes
22 of, you know, completing a brief. I also have a concern,
23 just as a party who needs to, you know, circulate the
24 brief and get clients' sign-off on it, that my work, you

1 know, needs to be done to afford my client an opportunity
2 to review it.

3 CHAIRMAN GETZ: Did you have proposals
4 for dates?

5 MR. MANDL: In terms of the dates, I
6 find Mr. Rubin's suggestion of November 20th for the
7 initial brief to be satisfactory. In terms of the reply
8 brief, if there were some way to maintain the approximate
9 interval between the initial brief and the reply brief.

10 CHAIRMAN GETZ: So, 12 days.

11 MR. MANDL: And not cause anyone any
12 undue hardship because of the Thanksgiving Weekend. I see
13 no reason why the reply brief could not be made due maybe
14 December 4th, that would not be a major delay, and might
15 address a couple of other concerns about the transcripts,
16 the record requests, and not unduly impacting people over
17 the Thanksgiving Holiday.

18 MS. HOLLENBERG: Excuse me, Mr.
19 Chairman, if I might just say something very quickly. In
20 all candor to the tribunal, I do want to say that at one
21 point a court reporter did ask if I wanted an overnight
22 transcript, and I indicated, for the reasons that
23 Mr. Rubin has indicated, that I didn't think that that
24 would be useful, because our agreement initially was that

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1 the brief would be due two weeks from the date of
2 receiving the transcripts. And, so, I didn't think a
3 rough draft would be useful. Thank you.

4 MS. HATFIELD: In terms of --

5 CHAIRMAN GETZ: Well, actually, Ms.
6 Knowlton has been standing for awhile.

7 MS. KNOWLTON: Thank you. And, if it
8 would be helpful to the Commission, I mean, I've been
9 printing out the transcripts every -- we get them at
10 night, and I print them out in the morning before we come.
11 And, what we get is, you know, three, for each day we get,
12 you know, each of the three reporters' transcripts, each
13 of which has a word index at the back. And, you know, I
14 mean, I have to say, I've been very pleased with the court
15 reporters and thankful for what they have done. I think
16 they have done a superb job here. I certainly, if it
17 would be helpful for you to see what we're getting, you
18 know, I've got every day with me, and I'm happy to show
19 you, as an example, it's -- I don't know what they do to
20 make it final, but I'll tell you, this looks like, you
21 know, pretty darn close to a final transcript, it just
22 doesn't have the cover page on it, with the parties and
23 appearances. So, I think to true up citations is going to
24 be minimal differences at best, you know, going from what

1 we have already.

2 CHAIRMAN GETZ: Okay. Thank you. Well,
3 they're available to us. But, Ms. Hatfield, did you have
4 anything more? Did you have a specific proposal on dates?

5 MS. HATFIELD: Well, our proposal would
6 be that the briefs not be due before two weeks after we
7 get the final transcript, which I believe would on the
8 8th, it sounds like, which would put us at Thanksgiving
9 Day. So, I think then our briefs should not be due until
10 the 26th or 27th. And, I think it is barely reasonable to
11 have reply briefs due 12 days later, so that puts us into
12 the first week of December, I think.

13 CHAIRMAN GETZ: Okay.

14 MS. FABRIZIO: And, Mr. Chairman, Staff
15 would just note that we support the current schedule of
16 November 16 and 28th, I believe. And, we have found the
17 draft transcripts, excuse me, to be quite serviceable for
18 using in briefs.

19 CHAIRMAN GETZ: All right. I think
20 we've got as much information as I can absorb on this
21 issue. Let's take about a 15 minute recess, and then
22 we'll come back and we'll hear from Mr. Lippold on the
23 highly confidential record. Thank you.

24 (Recess taken at 10:16 a.m.)

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1 (Hearing reconvened at 11:15 a.m.)

2 CHAIRMAN GETZ: We're back on the record
3 in DT 07-011. Apologize for the length of the recess, but
4 other issues are accumulating. Let me address, first off,
5 the briefing schedule. We've considered the various
6 arguments with respect to the time of initial and reply
7 briefs. And, we have set November 20th, the Tuesday
8 before Thanksgiving, as the deadline for initial briefs,
9 and Monday, December 3rd, as the deadline for reply briefs
10 in this proceeding.

11 (Whereupon **Brian Lippold** and **Michael**
12 **Skrivan** were recalled to the stand,
13 having been previously sworn.)

14 CHAIRMAN GETZ: Okay. We have Mr.
15 Lippold and --

16 WITNESS SKRIVAN: Mr. Skrivan.

17 CHAIRMAN GETZ: -- Mr. Skrivan back.

18 And, are we on the highly confidential record at this
19 point?

20 MS. ROSS: No, Commissioner. We're
21 going to cross-examine these witnesses on the exhibit
22 filed by the CLEC Coalition, which is called the
23 "Settlement Among FairPoint, Freedom Ring d/b/a BayRing,
24 segTel, and Otel". Only at the very end of my cross I'll

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1 have a couple of questions that will be highly
2 confidential, and I'll stop at that point and ask the
3 Commission to clear the room.

4 CHAIRMAN GETZ: Okay. So, we're
5 starting out with FairPoint Exhibit 15, okay, the
6 BayRing/segTEL/Otel. All right. And, who else -- I mean,
7 there's been some inquiry about this document already.
8 So, who else is seeking to cross-examine on this issue?

9 MR. McHUGH: My understanding, Mr.
10 Chairman, it was just Staff, because they were available
11 for cross for everybody else last week.

12 CHAIRMAN GETZ: Okay.

13 MS. ROSS: Yes. Staff didn't cross,
14 because the witness wasn't scheduled, it got changed at
15 the last minute, so we weren't prepared to cross when this
16 witness was available earlier. I think I have about 15
17 minutes, a half hour max, so it shouldn't take too long.

18 CHAIRMAN GETZ: Okay. All right. Let's
19 -- Mr. Rubin?

20 MR. RUBIN: Mr. Chairman, I don't have
21 questions for the panel, but I do have a concern about the
22 other agreements being highly confidential. As I read
23 through those agreements, it seemed to me that most of the
24 information in them, including many of the, I think,

1 central terms, should be public. They seem to track what
2 FairPoint witnesses and other witnesses have been talking
3 about throughout the case. I understand that the
4 attachments to those agreements, which do have, I mean,
5 have some very sensitive information, billing information
6 and so on, I certainly understand why those should be
7 highly confidential. But it seemed to me that the text of
8 the agreements themselves should either be public or
9 should have to be provided in a public redacted form,
10 where I think most of it would be public.

11 CHAIRMAN GETZ: Well, yes, I understand
12 those arguments. Those arguments have already been made.
13 And, I thought I expressly stated on the record is what we
14 would do is, on a highly confidential record, take the
15 time to understand these other MOUs. And, if we
16 concluded, based on the facts, apparently, which some of
17 you have already come to the conclusion how they should be
18 treated, we'll go through the record with Mr. Lippold and
19 Mr. Skrivan. And, if we conclude that they should be
20 either confidential or public, then we'll make that
21 decision.

22 MR. RUBIN: Very good. Thank you.

23 CHAIRMAN GETZ: Okay. Anything else?

24 Ms. Hatfield, do you --

MS. HATFIELD: Well, I don't want to
2 make Mr. Mandl's arguments for him, I think he can do that
3 very well on his own. But I guess my question is, if you
4 make the determination after-the-fact that they could be
5 public or confidential, parties -- there are some parties
6 that can't even see the documents while they're highly
7 confidential. So, I just think it creates a process
8 issue, where, after the witnesses are excused, if the
9 determination is made after-the-fact, it's just difficult
10 for a party to be able to go back later. And, actually,
11 it's impossible, and they can't do any cross.

CHAIRMAN GETZ: Well, I guess what we
12 had anticipated was, if we're convinced today that they
13 should be public, we'll make it -- we'll make it so. Or,
14 even if it's confidential, then Mr. Mandl, I take it, is
15 going to be hanging around, and we'll try to address those
16 issues.
17

MS. HATFIELD: Okay. Thank you.

CHAIRMAN GETZ: All right. Let's turn
18
19
20 to Ms. Ross.

MS. ROSS: Thank you. Good morning, Mr.
21
22 Lippold and Mr. Skrivan.

WITNESS LIPPOLD: Good morning.

WITNESS SKRIVAN: Good morning.

1 **BRIAN LIPPOLD, Previously sworn**

2 **MICHAEL SKRIVAN, Previously sworn.**

3 **CROSS-EXAMINATION, Resumed**

4 BY MS. ROSS:

5 Q. We're going to begin with some questions relating to
6 the settlement stipulation that I referenced earlier.

7 I assume both of you have a copy available to you?

8 A. (Lippold) Yes.

9 A. (Skrivan) Yes.

10 Q. Okay. Just a general -- to get some regulatory
11 context, are interconnection agreements filed with the
12 Commission?

13 A. (Lippold) Yes.

14 Q. And, that will be the case going forward with
15 FairPoint, is that correct?

16 A. (Lippold) Yes.

17 Q. Okay. I'm going to refer you to Exhibit 2 of the
18 agreement, which is a list of the various tariffs and
19 agreements that this CLEC Coalition uses. Are you
20 aware that these CLECs purchase service from Verizon
21 without the benefit of an interconnection agreement?
22 And, we're talking about New Hampshire now.

23 A. (Lippold) Yes.

24 Q. In other words, if you look up here, the purchase in

1 New Hampshire refers to several tariffs, 84, 85 and 86?

2 A. (Lippold) Yes.

3 Q. Okay. Does FairPoint intend to include settlement

4 items, which are listed in Paragraph 2a of this

5 agreement, in the Tariff 84, the New Hampshire Tariff

6 84? Let me just, for the benefit of the rest of the

7 room, this is the beginning of 2a, down at the bottom,

8 and here's the balance of it.

9 A. (Lippold) And, your question again was?

10 Q. Does FairPoint intend to make these settlement items

11 listed in 2a of this agreement available under Tariff

12 84 in New Hampshire?

13 A. (Lippold) We do not. My understanding is that any 271

14 elements are intended to be provided under a commercial

15 agreement.

16 Q. Okay. So, you're going to require CLECs to negotiate

17 purchase terms for the settlement items that you

18 consider 271 elements, is that correct?

19 A. (Lippold) That is correct.

20 Q. And, what type of agreements will those be called?

21 A. (Lippold) I would generically refer to them as

22 "commercial services agreements".

23 Q. Okay. Thank you. And, will those agreements be filed

24 with the Commission?

1 A. (Lippold) They will not.

2 Q. Okay. And, so, if those agreements are not filed with
3 the Commission, how will the Commission know whether
4 the parties have lived up to the agreements, the terms?
5 Or, specifically, how will the Commission know whether
6 FairPoint has lived up to the terms?

7 A. (Lippold) One moment. Mr. Skrivan is going to answer
8 this one.

9 A. (Skrivan) Our understanding is, if FairPoint did not
10 live up to the terms of this agreement, then the other
11 parties would have the right to approach this
12 Commission with a complaint regarding that.

13 Q. Okay. And, at that point, would the Commission be made
14 aware of the terms of those underlying commercial
15 agreements?

16 A. (Skrivan) I don't know the answer to that right now. I
17 mean, it seems --

18 Q. Doesn't it strike you as difficult for the Commission
19 to determine --

20 A. (Skrivan) Yes, it would.

21 Q. -- to resolve a dispute without knowing the underlying
22 terms that the dispute arose from?

23 A. (Skrivan) Yes, that makes sense that the Commission
24 would have to see the agreement at that point.

- 1 Q. Okay. Let's take a look at one other provision in this
2 agreement, and that is provision 2c, which is what you
3 -- what Mr. Skrivan was referring to a moment ago about
4 dispute resolution. This provision allows the parties,
5 if they fail to be able to reach agreement, to bring a
6 dispute to the Commission, does it not?
- 7 A. (Lippold) Let me read back through this.
- 8 Q. Sure.
- 9 A. (Lippold) Yes. This section is speaking to the
10 inability of the parties to come to an agreement for
11 the provision of their requested network element.
- 12 Q. Correct. And, what happens under this provision is
13 that the dispute comes to the Public Utilities
14 Commission, and then eventually it can also go onto the
15 FCC or the courts, is that correct?
- 16 A. (Lippold) Yes.
- 17 Q. Do you know whether -- or, has FairPoint ever received
18 any kind of legal opinion as to whether or not this
19 Commission's decision would be honored by any of those
20 subsequent tribunals, if the parties were unhappy with
21 this Commission and moved this decision up to, let's
22 say, a court of competent jurisdiction?
- 23 A. (Lippold) I lost track of your question there.
- 24 Q. Would the court, reviewing this Commission's decision,

1 one, find that this Commission had jurisdiction over
2 that decision, and, two, would it defer at all to this
3 Commission's decision?

4 A. (Lippold) I'm not an attorney. I don't know.

5 Q. Mr. Skrivan, are you aware of any inquiry on that
6 score?

7 A. (Skrivan) No.

8 Q. So, it's possible that, even though the parties brought
9 a dispute to this Commission, that ultimately a court
10 would determine, one, that this Commission did not have
11 jurisdiction to decide that issue, and, two, that this
12 Commission's decision was not consistent with any of
13 the applicable law, correct?

14 A. (Skrivan) That seems a matter of a legal question.

15 Q. Okay. FairPoint is going to be considered an ILEC
16 under the Federal Communications Act, isn't it?

17 A. (Lippold) Yes.

18 Q. Okay. And, as an ILEC, it's going to be obligated, for
19 an indefinite period of time, depending on a number of
20 decisions by the FCC, to provide 251 elements, correct?

21 A. (Lippold) That's my understanding.

22 Q. To competitive exchange carriers. It is FairPoint's
23 position in this litigation, is it not, that it is not
24 going to become what we call a "Bell Operating Company"

1 or a "BOC" under the Telecommunications Act of 1996?

2 A. (Skrivan) Yes, that is FairPoint's position.

3 Q. And, as a result of that position, FairPoint is taking
4 the position that it's not legally obligated to provide
5 any of the 271 elements that a BOC would be required to
6 provide under the Act, correct?

7 A. (Skrivan) Not under the provisions of Section 271, yes.

8 Q. Okay. And, some of those 271 elements are included,
9 aren't they, in some of these agreements, the one we
10 were just looking at?

11 A. (Lippold) Actually, they are included in this
12 agreement, and we have indicated publicly that we are
13 willing to provide all of the requirements under 271 as
14 if we were a BOC.

15 Q. However, if that question were ever taken to a court,
16 and a court agreed with FairPoint that it is not a BOC,
17 the court would quickly determine that FairPoint wasn't
18 obligated to provide any of those provisions, wouldn't
19 it?

20 A. (Lippold) I don't know what they would determine. But,
21 if, in my mind, if FairPoint was agreeing in writing to
22 be obligated to provide all of the elements as if we
23 were a BOC, then I guess I would question whether or
24 not -- I mean, this would be a binding agreement, I

1 would think.

2 Q. And, has FairPoint obtained any legal opinion as to
3 whether or not these agreements would be binding on
4 those issues?

5 A. (Lippold) I don't -- I'm not aware that we have.

6 A. (Skrivan) No, I'm not aware that we have.

7 Q. I want to turn now to just a couple of questions on
8 generally public interest. Right now, as we've just
9 discussed, Verizon is obligated to provide 271 elements
10 because it's a BOC, and obligated to provide 251
11 elements because they're an ILEC. Post transaction
12 here, FairPoint will be obligated to provide 251
13 elements because it will be an ILEC, but it will not be
14 obligated, except by its own agreement, if it's
15 enforceable, to provide 271 elements, correct?

16 A. (Lippold) That's my understanding.

17 Q. So, from a public interest standpoint, the Commission
18 is weighing the present party, who has to provide, by
19 law, 271 elements and 251 elements, against the new
20 party, who has to provide, by law, only 251 elements?

21 A. (Lippold) Was that a question?

22 Q. Correct. Do you agree that that's what the Commission
23 is looking at? The Commission is asked to determine
24 the public interest. And, what I'm suggesting is, the

1 Commission is comparing the current situation to the
2 proposed new situation. And, would you agree that, in
3 the new situation, the incumbent, which will be
4 FairPoint, will not be obligated to provide 271
5 elements?

6 A. (Lippold) I don't agree with that, I believe that we
7 are obligating ourselves to provide those elements as
8 if we were a BOC.

9 Q. And, you're obligating yourselves to provide those
10 elements to three CLECs, but you've indicated you're
11 not willing to put those elements into a tariff,
12 correct?

13 A. (Lippold) Well, first of all, as I understand it, the
14 wholesale tariffs are for 251 elements, not 271
15 elements. And, that the intention of the Section 271
16 is that those services would be provided via commercial
17 services agreements. We -- I lost track of your
18 original question.

19 Q. I think you've answered it. That's a fair response.
20 And, so, let's assume that your agreement with these
21 three CLECs to provide the 271 elements for three years
22 is enforceable. Then, what the Commission is comparing
23 is an incumbent, who is legally required to provide
24 under 271 and 251, with an incumbent who is legally

1 required to provide under 251, and will provide for
2 three years, to certain selective CLECs, under 271,
3 correct?

4 A. (Lippold) No, I believe that we have said in testimony
5 that we will provide the 271 elements as if we were a
6 BOC, and we have not limited that to these specific
7 CLECs. Now, in this negotiation, that commitment was
8 important for those parties to have as part of this
9 agreement, but it does not limit those to other
10 parties. And, the last time I was on the stand, I
11 think we went through step-by-step of that agreement
12 what would be available to all CLECs, as opposed to
13 which portions would not be. And, that was one that
14 was going to be available to all CLECs.

15 Q. Okay. So, you would like the Commission to view this
16 as just as good, in terms of enforcement ability, as
17 what currently is available through Verizon, what
18 FairPoint is offering?

19 A. (Lippold) I guess what we're -- we are acknowledging
20 that it is different, and we believe that it will be
21 just as good, but to acknowledge that there is a
22 difference.

23 MS. ROSS: Okay. I have a few questions
24 where I need to ask the witness now to compare the

1 agreement that is public with this coalition of CLECs,
2 with some of the private agreements, because I want to
3 point out some of the differences. I think that may
4 require us to divulge, in some very general terms, some of
5 those agreements. So, do you want to --

6 MR. MCHUGH: Mr. Chairman, could I do a
7 few redirects in the public setting, based on questions by
8 Ms. Ross, and then we can go to the highly confidential
9 session?

10 CHAIRMAN GETZ: Yes, let's do your
11 redirect.

12 MR. MCHUGH: Okay.

13 **REDIRECT EXAMINATION**

14 BY MR. MCHUGH:

15 Q. Mr. Lippold, I want to follow up on some questions by
16 Ms. Ross. Is FairPoint asking the Commission to
17 approve the Joint Stipulation? That's an easy one.

18 A. (Lippold) I'm sorry, but I don't know if it's required
19 that they actually approve it, but I'm not --

20 Q. I see. All right. Go back to Section 8a of the
21 stipulated settlement terms, which is Exhibit 1 to the
22 Joint Stipulation marked as "FairPoint Exhibit 15".

23 A. (Lippold) Okay.

24 Q. Section 8a, could you read the first sentence of

1 Section 8a, Mr. Lippold.

2 A. (Lippold) All right. "Each party agrees to support the
3 settlement terms set forth herein, to advocate approval
4 of the merger without additional wholesale conditions,
5 and to urge the state utility regulatory commission to
6 incorporate the CLEC settlement conditions into any
7 final order approving the transaction."

8 Q. Okay. And, will you just take a look without, and we
9 don't have to read -- I won't go through and make you
10 read everything, but would you just take a moment and
11 review Section 8b as well.

12 A. (Lippold) Okay, I've read it.

13 Q. And, having reviewed Section 8a, in part, and 8b, is it
14 fair to say that FairPoint is asking the Commission to
15 approve the agreement?

16 A. (Lippold) Yes.

17 Q. Okay. Would you please, Mr. Lippold, take a look at
18 Section 2, Subsection (c). I want to ask you a
19 question about this Commission's jurisdiction on
20 approval of the agreement, in the event the Commission
21 so chooses to approve it. But, if you go down towards
22 the bottom of Page 2, there's a sentence that starts
23 out "In addition, in any such review, proceeding", do
24 you see that, Mr. Lippold?

1 A. (Lippold) Yes, I do.

2 Q. And, it carries over into Page 3, do you see that?

3 A. (Lippold) I do.

4 Q. Does the agreement not provide that FairPoint and the
5 CLEC Coalition entities would not challenge the
6 Commission's jurisdiction, subject to the terms of this
7 section?

8 A. (Lippold) Yes, it does.

9 MR. MCHUGH: Okay. That's all I had,
10 Mr. Chairman.

11 CHAIRMAN GETZ: Okay. Anything else on
12 the public record?

13 (No verbal response)

14 CHAIRMAN GETZ: Okay. Then, Ms. Ross.

15 MS. ROSS: Could I have a -- can I ask a
16 clarification?

17 MR. MCHUGH: Sure.

18 MS. ROSS: Because I may be completely
19 misunderstanding this, the effect of this, in your request
20 to approve the agreement.

21 MR. MCHUGH: Sure.

22 **REXCROSS-EXAMINATION**

23 BY MS. ROSS:

24 Q. Mr. Luppold -- Mr. Lippold, excuse me, if the

1 Commission approves this agreement, is it FairPoint's
2 position that this agreement would apply to any CLEC
3 that wished to take advantage of its terms?

4 A. (Lippold) We are willing to have other CLECs signing an
5 agreement that would be identical to this agreement.
6 So, it's available for others to enter into, yes.

7 MS. ROSS: Okay. Thank you. That
8 wasn't clear to me from the record. Appreciate that.

9 CHAIRMAN GETZ: Okay. Then, I think we
10 need to transition into the highly confidential record.

11 (Hearing transcript continues under
12 separate cover originally designated
13 "HIGHLY CONFIDENTIAL," and subsequently
14 deemed to be "CONFIDENTIAL" by the
15 Chairman and Commissioners.)

16 (PUBLIC HEARING RESUMES AT PAGE 84)

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1 (PUBLIC HEARING RESUMES FROM PAGE 69)

2 CHAIRMAN GETZ: Okay. We've examined
3 the Paetec, DSCI, and Level 3 agreements, looked at them
4 as a matter of substance and in the context of what's the
5 appropriate level of confidentiality to be accorded.
6 We've concluded that there's no basis for concluding that
7 they -- those agreements are highly confidential. We will
8 treat them at this point as confidential. And, I guess
9 the most immediate impact of that, Mr. Mandl and
10 Mr. Price, is that we're going to make those agreements
11 available to you. We're going to take the lunch recess,
12 and give you an opportunity, if you want to question Mr.
13 Lippold or Mr. Skrivan on those agreements after lunch,
14 that you'll have the opportunity to do that.

15 Also wanted to note in the -- just as a
16 general matter with respect to these types of agreements,
17 with these particular agreements, there are clauses with
18 respect to confidentiality binding on FairPoint and the
19 other parties. There's also the matter of RSA 378:43 that
20 requires us to treat telephone utility information or
21 records as confidential in the first instance, if a
22 telecommunications company seeks such confidentiality. If
23 we conclude that such confidentiality is not required,
24 then there's a specific process laid out in the statute

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1 that says "before permitting public disclosure, the
2 Commission shall afford the telephone utility 30 days from
3 issuance of its written decision to request
4 reconsideration." So, we have to, I guess, determine how
5 that applies in this instance, if we want to or think it's
6 appropriate to make these agreements public, and then
7 we'll have to afford the telephone utilities the
8 opportunity to pursue their rights under 378:43, which
9 includes notice and an opportunity for a hearing.

10 So, and I also note that, to the extent
11 any party to this proceeding seeks to have any document
12 that's heretofore been provided "confidential" or "highly
13 confidential" treatment, then, under statute and under our
14 past practice, they always have the opportunity to ask,
15 make a request that such documents be treated as public
16 documents. And, that would be a parallel process. It
17 would not be linked to a final decision in this case, but
18 would be existing on its own accord.

19 So, is there anything else we should
20 address before the lunch recess?

21 (No verbal response)

22 CHAIRMAN GETZ: And, what I take it then
23 is what we have left is opportunity for questions about
24 the three CLEC MOUs. And, I guess -- oh, there was one

1 note from Mr. Patnaude, just to make sure that any party
2 that wants a transcript must fill out a Transcript Order
3 Form available from the court reporters. And, I think I
4 left also open at the end of the day yesterday the issue
5 of how to deal with exhibits. And, if there's agreement
6 on a list, then great. If there's going to have to be a
7 subsequent meeting among the parties and file a list, and
8 if there's a dispute, then we'll handle those issues as
9 they come up.

10 Have I covered all the procedural
11 issues? Ms. Ross.

12 MS. ROSS: You mentioned that there
13 would be an opportunity for parties to challenge or assert
14 challenges to the confidential status of different
15 exhibits or documents in this docket. When is that going
16 to occur?

17 CHAIRMAN GETZ: Well, we've made rulings
18 and treated documents as "confidential". As I think is a
19 standard clause in any decision we issue on any case,
20 there's an ongoing right of the Commission or any party to
21 ask that, by motion, to make a different decision as to
22 confidentiality. So, there's no deadline.

23 MS. ROSS: Okay.

24 CHAIRMAN GETZ: That would just be a

1 separate availability that would be -- that's out there
2 for the parties, if they want to pursue those issues.

3 MS. ROSS: Thank you.

4 CHAIRMAN GETZ: Okay. All right. Then,
5 let's take the lunch recess, and resume at 1:15. Thank
6 you.

7 (Lunch recess taken at 12:10 p.m.)

8 (Hearing reconvened at 1:20 p.m.)

9 CHAIRMAN GETZ: Please be seated. Okay.
10 Good afternoon. We're back on the record in DT 07-011 for
11 perhaps the last time.

12 And I think -- well, let me address one
13 issue I forgot to bring up that was addressed somewhat
14 earlier in the proceedings. And this has to do with the
15 testimony of parties who were prepared to testify, but
16 other parties indicated that there were no questions for
17 such witnesses. And I think that, for the most part, goes
18 to the witnesses from the City of Portsmouth and the
19 witnesses for the joint municipalities. And I guess I
20 would propose that the testimony exhibits of all of those
21 parties be entered into the record as if they had been
22 sworn to and available for cross examination. Is there
23 any objection to that process?

24 Okay. Hearing nothing, then that's how

1 the testimony and exhibits of those parties will be
2 treated.

3 And I understand with -- certainly,
4 there was the Ambrosi testimony, the Dandley and Clancy
5 testimony, it was all -- the parties sought to withdraw
6 the testimony or sought to withdraw as parties to the
7 proceedings, so those testimonies will not be made part of
8 the record.

9 And I take it that the testimony of
10 Ball, Thayer and Katz is obviated by the memorandum of
11 understanding, but there may be a question about that?

12 MR. MCHUGH: Yeah. The agreement, at
13 least, we had with Attorney Sawyer was that their
14 testimony would come in for purposes of allowing them to
15 identify their concerns, but then say their concerns were
16 resolved by the joint stipulation in the MOU. So I can
17 call Attorney Sawyer and get back to the service list, but
18 that was generally the ---

19 CHAIRMAN GETZ: Well, I guess I would
20 just leave it. Is there any objection to entering the
21 segTEL, BayRing, Otel testimony in the manner described by
22 Mr. McHugh?

23 Okay. So then that's how we will treat
24 the testimony from those parties.

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1 MR. MCHUGH: Thank you, Mr. Chairman.

2 CHAIRMAN GETZ: Anything I've missed in
3 that regard for testimony of individuals who were not here
4 at the hearings?

5 Okay. Well, hopefully, I've covered it
6 all, then.

7 I guess at this point, then, Mr. Mandl,
8 Mr. Price, do you have questions for Mr. Lippold or
9 Skrivan?

10 MR. PRICE: No, we don't. We've read
11 the agreements and we've discussed the matter with
12 FairPoint's counsel and we've agreed that we do not have
13 any questions for the witnesses, provided that these
14 agreements are entered into the confidential record of the
15 proceeding.

16 CHAIRMAN GETZ: Okay. Thank you.

17 All right. And this may be last call.
18 Is there anything that we've -- I've forgotten as a matter
19 of procedure before we close the hearings?

20 MR. COOLBROTH: Mr. Chairman, we were
21 working on the possibility of seeing whether there may be
22 another way to attack the briefing schedule. I've been
23 working with -- one moment.

24 MR. DEL VECCHIO: Shuttle diplomacy.

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1 MR. COOLBROTH: In order to preserve the
2 schedule, we were wondering about the possibility of
3 pursuing an idea that some other parties had had earlier
4 of going simply with a single round of briefs and
5 foregoing reply briefs.

6 CHAIRMAN GETZ: I don't think the bench
7 has any objection to reading one round the briefs as
8 opposed to two. I guess total page may be an issue, but
9 I've never had a particular problem with page limits.

10 MR. COOLBROTH: We have agreement, then?
11 So those would be due on the 20th, as I understand it, and
12 that would be it for the briefing.

13 MR. MANDL: I don't have authority right
14 now to agree to the single brief. I would need to discuss
15 that. I would be happy to try to do that as soon as
16 practicable, but I don't feel I have authority to agree to
17 the single ---

18 CHAIRMAN GETZ: Well, let me make sure I
19 understand. A single round of briefs, but due on the date
20 of the initial brief?

21 MR. COOLBROTH: That's right.

22 CHAIRMAN GETZ: At your pleasure, if we
23 need to get something in writing to confirm that -- well,
24 it looks like everybody's in agreement, except Mr. Mandl.

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1 You need to check with your client?

2 MR. MANDL: Yeah, I think I need to do
3 that.

4 CHAIRMAN GETZ: Okay. Well, then, I'll
5 -- we will withhold a ruling on that, pending your filing
6 something. How long would that take, Mr. Mandl?

7 MR. MANDL: I should be able to know
8 either later today or tomorrow, I would imagine, at the
9 latest, and communicate that hopefully by the end of this
10 week.

11 CHAIRMAN GETZ: Okay. All right.
12 Anybody else on that issue? Ms. Hatfield?

13 MS. HATFIELD: Was FairPoint suggesting
14 a page limit or no page limit?

15 MR. COOLBROTH: We're willing to go with
16 a page limit. The number 75 had been mentioned before. I
17 think attachments would go beyond that. But in terms of
18 the text of the brief, 75 pages we're willing to agree to.

19 CHAIRMAN GETZ: Okay. There does not
20 appear to be any objection on my left or on my right.

21 Mr. Mandl?

22 MR. MANDL: Yeah, I have the same
23 question. I just want to run this by my client before I
24 agree with...

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1 CHAIRMAN GETZ: Okay. And I guess,
2 then, maybe one other item here. I've already got
3 something today from PSNH about what should be admitted
4 into the record as full exhibits. And, well, actually,
5 this thing is from Mr. Sawyer that really goes to the
6 issue of how to treat the Griffin testimony from the Town
7 of Hanover. So I think that's been addressed.

8 I guess I would go back to what we may
9 have discussed once or twice now, if there can be a
10 recommendation on what exhibits everyone agrees to. And
11 maybe this falls to you, Mr. McHugh, Mr. Coolbroth. If I
12 can identify in one place what the exhibits agreed to are
13 and where the disputes are, and if we then have to
14 schedule a hearing or I have to rule outside of the
15 hearing based on resolving disputes about what should be
16 admitted, then we can do that.

17 MS. FABRIZIO: Mr. Chairman, I have two
18 questions. I apologize for being late.

19 You were discussing the municipality
20 exhibits when I came in, I think. Were you referring to
21 the exhibits attached to prefiled testimony?

22 CHAIRMAN GETZ: The prefiled exhibits --
23 prefiled testimony and attached exhibits.

24 MS. FABRIZIO: Okay.

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1 CHAIRMAN GETZ: As a package, which is,
2 I think, the way they're reflected in the markings, would
3 be admitted into the record.

4 MS. FABRIZIO: Okay. Because they
5 forwarded an e-mail earlier today, including copies of
6 data requests that they had received from the companies,
7 and I'm assuming that those shall be excluded.

8 CHAIRMAN GETZ: I would not incorporate
9 them, based on the ruling about the testimony alone. If
10 there's -- well, I guess I would leave it to the parties.
11 If there's debate -- I mean, I guess my inclination would
12 not be to include these other data responses, on the face
13 of it, but I guess I'll leave it to the petitioners to see
14 what their position is and if a ruling is needed. But I
15 can't deal with it in the abstract.

16 Ms. Hatfield?

17 MS. HATFIELD: Well, I thought that it
18 sounded like there was an agreement between that CLEC
19 coalition and Hanover's witness, that that's what they
20 would do in lieu of her testifying, her actually
21 appearing. But that's just how I read it. We might want
22 to check on that.

23 CHAIRMAN GETZ: Well, I guess that's
24 something we need to verify. Was it just for that -- is

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1 it just Ms. Griffin or does it go beyond Ms. Griffin's
2 e-mail?

3 MS. FABRIZIO: It may be the
4 stipulation ---

5 MR. MCHUGH: With Staff, there was just
6 a question as to whether or not we needed updated or
7 supplemented responses to any data requests in the
8 exhibits. We'll take care of that.

9 CHAIRMAN GETZ: Okay. Just reflect, you
10 know, where there's agreement, where there's disagreement,
11 and we'll deal with it.

12 MS. FABRIZIO: And just one request for
13 clarification, that any supplemental data that is provided
14 hereafter is only including updated information for
15 existing exhibits and not additional information that
16 would constitute new testimony.

17 MR. MCHUGH: Right.

18 CHAIRMAN GETZ: I think that's a fair
19 statement. And, of course, the record responses that
20 we've reserved numbers for.

21 MS. FABRIZIO: Okay.

22 CHAIRMAN GETZ: Anything else?

23 MR. COOLBROTH: Mr. Chairman, we're
24 going to mark the settlement agreements that were

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1 discussed this morning. They have now become exhibits
2 that are confidential. These will be additional FairPoint
3 exhibits. We submit those.

4 CHAIRMAN GETZ: Very well. And just, I
5 guess, again, following the process of making sure all
6 these -- all the exhibits have been numbered correctly for
7 identification.

8 MR. COOLBROTH: And then, do I
9 understand then, is the identification stricken from ---

10 CHAIRMAN GETZ: Well...

11 MR. COOLBROTH: --- the exhibits?

12 CHAIRMAN GETZ: That's why I want to try
13 and get this process clear. That if there's -- I would
14 like the parties to make -- and I guess the best way is
15 for FairPoint to put in one place all of the exhibits that
16 are agreed to. And where there's all agreement, they'll
17 be admitted into the record as full exhibits and the
18 identifications will be stricken. If there is dispute,
19 then we'll deal with the dispute.

20 I didn't want to take -- I was fearful
21 of several hours of going through each set of exhibits and
22 losing track of who was opposed and who was supportive of
23 particular exhibits. Is there any concern about using
24 this process? I think it worked fairly well in the

1 Pennichuck/Nashua case, but...

2 MS. HATFIELD: Mr. Chairman, I'm not
3 aware that there are any issues with any exhibits. And I
4 guess my concern would just be that we do that very
5 quickly, so that we would know, as we're writing our
6 briefs, what's in and what's not.

7 CHAIRMAN GETZ: Well, if I get a very
8 short letter from Mr. McHugh saying there's no -- there's
9 no dispute about entering any of the exhibits...

10 Maybe I can do this: To the extent I
11 get a letter like that, it will be approved.

12 MR. MCHUGH: I can do that,
13 Mr. Chairman.

14 CHAIRMAN GETZ: Any other procedural
15 items before we close?

16 Okay. I guess I'd like to make a few
17 observations in closing the hearings. I guess, first, as
18 it's obvious to all of you, we have a momentous decision
19 to make here. The record is extensive and the facts and
20 arguments are voluminous and complex.

21 The proposed transaction before us is
22 fundamentally different from the situation the Commission
23 faces when a large -- larger company with more resources
24 seeks to acquire a smaller company and it can be

1 relatively assured that there are the financial, technical
2 and managerial capabilities within that new entity to
3 address any outstanding operating concerns or any other
4 issues of risk.

5 In that light, we will review the
6 record, as well as the briefs that will be submitted in
7 the coming weeks, but we are left with difficult and
8 interrelated questions. Most apparently, is the proposed
9 transaction, the transfer of control from Verizon to
10 FairPoint, in the public interest. That question has at
11 least two aspects: Is it in the public interest for
12 Verizon to discontinue service in New Hampshire and to be
13 relieved of all of its statutory obligations, and is it in
14 the public interest for FairPoint to assume control of the
15 Verizon franchise.

16 With respect to FairPoint, we must
17 determine, among other things, whether it has the
18 financial, managerial and technical capabilities to
19 operate as a telecommunications public utility in New
20 Hampshire. A related inquiry goes to the question of what
21 does the public interest require of Verizon. For
22 instance, does the public interest and do the facts in
23 this case require that Verizon provide assurances that its
24 successor in interest is in a position to meet all its

1 statutory obligations, and what form would such assurances
2 take.

3 At the same time, we recognize that the
4 petition is not now posed solely as a binary approve or
5 reject proposition. While there are parties that suggest
6 that there are flaws in the transaction that cannot be
7 cured by conditions, other parties have proposed numerous
8 conditions for our consideration that arguably would
9 render the transaction in the public interest. Such
10 conditions go to some matters beyond our jurisdiction in
11 the normal course, such as in the arena of broadband.
12 Other conditions address larger competitive issues
13 concerning the telecommunications marketplace. Still
14 other conditions go to areas more directly within our
15 jurisdiction, such as quality of service and safe and
16 adequate service. And this proceeding has included
17 testimony and examination about how Verizon has met its
18 obligations in the past and how FairPoint would meet them
19 in the future.

20 At this point, I just would like to
21 thank all the parties for their diligence in presenting
22 their cases and assisting us in developing a record in
23 which we seek to fulfill our own statutory obligations.
24 So thank you all. We'll close these hearings and await

1 the briefs and take the matter under advisement.

2 Thank you.

3 (Hearing closed at 1:36 p.m.)

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