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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

September 6, 2007 - 9:05 a.m.
Concord, New Hampshire

RE: DT 07-011
VERIZON NEW ENGLAND, ET AL:
Transfer of Assets to FairPoint
Communications, Inc.
(Prehearing conference)

PRESENT: Donald M. Kreis, General Counsel
(Presiding as Hearings Examiner)

Jody Carmody, Clerk

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

Reptg. FairPoint Communications, Inc.:
Frederick J. Coolbroth, Esq. (Devine...)
Patrick C. McHugh, Esq. (Devine, Millimet...)

Reptg. New Hampshire Telecom Assn.:
Paul J. Phillips, Esq. (Primmer, Piper...)

Reptg. Communication Workers of America,
IBEW Locals 2320, 2326 & 2327, and
IBEW System Council T-6:
Nancy Brockway

COURT REPORTER: STEVEN E. PATNAUDE, CCR

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

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

Reptg. Residential Ratepayers:
Meredith Hatfield, Esq., Consumer Advocate
Rorie Hollenberg, Esq.
Office of Consumer Advocate

Reptg. the N.H. PUC Staff:
Lynn Fabrizio, Esq.

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1 P R O C E E D I N G S

2 MR. KREIS: Good morning, everybody. I
3 am Donald Kreis, the Commission's General Counsel, and the
4 Commission has, pursuant to RSA 363:17, asked me to
5 conduct today's prehearing conference in this docket,
6 which is docket number DT 07-011, which, as you all know,
7 is the petition of the Verizon Companies and FairPoint
8 Communications to transfer certain assets of Verizon and
9 its utility franchise to FairPoint.

10 Let's start by taking appearances.

11 MR. McHUGH: Good morning. Patrick
12 McHugh, Attorney Coolbroth here, from Devine, Millimet, on
13 behalf of FairPoint Communications.

14 MR. DEL VECCHIO: Good morning. Victor
15 Del Vecchio and Sarah Knowlton representing the Verizon
16 Companies.

17 MR. PHILLIPS: Good morning. I'm Paul
18 Phillips, from the law firm of Primmer, Piper, Eggleston &
19 Cramer, on behalf of the eight ILEC NHTA members.

20 MS. BROCKWAY: Nancy Brockway, on behalf
21 of IBEW and CWA.

22 MR. LINDER: Good morning. Alan Linder,
23 from New Hampshire Legal Assistance, representing
24 Intervenor Schmidt.

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1 MS. HATFIELD: Good morning. Meredith
2 Hatfield and Rorie Hollenberg, for the Office of Consumer
3 Advocate, on behalf of residential ratepayers.

4 MS. FABRIZIO: Good morning. Lynn
5 Fabrizio, on behalf of Staff.

6 MR. KREIS: Good morning, everybody.
7 Let me start with something really easy. Has the
8 discovery dispute that gave rise to FairPoint filing a
9 Motion to Compel Discovery from the OCA been successfully
10 resolved?

11 MR. McHUGH: Yes. And, last night I
12 circulated to the public service list a letter withdrawing
13 the motion on behalf of FairPoint.

14 MR. KREIS: Super. I just wanted to
15 make sure that was the case. Okay. Let me just run down
16 my little list of things that -- oh, excuse me.

17 MS. KNOWLTON: Actually, while we're on
18 discovery disputes, just for the record, Verizon has been
19 attempting to negotiate a resolution of discovery
20 regarding its first set of data requests with the Office
21 of Consumer Advocate. We're hopeful that's going to be
22 resolved. If it's not, we'll be moving to compel. So, we
23 just wanted to advise the Commission of that.

24 MR. KREIS: Great. Okay. Let me just

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1 run down my little list of things I think we need to talk
2 about today. And, the first thing I want to do is to
3 issue a little plea on behalf of myself and other
4 consumers of the pleadings that you all file in this
5 docket. They become very elaborate. And, in particular,
6 they often contain very elaborate recitations of the
7 procedural histories and the very extensive history of
8 various dealings that you have had amongst each other.
9 And, let me just plead on behalf of the folks who actually
10 read these documents to ask that you be as concise and
11 straightforward as possible. The Commission is familiar
12 with the procedural history of this docket. And, so,
13 really, it's not necessary for you to disgorge the entire
14 history of Western Civilization every time you need to
15 bring something to the Commission's attention. Because,
16 when you precede your actual arguments and requests with
17 ten pages of history and background, it just takes us
18 twice as long to read and think about the things you need
19 us to read and think about. So, there's my little plea.

20 Okay. The Commission is concerned about
21 conducting the hearing in this case in a manner that will
22 allow this docket to be resolved satisfactorily and make
23 unlikely the need for appellate litigation, regardless of
24 who prevails. And, so, to that end, I want to say a few

1 things. First of all, my understanding of the applicable
2 law is that there are essentially two flavors of
3 information under RSA 91-A and/or RSA 378:43. And, those
4 two flavors are "confidential" and "public". And, so, the
5 only relevant question, from our standpoint, is whether a
6 particular piece of paper that we have in our files here
7 can be and should be produced upon request to a member of
8 the public who comes here asking for them, or whether
9 something requires us to withhold them.

10 Now, let me state my further
11 understanding that RSA 91-A itself doesn't create any
12 rights in anybody to maintain the confidentiality of any
13 information. I do read RSA 378:43 to create such a right
14 on a fairly limited circumscribed basis as to certain
15 documents that are provided to the Commission by telephone
16 utilities. So, I think, and if folks disagree with this,
17 you all should be -- feel free to tell me that, I think
18 the statute that we're primarily dealing with here is RSA
19 378:43.

20 Now, an issue I have with RSA 378:43 is
21 that, while it is very specific as to documents that might
22 be submitted to the Commission, it doesn't really talk
23 about what the appropriate course of action for the
24 Commission to take is in connection with the actual

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1 hearings in a case like this. And, what actually goes
2 into the hearing record, meaning the evidentiary record,
3 in a case like this, and to what extent that information
4 is subject to public disclosure, and to what extent the
5 hearings in this case are open to the general public or
6 not.

7 The next issue I wanted to take up is
8 that RSA 378:43 requires telephone utilities, in order to
9 invoke its protections, to make certain representations to
10 the Public Utilities Commission. I'm looking at Paragraph
11 II of the statute. It says that "The utility shall
12 represent to the Public Utilities Commission that the
13 information or records are not general public knowledge or
14 published elsewhere; that measures have been taken by the
15 telephone utility to prevent dissemination of the
16 information or records in the ordinary course of business;
17 and that the information and records" meets a couple of
18 additional conditions that I'm not going to read right
19 now, because you all know them.

20 So, my question is, to what extent have
21 those representations actually been made? And, then,
22 assuming that those representations have or will be made,
23 my next question is "what proceedings does the Commission
24 need to undertake in order to make any necessary

1 determinations under RSA 378:43?"

2 The next issue I want to take a look at
3 has to do with Ms. Schmidt, because I noticed that
4 Mr. Linder, who's her attorney, filed a pleading that
5 suggested that paragraphs she and her counsel hadn't
6 received everything they need to receive. And, so, I want
7 to get a sense of to what extent that remains a live
8 dispute and how we can resolve it.

9 I would like somebody to confirm for me
10 that all of the protective agreements that everybody has
11 filed are essentially identical. I think they are, but I
12 have to confess, I haven't had time to read all of them.
13 And, then, my next question about the protective
14 agreements is, to what extent does the Commission care
15 about them and is there anything about those protective
16 agreements that you feel that the Commission needs to be
17 enforcing.

18 The next issue I want to take up has to
19 do with the OCA's concerns about the memoranda, and I
20 think there are two of them it's received from Verizon and
21 FairPoint, that explains their system of confidentiality
22 to them. And, I guess I'm having a hard time
23 understanding how those documents themselves, those
24 memoranda, can meet the standards for confidentiality in

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1 RSA 378:43. So, I'd like to hear about why that's the
2 case.

3 Those concerns and issues I think are
4 substantially similar, if not identical, to the questions
5 that the OCA raised in its pleadings. But I'd like to
6 hear from the OCA about whether there's anything else that
7 you think we need to talk about today that I haven't just
8 covered. And, I think that's it. And, I guess, as to who
9 we should hear from first, I think maybe the Petitioners,
10 unless anybody has any objection to that? And, then, the
11 Petitioners can decide which of them are going to go
12 first.

13 MS. HATFIELD: Mr. Hearings Examiner, if
14 I could just add one additional thing that I think we
15 should discuss. In FairPoint's response to OCA's motion
16 for this prehearing conference, on Page 4, in Paragraph
17 10, FairPoint states that "The classification system for
18 confidential information should consist of three levels."
19 I just want to suggest that during this prehearing
20 conference we discuss the fact that we currently have
21 five. That is what the OCA has been abiding by, due to
22 the agreements that we have with the Companies. And, now,
23 the Company is proposing three. And, we need direction,
24 and perhaps the parties can come to an agreement, but we

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1 do need to decide going forward what to do with all of the
2 things that have already been filed with five
3 classifications. And, then, going forward in the future,
4 are all parties going to be subject to the new three?

5 MR. KREIS: So, basically, how to boil
6 five down to three?

7 MS. HATFIELD: Yes.

8 MR. KREIS: That's an excellent
9 question.

10 MS. HATFIELD: For the past and for the
11 future filings.

12 MR. KREIS: Another general question I
13 have is, and I apologize because, in a better world, I
14 would know the answer to this question, I'm more than a
15 little bit curious to know how our sibling jurisdictions
16 on that side and that side, meaning to the east and the
17 west, are handling the same issues that we're confronting
18 here.

19 So, with that, the Petitioners.

20 MR. McHUGH: Sure. Patrick McHugh, on
21 behalf of FairPoint. Let me address, Hearings Examiner,
22 maybe -- maybe the easiest of the issues you raised, and
23 that's dealing with Ms. Schmidt's filing. There was a
24 filing made last Friday, then it was withdrawn, if I can

1 say that fairly, and refiled an amended petition on
2 Tuesday or an amended motion. I've spoken last week with
3 Attorney Linder, spoke with him very briefly this morning.
4 What I would propose to do, at least on behalf of
5 FairPoint, is to get together with Ms. Schmidt's counsel,
6 go through the information with counsel, and see what it
7 is that he doesn't have, in comparison to what he believes
8 he needs and work it out, with the goal that, by next
9 week, there will be no need for FairPoint to respond at
10 all to the motion, having resolved Ms. Schmidt's concerns.
11 So, that's how I would propose to proceed in that regard
12 for that issue.

13 MR. KREIS: Okay. Now, refresh my
14 memory, does Ms. Schmidt have a similar problem with
15 Verizon or does what you just said address all of Ms.
16 Schmidt's needs for information?

17 MR. DEL VECCHIO: Ms. Schmidt?

18 MR. KREIS: Yes.

19 MR. DEL VECCHIO: No, I believe that the
20 motion was directed, I think, --

21 MR. KREIS: Okay.

22 MR. DEL VECCHIO: -- as the Hearing
23 Examiner saw, that they amended their motion.

24 MR. KREIS: Super. So, I'll ask counsel

1 for Ms. Schmidt, if you don't mind me interrupting you,
2 Mr. McHugh, --

3 MR. McHUGH: Not at all.

4 MR. KREIS: -- whether that meets Ms.
5 Schmidt's needs or not?

6 MR. LINDER: It does in part. I talked
7 to Pat McHugh prior to this proceeding, sitting down and
8 seeing what information, whether information can be
9 provided, it does address -- may address part of the
10 problem. I think there's a bigger issue that the Hearing
11 Examiner identified, and that is, I always thought from,
12 originally, that there were two types of information,
13 public and confidential. And, then, we've somehow evolved
14 into various levels of confidentiality. And, we, Legal
15 Assistance, have been trying to work within those, sort of
16 parties' self-created parameters, which I'm not sure are
17 necessary or appropriate, but we've been trying.

18 When we received the testimony of Labor,
19 of Staff, of OCA, only then really did it candidly become
20 apparent to me as counsel the extent of the confidential
21 information that we had not been receiving. And, so,
22 trying not to create additional problems or do anything
23 that would delay the course of these proceedings, one
24 possible solution that we thought of, that I thought of,

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1 is if we, Legal Assistance, could have a less redacted
2 version of the testimonies of Staff and OCA and Labor,
3 that that might be the shortcut way of providing us with a
4 lot of the information that we need. Because, when I read
5 the Staff's testimony, for example, where the OCA asks for
6 its testimony, for example, the expert witness is saying
7 "Well, I conclude X, Y, and Z. And, I base my information
8 on A, B, C, D, E, and F, but I won't -- and also G, H, and
9 I, but I can't tell you what G, H, and I are. So, either
10 it would be helpful to have G, H and I or it would just be
11 helpful to have a less redacted version of the testimony,
12 so that, when we present our direct case, including when
13 we do cross-examination, if we choose to do so, and/or
14 when we file our briefs, assuming we choose to do so, we
15 would be able to present our conclusions, recommendations,
16 opinions at least based on a less redacted version. And,
17 in my view, we would be just as happy with a less redacted
18 version of the testimonies of Labor, Staff and OCA, as
19 opposed to trying to wade through hundreds and, you know,
20 potentially thousands of pages of documents, which I don't
21 actually feel the need to do. And, so, while Pat's
22 suggestion is not unreasonable, there's -- to me, there's
23 really an easier way to do this. And, we don't know, Pat
24 and I don't know, and Vic and I may not know either,

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1 because there were some testimony that referred to Verizon
2 documents, that Verizon may or may not have -- may or may
3 not have provided, but Staff and OCA and Labor think that
4 they can't say what that information is.

5 And, so, I don't want us to come back
6 two weeks from now and say "Your Honor, we tried, but we
7 failed, and now we're two further weeks down the pike."
8 And, it just creates -- it could create more of a problem.
9 So, while I appreciate the offer, and I'm willing to take
10 the offer up, number one, I don't know that it's really
11 going to resolve the issue, because I may come back and
12 say "they don't want to give me G and H. They're willing
13 to give me I. And, for whatever reasons, and so now --
14 and then the other -- so, alternatively, the other way to
15 do it is, if the Commission would authorize, I guess is
16 the word, Staff and OCA and Labor to provide a less
17 redacted version, and I would ask for the highest level
18 possible, that could resolve our needs and the issues that
19 we've laid out.

20 MR. KREIS: Okay. That's helpful. And,
21 so, if I understand you correctly, what you would like the
22 Petitioners to -- what you would like to receive
23 ultimately is an unredacted version of the Staff testimony
24 and the OCA testimony and the --

1 MR. LINDER: Labor.

2 MR. KREIS: -- and the Labor testimony.

3 And, when you look at that, you actually said "less
4 redacted", but let me just state the hypothesis that maybe
5 what you ought to get is a complete copy of those three
6 documents. And, at that point, you don't know -- I don't
7 want to put words in your mouth, Mr. Linder, but I think
8 what I heard you say is "I don't know, but I am pretty
9 sure that, if I have those things in some reasonably short
10 amount of time, I will be able to prepare adequately for
11 hearings." Would that be a fair statement?

12 MR. LINDER: Yes. That's a correct
13 characterization.

14 MR. KREIS: But you might discover
15 something in those less redacted documents that might
16 trigger additional issues for you perhaps? I'm just --
17 what I'm concerned about is making sure that your client's
18 rights are protected vis-a-vis preparing for the hearings,
19 which are coming up.

20 MR. LINDER: It's a fair question that
21 you asked. Our response would be, we would be happy with
22 the unredacted version. And, we would not be coming back
23 saying "oh, by the way, we would like something else."

24 MR. KREIS: Okay. Thank you. So, let

1 me just say to the Petitioners now, Mr. Linder has said
2 something like "if the Commission would authorize him to
3 receive, you know, less redacted versions or unredacted
4 versions of the testimony", let me be clear. The
5 Commission authorizes that without reservation. I'm not
6 -- The Commission has not ordered anybody not to disclose
7 anything in those three parties' prefiled testimony to
8 Mr. Linder or anybody else. All of those redactions and
9 nondisclosures are all functions of agreements that you
10 have entered into amongst yourselves, without any
11 Commission review.

12 Now, having said that, my question to
13 the Petitioners is, why shouldn't Ms. Schmidt see
14 everything? After all, as far as I know, she's not a
15 competitor of any of the Petitioners. She's not an
16 employee or a collective bargaining agent for any of the
17 employees of the Petitioners. She is just a customer, as
18 far as I know. And, so, therefore, I don't understand why
19 she shouldn't simply see everything.

20 MR. McHUGH: There was a concern about
21 certain proprietary and highly sensitive information being
22 released. We have offered to work with the OCA, before
23 this motion practice started, to reduce the levels of
24 redaction. And, frankly, we're willing to, on behalf of

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1 FairPoint, allow Attorney Linder, for Ms. Schmidt, in the
2 preparation of his case, to see the unredacted testimony.
3 So, that was going to be part of the discussion with Alan
4 that I had referred the Hearings Examiner to a little bit
5 earlier.

6 MR. KREIS: Okay. So, let me therefore
7 express some guarded optimism that, as to Ms. Schmidt and
8 her access to information, apart from the broader issues
9 about the hearings in general, it looks like that issue
10 might be headed for resolution. And, let me, I guess,
11 also say, and so therefore I won't try to resolve it
12 today. But let me say I'm available to Ms. Schmidt and
13 the Petitioners to try to resolve any outstanding issues
14 you have, because I want all the parties to be able to
15 prepare adequately for hearing. That's very important
16 from our standpoint. Ms. Brockway.

17 MS. BROCKWAY: Thank you, your Honor.
18 The request by Mr. Linder went also to Labor's testimony.
19 We would have no objection to providing unredacted copies.
20 I just want to make sure that we are not violating some
21 other agreement that we might have under proprietary
22 agreements, and would either ask for the consent of those
23 claiming proprietary nature of certain information or your
24 order, so that we might produce it for Mr. Linder.

1 MR. MCHUGH: On behalf of FairPoint,
2 we're fine with that.

3 MR. DEL VECCHIO: Mr. Hearings Examiner
4 I would just note that we did, in fact, give proprietary
5 information to the counsel for Ms. Schmidt. I would note,
6 however, that there was one exception, and I understood
7 that that exception was acceptable, and that had to do
8 with so-called HSR, Hart-Scott-Rodino material, that there
9 was only one question among all of the discovery responses
10 that Verizon filed. So, with that one exception, and I
11 don't recall whether there was something specific in
12 Labor's testimony or FairPoint's testimony, there was none
13 in Verizon's, we would not object to disclosure, because
14 we've already Alan the proprietary responses that Verizon
15 generated.

16 MR. KREIS: Okay. So, as to the parties
17 with whom Mr. Linder and his clients have entered into
18 nondisclosure agreements, those parties, meaning the
19 Petitioners, are authorizing the Labor intervenors, the
20 OCA and Staff to provide Mr. Linder with unredacted
21 versions of their prefiled testimony. Is that a fair
22 statement?

23 MR. MCHUGH: Yes, on behalf of
24 FairPoint.

1 MR. KREIS: And Verizon?

2 MR. DEL VECCHIO: In terms of our
3 testimony, yes.

4 MR. KREIS: No, I mean, in terms of
5 those -- the testimony of the Labor intervenors, the OCA
6 --

7 MR. DEL VECCHIO: No, as I said, subject
8 to the exception that, to the extent there's an HSR
9 specific response included, and I don't have their
10 testimony in front of me, we would not consent to that, as
11 we have not consented before, and as I understood
12 Mr. Linder was amenable. So, with that one exception.

13 MS. BROCKWAY: Your Honor?

14 MR. KREIS: Is that okay with
15 Mr. Linder?

16 MR. LINDER: Yes.

17 MS. HATFIELD: Your Honor, I just want
18 to point out that, for some of the OCA's testimony, I
19 believe for one of our witnesses, that actually, if the
20 HSR documents are excepted, if they're an exception, then
21 Mr. Linder actually won't get a higher level of our
22 testimony the way it's redacted in the five versions now,
23 because he received the highest level he could, without
24 getting the HSR information. So, in order to give him a

1 higher level, I think we actually would need to disclose
2 the HSR materials.

3 MR. KREIS: Wasn't the HSR material
4 disclosed to you though?

5 MS. HATFIELD: To the OCA?

6 MR. KREIS: To the OCA.

7 MS. HATFIELD: Yes.

8 MR. KREIS: Why shouldn't it be
9 disclosed to Ms. Schmidt and her attorney, Mr. Linder,
10 then?

11 MS. HATFIELD: I don't know.

12 MS. BROCKWAY: Your Honor, if I could
13 speak to this. I don't know whether or not there is any
14 HSR reference in testimony of our witnesses. I apologize,
15 I didn't bring the testimony here, didn't expect to be
16 participating at this level. I don't see any reason why
17 all parties shouldn't get HSR. I don't understand why
18 there's a distinction drawn here. In other merger
19 proceedings of which I've been a part, there have been
20 limitations on the extent of HSR distribution. But I
21 don't -- I can't think of any case that I'm aware of where
22 attorneys for parties were barred from getting HSR
23 materials. I believe that all of these materials are
24 being provided to all parties in our sister states.

1 MR. KREIS: That's my understanding,
2 too, Ms. Brockway. And, so, therefore, my question for
3 Verizon is, why not just give all the HSR material --

4 MR. DEL VECCHIO: There are -- excuse
5 me.

6 MR. KREIS: -- to Ms. Schmidt and her
7 attorney?

8 MR. DEL VECCHIO: I think, as the
9 Hearing Examiner knows, there -- if you recall, this
10 matter came up during the course of discovery. Verizon
11 and FairPoint objected. We asserted our objections within
12 the four corners of the procedural orders and the rules.
13 We said we would not give it to various parties. We
14 reached agreement with OCA and Staff, who abided by that
15 agreement. Now, months later, we're, in essence, hearing
16 an objection or a motion to compel based on an objection
17 we asserted. The agreement in which we reached was one
18 that all parties essentially abided by, because no party
19 sought to compel, no party filed a motion with the
20 Commission. Now, we're undoing the procedural rules that
21 were in place, established by the Commission and by the
22 parties. And, so, that's Point Number 1.

23 Point Number 2 is, this is
24 extraordinarily proprietary information. And, I think

1 there was only one piece, frankly, in one of our responses
2 where we objected based on that ground, as I've said. One
3 specific component of one question, I believe, out of, in
4 our case, 900 responses.

5 MR. COOLBROTH: Mr. Examiner, if I
6 might, there's one aspect of the Chair's analysis of the
7 process here that I'd like to address. And, that is, as
8 to service of discovery materials and confidential
9 information generally to other parties in the docket,
10 obviously, this is a statute that describes how
11 confidential information is handled in terms of when it
12 comes into this building and whether, under 91A, it's
13 public, and whether, under 378:43, it's entitled to be
14 treated confidentially. The Commission's rules compel
15 participants in a document like this to furnish that
16 information to other parties. Parties, like the
17 Petitioners, would not provide that information but for
18 the compulsion that is contained in the Commission's
19 rules. So that the protection of the confidentiality of
20 this sort of information, from disclosure to a person,
21 such as competitors, is an issue that arises because of
22 the operation of the Commission's rules. So, these are
23 not simply private arrangements among the parties to the
24 proceedings. These are efforts to deal with the

1 compulsion that's in the Commission's rules requiring the
2 disclosure of information that otherwise would not be
3 provided.

4 MR. KREIS: Which rule are you taking
5 about?

6 MR. COOLBROTH: The rules regarding
7 service of discovery responses, I don't have the rules in
8 front of me. But, in terms of the discovery process, data
9 requests that are propounded, first of all, are required
10 to be answered pursuant to the Commission's rules, and
11 then, when they are answered, copies are required to be
12 furnished to other parties to the docket. 203.09
13 authorizes persons granted intervenor status to conduct
14 discovery. So, that's a compulsion to provide information
15 that parties, such as the Petitioners here, view to be
16 confidential that they would not provide to intervenors,
17 but for being compelled to do so under that rule. So,
18 this process of attempting, through protective agreements
19 and the operation of RSA 378:43, to make this process
20 workable resulted in protective agreements to create a
21 vehicle pursuant to which these requirements under the
22 rules could be met. But, at the same time, legitimate
23 concerns about the protection of confidential information
24 could also be met.

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1 MR. KREIS: Thank you, Mr. Coolbroth.
2 Okay. Let me handle it this way. My recommendation to
3 the Commission will be that Ms. Schmidt and her attorney,
4 Mr. Linder, be furnished with unredacted versions of
5 everybody's testimony. Now, if that's an issue for
6 Verizon, it obviously has an opportunity to object to that
7 recommendation. And, subject to that, you all can try to
8 -- I would encourage you all to resolve all of your
9 issues. You don't need to argue this anymore, Mr. Del
10 Vecchio, because --

11 MR. DEL VECCHIO: I understand. But,
12 since we're transcribing, I would just like to note for
13 the record that we do object, and that we just heard from
14 Mr. Linder that he wasn't even seeking that.

15 MR. KREIS: Mr. Linder.

16 MR. LINDER: As I said before, during
17 the course of the discovery proceedings, I was trying to
18 work within the parameters that the parties had created
19 themselves. It wasn't until I read the testimony of the
20 OCA, Staff, and Labor that I realized the extent of the
21 information that I had not been provided with. And, so,
22 -- and I'm not sure I'm still going to know -- reading
23 their testimony, it's hard to tell which information has
24 been withheld by the expert witnesses that are

1 Hart-Scott-Rodino materials -- I mean sourced. So, our
2 position is, we tried to work within the parameters. We
3 didn't realize the extent of the information that was --
4 that we weren't being provided with. We, really, we need
5 that information at least to the extent that it's
6 referenced in the testimonies of OCA, Staff and Labor.
7 And, our position now is, we would like that information.
8 We feel that we would need it to assist us in presenting
9 our ultimate position and recommendations to the
10 Commission in this case.

11 I apologize to any party, to the extent
12 that what I appear to be agreeing to in the past is
13 different than what I'm saying today. I simply didn't
14 realize the extent of the information that was being
15 withheld and how extensively Labor, OCA, and Staff were
16 relying on that information as part of their expert
17 witness testimony.

18 MR. KREIS: Understood, Mr. Linder.

19 MR. LINDER: And, so, I apologize.

20 MR. KREIS: You've persuaded me. You've
21 heard the recommendation I intend to make, and so we'll
22 see where it ends up, because, as you know, I don't really
23 have the authority to order anything. Okay.

24 MR. LINDER: There is one related issue

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1 that your Honor referenced earlier in listing the issues.
2 To the extent the Commission is concerned about the actual
3 hearings, what happens during the hearings, there's an
4 item that we raised in our motion, and the relief in that
5 is, to the extent -- to the extent that there will be or
6 that there may be these levels of confidentiality during
7 the hearings, and I don't want to wait till the hearing to
8 raise this issue, is are certain parties, who have signed
9 the protective agreements, going to be required to exit
10 the hearing room at various times during the proceedings,
11 when various experts or witnesses attempt to or testify
12 about items that certain parties think should be withheld?
13 And, so, my question is directed to those who have signed
14 the protective agreements, such as ourselves, Legal
15 Assistance, are we going to be required to exit the
16 hearing room, I imagine frequently, because we're not --
17 because somebody thinks we're not entitled to whatever
18 level of confidentiality? And, so, I just bring that
19 issue to the Hearing Examiner's attention.

20 MR. KREIS: Indeed, I think that's
21 fairly encapsulated, captured by the issues that I've
22 asked the Petitioners to address, and that is a serious
23 concern here. Just the choreography of that alone is a
24 potential big problem. And, so, I guess, having now taken

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1 the smallest slice of the issues that are pending here,
2 Irene Schmidt access to information problem, and, excuse
3 me, spent a great deal of time talking about that, let's
4 turn to the even bigger issues.

5 MR. McHUGH: I think that is a natural
6 segue. And, on behalf of FairPoint, we do not object to
7 Attorney Linder sitting in the full hearings, regardless
8 of the levels of confidentiality. As the Hearings
9 Examiner knows, we have proposed a two-tier
10 confidentiality system in our responsive pleading to the
11 OCA's motion. That it would include a public level. I
12 can tell the Hearings Examiner in general, and perhaps
13 actually put Attorney Phillips a little bit on the spot,
14 he was up at the hearings in Vermont yesterday, but I also
15 listened in from New Hampshire to the hearings in part
16 yesterday. And, I can tell you there must be, and I don't
17 know officially because people were tied up and I didn't
18 get through to anybody in the last couple of days, but
19 there has to be more than a certain level of
20 confidentiality, because, at one point, when Attorney
21 Ruben finished his public questioning of FairPoint witness
22 Walter Leach, he moved into what he labeled a "proprietary
23 session", and I heard Attorney Mandl, who represents
24 NECTA/Comcast, get up and start leaving the room because

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1 he specifically asked the Public Service Board if he needs
2 to remove his materials or could he let them in the room.
3 So, there was some mechanism in place. And, I don't want
4 to put Paul on the spot, but I didn't know if he could
5 describe it a little further. He was actually up there
6 yesterday. So, if he could address the question of how it
7 went? But --

8 MR. KREIS: You want to let him do that
9 now, because he's standing?

10 MR. MCHUGH: Sure.

11 MR. PHILLIPS: I'll give you a short
12 response, Pat. Which is, as you know, my clients are not
13 even parties to the confidentiality agreement.

14 MR. MCHUGH: Right.

15 MR. PHILLIPS: So, whatever discussions
16 occurred during that session, I was not there for.

17 MR. MCHUGH: You weren't even there.
18 So, that makes it easy enough.

19 MR. KREIS: But my question will be,
20 assuming that the Vermont Public Service Board has
21 implemented a hearing procedure that involves various
22 subgroups of people leaving the hearing room at various
23 times, my question to the Petitioners is, what provision
24 of New Hampshire law either authorizes or requires this

1 agency to conduct hearings in that fashion?

2 MR. McHUGH: Well, I think it's allowed
3 under the rules. It's not prohibited. There is a
4 provision, in terms of RSA 378:43, that permits certain
5 levels of confidentiality. We've briefed the Hearings
6 Examiner on the examples of other jurisdictions which have
7 recognized the need to prevent certain materials from
8 being produced to competitors due to their highly
9 sensitive nature. And, I think that Commission precedent
10 allows that as well. And, I cited cases to that in the
11 responsive pleading.

12 MR. KREIS: So noted. And, we'll look
13 at the cases from other jurisdictions. But I have to say
14 that this agency is bound by New Hampshire law. And, if
15 you look at RSA 91A, and if you look specifically at the
16 provisions governing open meetings under RSA 91A, and if
17 you assume, as I assume, that hearings of this Commission
18 are "meetings", and therefore "open meetings" within the
19 meaning of RSA 91A, we are under some fairly explicit
20 instructions, from both the Legislature and the State
21 Supreme Court, to be very, very open and to resolve all
22 issues in favor of public disclosure and openness. And,
23 those kinds of policy imperatives are also consistent with
24 notions of due process. So, I'm not trying to torment the

1 Petitioners. We are earnestly struggling with that,
2 because we understand. There is information that will be
3 introduced in the record here that's very competitively
4 sensitive to Verizon and/or FairPoint. So, I don't want
5 to appear to be indifferent to these questions, but
6 they're really difficult for us to resolve. And, I know
7 that, in the past, we've done that. But, the fact that we
8 may have done something in the past, doesn't necessarily
9 resolve the question, because the precedents and the law
10 that we are bound by here are the precedents of the State
11 Supreme Court and the legislative declarations of the
12 Legislature. We're not bound by our own precedents,
13 fortunately or unfortunately.

14 MR. MCHUGH: But we would submit that
15 the precedents are valid and can be adhered to in this
16 case. And, I'll let Attorney Del Vecchio talk about other
17 examples in various dockets. But I can tell you
18 specifically in the statute, 378:43, it says that the
19 materials submitted "shall not be considered public
20 records for purposes of RSA 91-A, if the information or
21 records satisfy the requirements listed therein in
22 Paragraph II." And, we submit to you that nobody has
23 moved in these proceedings, certainly to date anyway, as
24 the Hearing Examiner may know, that we have failed to

1 somehow comply with this statute. And, we submit we have
2 complied with this statute.

3 MR. KREIS: Okay. So, that's helpful,
4 your pointing out that RSA 378:43 doesn't say -- it refers
5 generically to RSA 91-A, which also included the "open
6 meeting" provisions of that statute.

7 MR. McHUGH: Correct. It says, I
8 believe quite clearly, in Section I(b), that these records
9 "shall not be considered public records for purposes of
10 RSA 91-A."

11 MR. KREIS: See, the issue with that is,
12 the "records", meaning the pieces of paper or their
13 equivalent that we have, are not public records, and, so,
14 therefore, we don't, as an agency, make them available to
15 the public. But that doesn't address the question of the
16 hearings, which are "meetings". And, so, I'm grappling
17 with this question of, you know, "how we conduct our
18 hearings?" And, so, I'm looking for advice from the
19 Petitioners about how you would like us to do that?

20 MS. HATFIELD: And, your Honor, if I
21 might add, it also doesn't address the issue of more than
22 two levels. Because it seems to me that the Commission,
23 on a routine basis, conduct hearings where they have a
24 public portion, and then they go into a confidential

1 session. But, just to raise the issue again, if we have
2 more than two, I think that raises additional issues that
3 we need to deal with today.

4 MR. KREIS: Okay. Mr. Coolbroth.

5 MR. COOLBROTH: Just to take a moment on
6 that, I mean, in terms of the levels, we are then dealing
7 with documents that are not public. So that we have
8 answered the question "public versus not public?" And,
9 then, it's within the Commission, in terms of the conduct
10 of its proceedings, to determine who is entitled to the
11 nonpublic information, again, which would not have been
12 produced but for the Commission's rules that compel
13 participants in the proceeding to produce that
14 information. And, again, we have protective agreements,
15 pursuant to which we have reached agreement on, on the
16 distribution of that nonpublic information to petitioners
17 in proceedings, to other parties in the proceeding, and
18 those protective agreements have mechanisms in there for
19 dealing with highly confidential information. So that we
20 have tried to create a vehicle to deal with that, but that
21 universe is "nonpublic". So, it's not "public" versus
22 "nonpublic". It's among the nonpublic, then who gets what
23 information involved there.

24 MR. KREIS: Okay. Mr. Del Vecchio.

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1 MR. DEL VECCHIO: Thank you, Mr. Kreis.
2 I just wanted to comment again on 378, Section 43. As the
3 Hearing Examiner knows, it basically consists of two
4 parts. The first, under subsection (a) relates to
5 "information or records" that are provided to the state,
6 in essence, because the statute, which is essentially
7 affected by this treatment is RSA 91-A, and that addresses
8 information provided to the state. So, in (a),
9 essentially, it says "to the extent that a utility gives
10 information to the Staff or to the Commission, and it
11 falls within certain parameters, it's not proprietary" --
12 that is, "it's not public", I should say. It is subject
13 to proprietary treatment. (b), however, specifically
14 addresses the issue that Hearing Examiner raised, which is
15 information introduced into the record. And, by "record"
16 is the commonly understood meaning "in a hearing", into
17 the record. "Any information or records that Public
18 Utilities Commission Staff or a party places into the
19 record", and that's what the hearing room process is.
20 And, it's not limited solely to the Staff or the
21 Commission, because, in a hearing setting, where a record
22 is established, there are parties present. The reason why
23 the statute in (a) and (b) didn't specifically address
24 "what about when you give it to a party?", and I had the

1 honor of participating in the legislative process here, is
2 because, in that case, much as we have over the past
3 eight, nine, ten years, protective agreements are entered
4 with those parties. So, if the disclosing party, in an
5 interest of expediting the process, and giving as much as
6 possible, and giving it to as many parties as possible,
7 has the protection of a protective agreement. To the
8 extent that the State is implicated, however, and you give
9 information in discovery or otherwise in this state, the
10 statute under Section (a) kicks in. To the extent that
11 the party now obtained information, whether by way of the
12 Commission or by way of the disclosing parties having
13 given it, the protection in (b) kicks in with respect to
14 the establishment of a record. So, I believe that RSA
15 378:43 does specifically address the issue in here, at
16 least with respect to public versus nonpublic.

17 MR. KREIS: Thank you. Okay. So, given
18 all of that, what I'd like to hear from the petitioners
19 is, how should the Commission conduct its hearings in your
20 view? And, you might remind me what, as I understand it,
21 the Petitioners envision three levels of confidentiality,
22 public, right? Public, and then two different kinds of
23 confidential, correct?

24 MR. McHUGH: Yes, that's correct.

1 MR. KREIS: Tell me the two different
2 types of confidential.

3 MR. MCHUGH: There would be
4 confidential, where all parties subject to the protective
5 agreement would be entitled to remain in the hearing room.
6 And, there would be a level where competitors would not be
7 entitled to remain in the hearing room.

8 MR. KREIS: So, competitors, but not the
9 Labor intervenors or anybody else?

10 MR. MCHUGH: Correct.

11 MR. KREIS: What about the public? The
12 public, I presume you would have the Commission exclude,
13 whenever there's any confidential information under
14 discussion?

15 MR. MCHUGH: That's correct.

16 MR. KREIS: Okay.

17 MR. DEL VECCHIO: We have a slightly
18 different process, Mr. Hearing Examiner. I apologize, let
19 me explain that. The first, as I said, was the one
20 subcomponent of one response, which was related to the
21 Hart-Scott-Rodino piece. And, that's only limited to one
22 limited instance, and I'm not trying to assert whether
23 Labor, as you made reference to it, so that's something we
24 can address.

1 But, essentially, then, we are
2 defaulting into two categories, which Pat explained.
3 However, in our case, Verizon, in the interests of trying
4 to be as permissive as possible, while still protecting
5 there rights, has given it to competitors, have given
6 competitive data, but to counsel only, not to principals
7 within the competitor. So, we have given it, for example,
8 to counsel for One Communications, and we would not
9 exclude counsel present in the hearing. We would,
10 however, exclude other parties to whom we had not
11 originally given it within that part, within the confines
12 of that competitor.

13 MR. KREIS: Okay. So, that introduces a
14 another flavor, if you will, which is Verizon information
15 that's competitively sensitive that Verizon has disclosed
16 to counsel for competitors, but has required counsel not
17 to disclose to their clients. And, the problem that
18 creates from our standpoint is, you know, the more favors
19 there are and more choreographies involved in hearings,
20 the more cumbersome and unwieldy this process becomes.

21 And, so, what I would suggest is the
22 Petitioners are -- Your joint petitioners. And, so,
23 therefore I think it's reasonable for folks like us here
24 at the Commission to expect you all to agree on a unified

1 approached in the case. Because you all are working
2 together to hopefully persuade the Commission, from your
3 standpoint, to approve the Petition. So, I'm concerned, I
4 really want to minimize the choreography, assuming for the
5 sake argument that there's at least some entitlement under
6 New Hampshire law, to sometimes exclude at least some
7 people from the hearing.

8 So, is there anyway I can encouraged the
9 Petitions to come as a unified stance, about the three
10 different kinds of information that you're talking about?

11 MR. DEL VECCHIO: I think that parties
12 are willing to -- Petitioners, rather, are willing to
13 discuss some approach.

14 MR. KREIS: That would be really great.
15 Okay. Is there anything else that FairPoint wants to say?

16 MS. HATFIELD: You're Honor, I do just
17 want to point out that the OCA asked the Companies to this
18 docket in June. And, so, I would respectfully request the
19 Commission order the Companies to do that, because today
20 is September 6, and just a month before hearings start, we
21 need that information as quickly as possible. Thank you.

22 MR. KREIS: If you'll indulge me, let me
23 make a general observation. This goes to some points that
24 Mr. Coolbroth was making. The Commission understands its

1 own discovery rule, is accustomed to leaving the parties,
2 in really big cases, to their own devices around
3 conducting discovery, and that's essentially what you all
4 have done. You've entered into various protective
5 agreements with each other. And, the idea, I assume, is
6 to facilitate your exchange of information, which was
7 fine, but there's a whole alternate approach that you
8 could have, but did not take, which is to ask for the
9 Commission's direct intervention. We, the Commission,
10 could have issued a elaborate protective order, the way
11 I've seen other commissions do, that would have, rather
12 than requiring you to enter into individual protective
13 agreements, would have just laid out some rules for all of
14 you to follow.

15 That might have been a preferable
16 approach in this instance, because all of these issues
17 that we're thrashing out now would have been resolved in
18 some much earlier point in the proceeding. That said, my
19 concern is getting us to hearing, and holding hearings in
20 a manner that is not too unwieldy and protects everybody's
21 due process rights.

22 So, is there anything else the
23 Petitioners need to say? FairPoint?

24 MR. McHUGH: Not at this time.

1 MR. KREIS: Anything else that Verizon
2 needs to say?

3 MR. DEL VECCHIO: In general or on this
4 point specifically?

5 MR. KREIS: On this point specifically.

6 MR. DEL VECCHIO: The only thing I would
7 note, Mr. Hearing Examiner, is, and as Pat alluded to
8 earlier, just by way of establishing in the record, I'd
9 like to identify at least some dockets in the immediate
10 past where we have had multi-tiered levels of
11 confidentiality, because that has been the practice. In
12 fact, I can't think of one case where the issue has -- had
13 been denied, that is, where parties objected to it on
14 grounds of multi-tiered protective treatment. And, I went
15 back, and this is not an exhaustive search by any means,
16 Mr. Hearing Examiner. But dockets DT 05-083/06-012,
17 that's the Verizon wire centers investigation. In that
18 case, information was only given to the Staff and to OCA.
19 No other parties got the specific wire center data. And,
20 a report was issued by the Staff, and the Commission
21 issued an order, and, in fact, more than one order.
22 Docket 04-203, that was the request to alter special
23 contracts, an order that had been in effect, and this
24 again implicated wire center specific data, which was not

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1 shared with competitors. Docket DT 05-042, that was the
2 MCI merger. And, I don't believe that we shared specific
3 wire center data with competitors. The BayRing access
4 complaint docket, and I'm certain of that docket, 06-067.
5 We just had that last month. Proprietary billing data of
6 the various competitors was not shared with those
7 competitors. And, in fact, the Commission cleared the
8 room when proprietary data was being introduced into
9 evidence.

10 The Verizon AFOR investigation in docket
11 DT 06-072, again, wire specific access line and competitor
12 specific data was not shared with competitors in that
13 proceeding. There is, in fact, in the monthly New
14 Hampshire Performance Assurance Plan reports, a process
15 which the Commission has permitted, whereby CLEC specific
16 data is not shared with any other CLEC in New Hampshire,
17 but it is shared with Staff and OCA.

18 Docket DT 01-151, which is the
19 Section 271 docket, again, competitor CLEC data was not
20 shared with other CLECs, but Staff and OCA were provided
21 it. So, we have, I think, as Mr. McHugh explained, a
22 history of practice in New Hampshire, which I think has
23 observed the need for protective agreement where
24 appropriate, and the need for multi-tiered protective

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1 treatment. Because, I think, ultimately, what it means
2 is, as much information can get dispersed to as many
3 parties as possible, as quickly as possible. When we have
4 a process in place, which allows the party that's making
5 the disclosure to have some comfort that competitive
6 issues won't unnecessarily be used against it in other
7 instances. Thank you.

8 MR. KREIS: Thank you, Mr. Del Vecchio,
9 that's helpful. Okay. Who would like to be next? We can
10 go around the room. Mr. Phillips, anything you want to
11 say?

12 MR. PHILLIPS: Thank you, Mr. Hearing
13 Officer. I don't have any substantive position to make
14 relative to the matters at issue today. The one matter
15 that got my client's interest was in the OCA's pleading
16 relative to the question of whether additional disclosures
17 to parties who have not received information heretofore,
18 would then require them to engage in additional discovery.
19 Which might ultimately delay the hearings and delay the
20 conclusion of the proceeding. And, I have not heard that
21 raised today. I think I've heard an allusion to perhaps
22 Mr. Linder not needing additional discovery, once he
23 receives that information. But, if it's the Hearing
24 Examiner's recommendation to allow discovery based on

1 parties receiving information that they have not received
2 up until now. Obviously, we'll want to know about that,
3 because that will impact the ultimate schedule in the
4 proceeding. Thank you.

5 MR. KREIS: Thank you. Okay. Now, I'd
6 like to hear from the Labor intervenors, the OCA, and the
7 Staff, in whatever order you all would like. And, what
8 I'd like some help on from your side is, given that Mr.
9 Del Vecchio and counsel for FairPoint have pointed out
10 that there's at least some fairly long-standing precedent
11 here for limiting access, even at hearing, in some
12 circumstances, with respect to competitively sensitive
13 information, how would you like the Commission to conduct
14 this proceeding in a manner that gives you what you need
15 to do in order to make your case? Ms. Brockway.

16 MS. BROCKWAY: Your Honor, I would rise
17 to say first that I am not on this side. I happen to be
18 sitting on the bride's side, but that doesn't mean that
19 I'm supporting the bride necessarily.

20 MR. KREIS: I thought that was the
21 groom's side?

22 (Laughter.)

23 MR. DEL VECCHIO: Is that a compliment?

24 (Laughter.)

1 MR. KREIS: Well, I note that you have
2 boys and girls sitting on both sides of the room.

3 MS. BROCKWAY: And, having said that,
4 first, I would say that Labor intervenors have been able
5 to work with the protective agreements so far. They have
6 been cumbersome, they have been a pain in the neck, but we
7 have been able to get the information that we need. And,
8 we have been able to provide two sets of testimony, and
9 have not heard from the Petitioners that we incorrectly or
10 in some damaging way misallocated between confidential and
11 public. And, we have not been asked to deal with two
12 separate levels of confidentiality, and have not done
13 that. And, that has not, as far as we know, been a
14 problem.

15 So, we don't have a particular issue
16 with what the OCA is raising. Our only concern here would
17 be in parallel with the Commission's, to make sure that
18 the proceedings are done in a way consistent with due
19 process and fairness. And, I would say that we have a
20 general belief that the more public the information can
21 be, the better it is for public acceptance of the results
22 of the Commission process, the public's understanding of
23 these important issues. But that's really all that we
24 have to say at this point, and I'd be glad to respond to

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1 other things that are brought up.

2 MR. KREIS: I think those are points
3 well taken. I've had occasion to explain at least to
4 counsel for FairPoint that, I think at the end of the day,
5 an order from the Commission that says "your petition is
6 approved, but we can't tell you why" is not a terribly
7 satisfactory result, from the standpoint of FairPoint.
8 So, that's the -- that's the kind of assistance I'm hoping
9 the Joint Petitioners will provide us, because I think the
10 Commission, at the end of the day, will want to protect
11 your right to maintain the confidentiality of
12 competitively sensitive information.

13 But the reality is that whichever side
14 loses, it's likely to appeal and publicly complain about
15 the results. And, the prevailing side is going to want to
16 be able to say "Look, the Commission did the right thing.
17 Read their order. And, if there's hardly anything in that
18 order, that's going to be a problem. But everybody in the
19 room knows that, so I shouldn't even have to explain it.

20 MS. BROCKWAY: May I only say one other
21 thing, your Honor? And, that is, when this set of issues
22 concerning five different levels of confidentiality
23 requested of the OCA, it came to our attention, we were
24 surprised, because that had not been asked of us. And, I

1 think that all parties to the case have an interest in the
2 OCA being able to do a good job in the case, because they
3 represent the public generally. So, it was disappointing
4 to see that this had happened. And, I am glad that we are
5 here today so that we can clear things up and move forward
6 with the proceedings in an expeditious manner.

7 MR. KREIS: Okay. Ms. Hollenberg.

8 MS. HOLLENBERG: A new face now. I just
9 wanted to start off that, with all due respect to
10 Ms. Brockway, we were under the understanding and
11 represented in our motion that Labor supported our motion
12 on the -- for the prehearing conference and for discussion
13 of these issues. And, what I would say is that the OCA
14 does not dispute that --

15 MR. KREIS: Well, let me just interrupt
16 you.

17 MS. HOLLENBERG: Yes.

18 MR. KREIS: I just heard Ms. Brockway
19 say that she wants the OCA --

20 MS. HOLLENBERG: Okay.

21 MR. KREIS: -- her client wants the OCA
22 to essentially feel comfortable with its ability to
23 present its case. So, I don't think you're really
24 disagreeing with Ms. Brockway.

1 MS. BROCKWAY: Yes, and I'm sorry. If I
2 -- I think you probably picked that up from my saying "I'm
3 not on this side." Yes, we support the motion.

4 MS. HOLLENBERG: Thank you. And, I just
5 wanted to start off to say that the Office of Consumer
6 Advocate does not dispute that information and documents
7 that qualify for protection under the law should be
8 disclosed to the public, and should not be kept
9 confidential. That is not our position. The reason for
10 our motion was because this has just gone too far, in
11 terms of the OCA attempting to manage this issue. We
12 have, in a very compressed schedule, tried to work as
13 cooperatively as possible with the Companies to enable a
14 sharing of information to allow the case to go forward in
15 the way that it was set out in a procedural schedule.

16 And, so, our problems are that the
17 rules, the rules in terms of what is confidential and what
18 isn't confidential, have not only been changing, but, as
19 we're seeing even today, with the Company's new proposal,
20 which we just saw for the first time in their response to
21 our motion, that we have only two levels of
22 confidentiality, but the rules are not being applied to
23 similarly situated parties. For instance, the Staff --
24 the memoranda was addressed to both the OCA and Staff.

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1 The Office of Consumer Advocate filed its testimony as it
2 perceived it should under the memoranda, and the Staff
3 filed two, one level of confidential information or one
4 level of confidential testimony and public testimony.
5 And, this is not in any way to disparage Staff. I'm just
6 trying to show that the rules are not being applied
7 equally.

8 Also, similarly, the Labor parties are
9 similarly situated to the Office of Consumer Advocate, and
10 they only filed one level of confidential testimony, and
11 we filed a public testimony. So, --

12 MR. KREIS: Okay. But Ms. Hollenberg,
13 let me just say, there are no rules. No party asked the
14 Commission to decide how these things should be handled.
15 You all agreed privately how you were going to deal with
16 that. And, I guess it's not completely surprising to me
17 that all of the -- that Staff and the OCA and Labor all
18 handled those issues somewhat differently.

19 MS. HOLLENBERG: Uh-huh.

20 MR. KREIS: I think that is not an
21 unreasonable phenomenon under the circumstances, and
22 doesn't suggest any bad faith on anybody's part or
23 anything.

24 MS. HOLLENBERG: And, certainly, I am

1 not trying to assert that. I'm just trying to show that
2 the Office of Consumer Advocate is here today because we
3 want this straightened out. We want the same expectations
4 or requirements to apply to everybody.

5 MR. KREIS: So, what I'd like OCA to
6 tell me is, how should we straighten it out? Given the
7 fact where time travel is not possible, what can we do,
8 starting today, that will cause the Space Shuttle to land
9 smoothly on the runway, come to a halt, with a final,
10 unappealable, perfectly written order that reaches the
11 right answer?

12 MS. HATFIELD: Well, if it's the
13 Companies' proposal that they now think it's appropriate
14 to have two levels of confidentiality, of confidential
15 testimony, and one public, and if that's agreed to by both
16 of the Companies, the Office of Consumer Advocate would
17 not oppose that. However, at this point in time, the
18 Space Shuttle has travelled and has lost a couple of the
19 heat shields. And, we have testimony that's out there
20 that is redacted, we have five versions of Ms. Baldwin's
21 testimony, and we have four versions, and had we actually
22 complied with the expectations of Verizon, we would have
23 had six and five. So, and we've -- and I can tell you
24 that, personally, we spent approximately probably more

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1 than a week's time preparing the redacted versions. So,
2 do we have the ability and the resources to go back and
3 change those testimonies at this point in time? No. I
4 guess I would look to the Companies to resolve those
5 problems for us.

6 MR. KREIS: So, if I under --

7 MS. HOLLENBERG: And, if I could just
8 mention one other thing. I mean, to the extent that the
9 testimony is re-redacted according to the new levels, the
10 underlying documents that are referenced should also be
11 disclosed accordingly. I mean, for instance, if they now
12 say that, and this gets to another issue that we raised in
13 our motion, which I don't know if you specifically
14 mentioned in the beginning. But, if they now say that a
15 certain conclusion contained in a Highly Confidential
16 Level 3 document is no longer confidential, that Highly
17 Confidential Level 3 document should be a public document
18 then. So, I think there's -- it's more than just
19 re-redacting the testimony. It's actually looking at
20 instances where the testimony, where it is re-redacted, if
21 it mentions a source document that's at a certain level of
22 confidentiality, that needs to be adjusted as well.

23 MR. KREIS: Okay. So, if I might
24 indicate, and just to state my understanding of what you

1 just said, your position is you could live with this sort
2 of three-flavor approach to the hearings, "public",
3 "confidential", and "really confidential", for lack of a
4 better word, --

5 MS. HOLLENBERG: "Superduper".

6 MR. KREIS: -- but you want the
7 Petitioners to do the heavy lifting of figuring out how to
8 remassage everybody's prefiled testimony, and presumably
9 everything else, to get to those three favors. Would that
10 be a fair statement of your position?

11 MS. HOLLENBERG: I do think that that
12 would be a way -- an appropriate way of characterizing
13 what I just said. And, the only thing that I would add is
14 that I would expect that the Petitioners would also comply
15 with their own rules. And, so that, I mean, just for
16 instance, we got data requests recently from FairPoint on
17 our testimony, and it contained the flags of "proprietary"
18 around what they asserted was confidential, which isn't
19 even a designation under their confidential memoranda.
20 So, you know, to the extent that they filed their rebuttal
21 containing information that we are required to redact in a
22 certain way, I believe that they should have to also
23 comply with their own designations.

24 MR. KREIS: So, the problem you're

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1 talking about now is, after they sort of imposed, --

2 MS. HOLLENBERG: Yes.

3 MR. KREIS: -- for lack of a better
4 word, this rubric on you, they did something different --

5 MS. HOLLENBERG: Yes.

6 MR. KREIS: -- with respect to their own
7 stuff?

8 MS. HOLLENBERG: Yes, they did.

9 MR. KREIS: Okay. So, let me hear from
10 the Petitioners about that stuff. Now, you know, what I'd
11 like you to address is the general contention that OCA
12 says "okay, we'll do it your way, but you've got to do all
13 the work that gets us to your way."

14 MR. COOLBROTH: Yes, we'll do the work.
15 But we do have a major issue about how the confidentiality
16 process works that we do need to address, and that was one
17 point that Ms. Hollenberg made. The OCA appears to be
18 under the impression that if you use the words "financial
19 model" in your testimony, that you have to redact the
20 words "financial model". And, if you don't redact the
21 words "financial model", the Company takes the position
22 that you can say "financial model" publicly, but the
23 financial model and all of its contents must be made
24 public. That resulted, for instance, in the prefiled

1 testimony of Mr. Brevitz, at Page 8, there's a sentence:
2 "FairPoint is in very weak financial shape entering the
3 transaction, and [BEGIN HIGHLY CONFIDENTIAL LEVEL 2] is
4 little improved according to its" -- "is little improved
5 according to its projections [END HIGHLY CONFIDENTIAL] if
6 the proposed transaction takes place. Further,
7 FairPoint's [BEGIN HIGHLY CONFIDENTIAL LEVEL 2] financial
8 protections are unverifiable and contain flawed
9 assumptions [END HIGHLY CONFIDENTIAL]. The Commission
10 should [BEGIN HIGHLY CONFIDENTIAL LEVEL 2] not rely on
11 FairPoint's financial protections [END HIGHLY CONFIDENTIAL
12 LEVEL 2] in determining whether the proposed new company
13 is financially viable."

14 We take the position that those
15 redactions are not required. That the general references
16 to our financial model are not confidential. If the
17 paragraph gets into the expected level of capital
18 expenditures in fiscal 2009, sure, that is confidential.
19 But it is -- it is not correct to take the position that's
20 referring to a confidential document, generically, either
21 the reference must be confidential or the whole document
22 must be made public, is -- results in a vast over
23 redaction of information. And, to say that to, by the
24 same token, to say that making this public requires

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1 FairPoint to disclose its financial model to the public
2 also is, you know, an excessive view of what needs to be
3 public.

4 So that we do have a basic issue about
5 how confidentiality works that we need to work out with
6 the Office of Consumer Advocate. That issue caused a
7 substantial over redaction, we believe, of their prefiled
8 testimony.

9 MR. KREIS: Okay. But what Ms.
10 Hollenberg is standing up to say is "Well, that's because
11 we're such good faith actors, that we wanted to be super
12 careful."

13 MR. COOLBROTH: Absolutely.

14 MR. KREIS: "We didn't want to leave
15 ourselves vulnerable to you hollering "Oh, my gosh, the
16 OCA, they have acted improperly. They violated their
17 agreement with us."

18 MR. COOLBROTH: Absolutely. And, we
19 agree that they went -- that they went the full 100 yards
20 and beyond in attempting to honor their confidentiality
21 obligation. We have no -- We take no objection to that
22 assertion.

23 MR. KREIS: And, so, therefore, this
24 should auger well for your ability to cooperate in

1 generating versions of all this stuff that will -- that we
2 can load onto the Space Shuttle and land nice and
3 comfortably on the runway and have a great hearing. Fair
4 statement?

5 MR. MCHUGH: We are willing to undertake
6 that.

7 MR. KREIS: Okay.

8 MS. HOLLENBERG: And, your Honor, if I
9 could just say a couple of other things. I want to
10 recognize that the Company did offer, before we filed the
11 motion, they did offer and undertake to re-redact the
12 highest level of our testimony. And, it was in doing
13 that, and we appreciated that effort on their behalf, it
14 was in doing that, however, that when we reviewed what
15 their re-redactions were, that it came to light that there
16 were instances where they allowed, for instance,
17 statements made, and I'll just give an example, in their
18 own testimony, which was designated as "confidential",
19 allowed that to then become public. And, so, while there
20 are instances, as Mr. Coolbroth mentioned, that it's
21 possible that the Office of Consumer Advocate erred on the
22 side of caution, because, honestly, there's no way to take
23 back a disclosure of a confidential. There's really no
24 adequate remedy. And, so, we were trying to be cautious.

1 But there are instances where they have re-redacted, and
2 have done so in a way that they're basically making public
3 information that's contained in their testimony,
4 information contained in HSR documents. And, I'm happy to
5 discuss or this office is happy to discuss with the
6 Company those instances. But it's not as though we
7 brought this motion lightly. We really wanted to get to
8 the bottom of these issues and to go forward in a way that
9 was effective for everybody.

10 MR. KREIS: Okay. That's what I'm
11 trying to figure out how to do. Mr. Del Vecchio.

12 MR. DEL VECCHIO: Thank you, Mr. Hearing
13 Examiner. One, or two points. We're also willing to
14 cooperate with FairPoint in reviewing, as we already have,
15 some of the OCA's testimony for the purpose of trying to
16 eliminate unnecessary designation of proprietary
17 treatment. But I would note this, in terms of Verizon's
18 discovery responses, as I've said, we've given the
19 information, proprietary information to those that signed
20 the protective agreements. And, we served it on attorneys
21 for all of their parties. So, in essence, there's not an
22 issue. All the other parties got protective treatment
23 pursuant to the agreement. There was no need to massage.

24 MR. KREIS: Okay. Maybe we should hear

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1 from either Ms. Schmidt or Staff next, before I continue
2 pontificating.

3 MR. LINDER: I think our concerns have
4 already been addressed by your Honor.

5 MR. KREIS: Okay. Staff.

6 MS. FABRIZIO: Thank you, Mr. Hearings
7 Examiner. First of all, I would like to correct OCA's
8 misunderstanding of what Staff actually did when it filed
9 its testimonies. We also produced multiple levels of
10 confidential testimonies for filing. We filed one fully
11 redacted and one fully unredacted version with the
12 Commission. Those apparently are the only versions that
13 OCA was aware of. We, however, did four levels, three
14 levels and one level for our three various testimonies for
15 distribution to the parties.

16 MR. KREIS: And, they wouldn't have
17 known that because they saw --

18 MS. FABRIZIO: They saw the fully
19 unredacted version, as well as redacted, yes.

20 MR. KREIS: Okay.

21 MS. FABRIZIO: And, that leads Staff to
22 the same concern that OCA has voiced, that are "now what
23 do we do with these testimonies when we prepare the
24 hearing, because I was unaware of the new two-tier

1 confidential version of the memo. And, I would recommend
2 that the two Petitioners work together to create one
3 memorandum clarifying the levels of confidentiality, and
4 also that that memorandum be disclosed in the interest of
5 transparency, so that parties, all parties know that there
6 may be legitimate justifications for a multi-tiered
7 approach, and that parties are able to prepare their
8 testimonies appropriately.

9 MR. KREIS: And, if I might build on
10 that a little bit, it probably would make sense at this
11 point to bless that memorandum with the Commission's
12 imprimatur, so that it is no longer really just a private
13 agreement amongst the parties, but actually becomes kind
14 of a protective order that everybody can live under and
15 adjudicate, if necessary, any disputes under here. Would
16 that be a reasonable step to take?

17 MS. FABRIZIO: Yes.

18 MR. KREIS: Okay. Is that something
19 that the Petitioners think would be helpful?

20 MR. DEL VECCHIO: Speaking only for
21 Verizon, sir, I'm not quite sure exactly what you're
22 proposing. I don't think there's a need for a protective
23 order. I don't think there has been a need for a
24 protective order, in light of the scope of RSA 378:43, and

1 in light of the fact that no party has specifically
2 disputed protection of various documents designated as
3 "proprietary".

4 However, there's going to be an order in
5 any event, as I understand it, by virtue of this process,
6 in which the Commission sets forth its understanding of
7 how the parties are going to proceed. So, regardless of
8 whether we call it a "protective order" or not, there will
9 be some order which assists the process. We have no
10 objection to that.

11 MR. KREIS: Okay.

12 MR. DEL VECCHIO: If I might also note,
13 Mr. Hearings Examiner, since this seems to be a good
14 opportunity, Verizon did not claim that the memorandum,
15 which it provided to OCA and to Staff identifying the
16 various levels was proprietary. We never did. We sent
17 you a letter, I believe, earlier this week or late last
18 week confirming that we never did. The underlying data,
19 of course, is proprietary, but not the memo itself. In
20 fact, to assist the parties, I believe we sent, I'm
21 certain we sent it to Ms. Fabrizio, a memo, before
22 intervenors filed testimony, identifying all the
23 signatories to all the protective agreements, and
24 identifying the various levels of protection. So, it

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1 identified the fact that we had tiers. We did that before
2 discovery, before the testimony was filed, and
3 Ms. Fabrizio distributed that to the docket, as I
4 understand it.

5 MR. KREIS: Okay. Now, I want to make
6 sure I'm understanding this correctly. There's also a
7 FairPoint memo that's not the same as the Verizon memo.

8 MS. FABRIZIO: And, I would clarify that
9 it was FairPoint that asked OCA and Staff to keep that
10 memorandum confidential --

11 MR. KREIS: Is there -- There's two
12 different memoranda, aren't there, --

13 MS. FABRIZIO: Yes.

14 MR. DEL VECCHIO: Yes.

15 MR. KREIS: -- that we're talking about?

16 MR. DEL VECCHIO: Yes.

17 MR. KREIS: So, and Verizon's position
18 is its memorandum is a public document, no problem?

19 MR. DEL VECCHIO: Correct.

20 MR. KREIS: What's FairPoint's position
21 about its memorandum?

22 MR. MCHUGH: We have no problem with the
23 memorandum being distributed. I didn't claim in the
24 memorandum that it's subject to the statutes at issue that

1 we've been discussing. And, it simply contains -- it does
2 say that it was prepared for their convenience, at their
3 request, and was not to be distributed to other parties,
4 and not to be used as an exhibit.

5 MR. KREIS: Okay. So, we resolved that
6 problem by making clear here that those two memoranda,
7 which sets out sort of the Petitioners' instructions about
8 how to deal with confidential information pursuant to
9 those confidentiality or nondisclosure agreements, those
10 two memoranda themselves are public documents subject to
11 disclosure under RSA 91-A, not proprietary, not
12 confidential, as public as our decisions.

13 MR. MCHUGH: I would only note for the
14 record that they're really not relevant --

15 MR. KREIS: Sure.

16 MR. MCHUGH: -- any longer, and we'll
17 work with the revised tiers as we've been proposing here
18 today. So, I just I wanted to make it clear on the
19 record, we don't consider it relevant to really anything
20 any longer as to FairPoint.

21 MS. FABRIZIO: I would just add that the
22 fact that we were asked to keep it confidential amongst
23 ourselves led to the kind of the problem that Mr. Linder
24 faced, and he was not aware until he read the testimony of

1 the various levels.

2 MS. HOLLENBERG: And, I would just note
3 for the record that there are three; FairPoint has two and
4 Verizon has one.

5 MR. KREIS: Okay. But those three
6 memoranda are not confidential. I am willing to at least
7 entertain the notion that they're -- the fact that that
8 memorandum wasn't circulated to Ms. Schmidt creates
9 difficulties for her and her preparation for hearing is
10 more difficult than it otherwise would have been. But I
11 can't turn back the clock. And, so, I'm just trying to
12 figure out how to get us into the hearing in a way that
13 makes everybody feel comfortable on day one that they have
14 been able to prepare and allow the Commission to conduct
15 its hearings appropriately.

16 Mr. Del Vecchio.

17 MR. DEL VECCHIO: The only correction I
18 would make, Mr. Hearings Examiner, to what I just heard
19 was that, in the memo that Staff distributed to all
20 parties in the docket, prior to the filing of intervenor
21 testimony, that memo, which Verizon prepared, identified
22 all the signatories to the agreement, identified all of
23 the -- in addition to parties that had signed, all the
24 parties, that is the employees and representatives of the

1 parties that had signed Schedule 1, and identified the
2 various levels. It had Level 1, 2, 3, if you will, in
3 terms of proprietary. So, the parties did get notice that
4 there was a different treatment, and it identified by note
5 each of the individual's level of access.

6 MR. KREIS: Well, would it help if I
7 just made the general observation that this is a really
8 big case, hotly contested. All of you, at various times,
9 have made the point that you have been overwhelmed with
10 tasks in this docket. And, so, you're all -- all of the
11 lawyers in the room are excellent practitioners, and so
12 you've all been doing your best. And, in some instances,
13 your best has been imperfect. But, in general,
14 everybody's been proceeding in good faith. And, at the
15 end of this, if you wanted to, you could all have a big
16 hug, a group hug, and sing Kumbia, based on your shared
17 good --

18 MR. DEL VECCHIO: That's my favorite,
19 actually, Mr. Hearings Examiner, Kumbia.

20 MR. KREIS: So, I just, because what I'd
21 like the general atmosphere of this discussion to be is
22 one that acknowledges that everybody's been basically
23 trying to kind of deal with these things as best they can.
24 I think that's -- that's the way it looks to me.

1 So, what is likely to happen, therefore,
2 is I am likely to recommend to the Commission that the
3 three flavors of information that the petitioners are
4 proposing for application at the hearing is one that the
5 Commission should adopt. That the Commission should
6 basically acknowledge that there is a category of
7 information that's public, there's a category of
8 information that is nonpublic, meaning not subject to
9 public disclosure under RSA 91-A, and there is an
10 additional level of protection that involves stuff that is
11 not only not public, but not disclosable to competitors of
12 the Petitioners. And, so, therefore, at hearing, when
13 public information is under discussion, the hearing is
14 open to the public. When confidential information is
15 under discussion, the hearing is only open to parties that
16 have signed nondisclosure agreements. And, when the
17 competitively sensitive information is under discussion,
18 parties, parties or parties and their lawyers that are
19 competitors have to leave the hearing room? I'm guessing
20 that Verizon and FairPoint have a slightly different take
21 on that.

22 MR. MCHUGH: But we can work that out.

23 MR. KREIS: Okay. So, what I'm working
24 on now --

1 MS. BROCKWAY: Your Honor, excuse me.

2 MR. KREIS: Ms. Brockway.

3 MS. BROCKWAY: It would be useful for
4 other parties to know what the "we can work it out" is.
5 So, I'm a little bit confused about what the process is
6 that was recommended.

7 MR. KREIS: Okay. That's what I was
8 going to get. So, proceeding on the assumption that that
9 would be my recommendation, and if it is, further
10 proceeding on the assumption that nobody will object to
11 that recommendation as a kind of a reasonable
12 accommodation of the issues that we're talking about, how
13 do we get to where we need to be with regard to
14 reclassification of, first of all, what needs to be
15 reclassified, and how do we do it?

16 I'm assuming that we're not going to go
17 through every document that's been shared in discovery and
18 undertake that exercise. That would be too burdensome.
19 And, to some extent, the Commission will have to make
20 determinations right at hearing about, you know, this
21 piece of paper being, you know, this flavor. But, so, I
22 think we're talking about prefiled testimony, basically,
23 and any exhibits of the prefiled testimony. Fair?

24 (No verbal response)

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1 MR. KREIS: Nodding heads in the
2 affirmative.

3 MS. HATFIELD: Well, I guess, when a
4 testimony relied on discovery materials produced in
5 discovery, I would think that the level of those materials
6 would also need to change. Because, for example,
7 Mr. Linder, once he gets the fully -- if he gets the fully
8 unredacted versions of our testimony, he might then ask
9 FairPoint "can you please provide me with your broadband
10 plan" or some other document that was classified under a
11 higher level. So, you know, a piecemeal approach is one
12 way to go, but we would prefer to have a very clear set of
13 criteria that applied to all of the documents in the case.

14 MR. KREIS: Okay. So, my question is,
15 do I leave you all to your own devices, to let the
16 Petitioners do the work of sort of reclassifying
17 everybody's prefiled testimony and exhibits, and then
18 hopefully get agreement on how they have done that with
19 the other parties? Or, do you want the Commission, which
20 probably means me at this point, to be actively involved
21 in that process? And, I'm willing to see that happen
22 pretty much either way.

23 MR. MCHUGH: I think the Hearings
24 Examiner should allow us, in the first instance, to go

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1 through and finish the exercise of sort of
2 reclassification and get Attorney Linder the testimony
3 that he claims he needs, and then we can come up with a
4 joint proposal and go from there.

5 MR. KREIS: Okay. So, let me just
6 remind you that my recommendation, as to Ms. Schmidt and
7 her attorney, Mr. Linder, is I think they're entitled to
8 everything. They have signed the protective agreement,
9 correct?

10 (Atty. Linder nodding affirmatively)

11 MR. KREIS: I don't see -- I can't think
12 of a reason why they shouldn't have access to everything.
13 So, that's -- I realize that, if I'm remembering
14 correctly, that's not something that I know Verizon
15 doesn't agree with that, because of its concerns about
16 Hart-Scott-Rodino materials. I'm not sure whether
17 FairPoint agrees with that. You can -- You'll be able to
18 object to that recommendation.

19 MS. HATFIELD: I would just suggest, if
20 I could, that perhaps the parties could agree to what
21 these three levels are called right now.

22 MR. KREIS: Okay.

23 MS. HATFIELD: And, I would suggest
24 "public", "confidential", and "highly confidential",

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1 because I think people can understand what the word
2 "confidential" means. And, to have the two "confidential"
3 levels have something in common in their name, so one
4 isn't called "proprietary" and one is called something
5 else.

6 MR. KREIS: Is that nomenclature okay
7 with everybody?

8 MR. McHUGH: That's fine. Thank you.

9 MR. KREIS: Okay. So, let's proceed on
10 that assumption. So, Mr. Del Vecchio.

11 MR. DEL VECCHIO: And, I apologize
12 again. Verizon is not waiving its rights to assert that,
13 that one portion of the Hart-Scott-Rodino response should
14 be treated in a fashion which would be an exception to the
15 "highly confidential". So, we're not making that
16 exception. But for that one, we have no objection to the
17 approach to be taken.

18 MR. KREIS: Okay. I understand that
19 we'll take steps to preserve Verizon's contention that its
20 entitled to confidential treatment of the
21 Hart-Scott-Rodino materials, meaning withholding them not
22 just from public disclosure, but from disclosure to --

23 MR. DEL VECCHIO: We essentially served
24 it to the Staff and its consultants and the OCA and its

1 consultants, and to Labor and one of its consultants.

2 MR. KREIS: Okay.

3 MR. McHUGH: I would add that there
4 would be perhaps one exception with some folks at
5 FairPoint that I would confirm, but we have what we
6 consider is highly proprietary, Systems Architecture Test
7 Review Strategy and Process Document. And, that my
8 understanding is, really, that the only expert in this
9 case qualified to even review the document is probably on
10 the Staff's position. But we would like to reserve the
11 right to also withhold that document, at least until we
12 have time to consult and get a final decision from the
13 folks at FairPoint. And, I just wanted to get that on the
14 record so the Hearings Examiner knows that.

15 MR. KREIS: Tell me again the name of
16 the thing that you were just referring to?

17 MR. McHUGH: It's an operating systems
18 test review strategy and test process document. It's a
19 very comprehensive document about, generally, how
20 FairPoint will go about testing the new systems
21 architecture that is currently under development.

22 MR. KREIS: That is not a insignificant
23 issue in this case, true?

24 MR. McHUGH: No. And, that's true.

1 It's --

2 MR. KREIS: Okay. So, now, what
3 FairPoint is saying is, notwithstanding having come in
4 here and represented that there are basically three
5 flavors of stuff, you're now introducing a fourth flavor,
6 and that could potentially be a pretty big deal, because
7 the regime that the Petitioners intend to use to test the
8 system, after FairPoint's taken it over, that's a big
9 deal.

10 MR. MCHUGH: I don't disagree that it's
11 a big deal. But the question is whether or not anybody
12 can even look at this document and understand what it
13 says. And, FairPoint has a great concern about this
14 document somehow (a) being produced to competitors, and
15 (b) being produced to anybody who does not have an
16 understanding of how to even interpret the document, given
17 the amount of proprietary data in there concerning
18 FairPoint's new systems.

19 MR. KREIS: Okay. Well, let me just say
20 right off the bat that "they can't understand it" is not a
21 valid basis for withholding something. That's just -- I
22 can tell you unequivocally that that is not a basis that
23 will withstand scrutiny here or at the court.

24 MR. MCHUGH: This document contains

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1 highly confidential information that is competitively
2 sensitive, because it involves FairPoint's systems and how
3 they work. So, --

4 MR. KREIS: So, you're then -- then I
5 think you're classifying that as "highly confidential"?

6 MR. McHUGH: That's true. And, I'm
7 simply reserving the right to come back to the Hearings
8 Examiner and explain FairPoint's concerns about producing
9 it at all, other than to OCA and Staff. That's all I'm
10 saying at this point. So, the Hearings Examiner is not
11 surprised, if that's the decision FairPoint or the process
12 that FairPoint want's us to implement.

13 MR. KREIS: Thank you. I appreciate
14 that, because I don't like surprises, as everybody knows.
15 Ms. Brockway.

16 MS. BROCKWAY: Your Honor, I think it's
17 too late in the game for FairPoint to be trying to reserve
18 this. I think this ought to be decided now. I agree that
19 FairPoint's opinion as to whether or not others can
20 understand it is not -- is not a valid ground. And, as to
21 the grounds of propriety and confidentiality, there is no
22 claim that Labor has, in any instance, revealed any of the
23 confidential information, confidential or highly
24 confidential, or specially confidential, or of any kind,

1 and we would not. But, if we are to prepare for
2 cross-examination on these issues, just because we are not
3 able to hire a consultant on these issues doesn't mean
4 that we're not very interested in them. And, as your
5 Honor points out, it's the core issue whether or not
6 FairPoint is capable of cutting over in a way that does
7 not create serious problems.

8 MR. McHUGH: I would simply point out
9 for the record that there is no motion before the Hearings
10 Examiner. We are not prepared, FairPoint is not prepared
11 to concede that at this point. And, if there needs to be
12 a motion, perhaps we'll be back. And, I will endeavor to
13 get an answer sooner than later, so the Hearings Officer
14 knows.

15 MS. BROCKWAY: That's such a waste of
16 your Honor's time. Really, it's so late in this
17 proceeding, we're so close to hearings. I would move
18 orally then that the Bench rule that at least that these
19 materials be made available to those who have received
20 highly confidential information.

21 MR. KREIS: Okay. As Ms. Brockway
22 presumably knows, and as I think everybody here knows, I
23 don't have the authority to make any rulings about
24 anything. All I can do is make recommendations under RSA

1 363:17. And, based on what I've heard today, and, again,
2 assuming that this tripartite designation scheme that
3 everybody is talking about here is the appropriate one, it
4 sounds to me like the operating systems test process
5 document is properly classified as "highly confidential".
6 And, to the extent that FairPoint disagrees with that
7 recommendation, as with the Hart-Scott-Rodino materials
8 that Verizon was talking about, you'll have an opportunity
9 to make that argument, if you need to, by objecting to my
10 recommendation.

11 Is that, I think that's as far as I can
12 go with that right now. Mr. Linder.

13 MR. LINDER: Just a clarification, or a
14 question for clarification. If a fourth level of
15 confidentiality gets adopted, would I be correct in
16 assuming then that, according to the Petitioners' view, we
17 would be excluded from that portion of the hearing that
18 would discuss that document? I'm just trying to get a
19 clarification. If we're excluded, I mean, if we're not
20 included, if there's just the three levels, but if there's
21 a fourth level for anything, then we would be excluded.
22 I'm just trying to get a clarification as to what the
23 Petitioners' position would be on that.

24 MR. McHUGH: I don't think it requires

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1 any exclusion. I'd have to confirm it with FairPoint.
2 But I think the Hearings Examiner should understand, I
3 mean, FairPoint has made a proposal whereby the test
4 review document, for lack of a better term, would be
5 produced to the Staff and OCA only. Whereby a portion of
6 that document, as it pertains to the competitive local
7 exchange carriers, the CLECs, would receive that specific
8 portion only for they and their experts to consider as
9 well. But that then there would be one consultant from
10 among the three states who would be essentially working
11 with FairPoint on the test review process, as the systems
12 are being tested. So, there's been no effort to exclude
13 Attorney Mandl from the room, for example, if that witness
14 were testifying. And, the concern is with the information
15 exactly within the document that it simply not be overall
16 generated even on a regular "confidential" or "highly
17 confidential" basis.

18 So, we are working with, I think it's
19 fair to say, we are working with trying to finalize this
20 process, which FairPoint has offered, and which will be
21 enumerated a bit more in the testimony due on
22 September 10. So, in terms of asking Attorney Linder to
23 get up out of the room and leave, that's not the intent.
24 But, again, I want to reserve the right to talk to the

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1 folks at FairPoint, understanding what the recommendation
2 is going to be.

3 MR. KREIS: Okay. Is that helpful,
4 Mr. Linder?

5 MR. LINDER: Yes. Thank you.

6 MR. COOLBROTH: Mr. Examiner, if I could
7 add one, one additional thing. With regard to this task
8 list process for the cutover, this is kind of the "formula
9 of Coke" type of issue. This is the process by which this
10 very complex conversion from the Verizon Legacy systems to
11 the new systems at FairPoint is going to develop. This is
12 the process for doing that. This is inventing the wheel.
13 This is very complicated. FairPoint is spending tens to
14 hundreds of millions of dollars to accomplish this. This
15 is highly valuable information. So that parties who get
16 it have, under the protective agreement, have obligations
17 under that protective agreement, and that applies to
18 counsel, it applies to consultants. They are prohibited
19 from using that information for any other purpose. So, to
20 the extent that the result of this process is that any of
21 those parties and any of those individuals receives this
22 very valuable proprietary information, there are strict
23 requirements. And, I rise to make the point, because,
24 quite frankly, people might want to think twice about

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1 whether they really need to have it and really need to be
2 exposed from a liability perspective to claims that they
3 have breached the contract.

4 MR. MCHUGH: And, if I can just put on
5 the record, in terms of the small or general categorized
6 portion that FairPoint has offered to produce to the CLEC
7 based intervenors, and only that portion, as the Hearing
8 Examiner can tell, nobody has filed an objection or a
9 motion to compel the balance of the portion of it that
10 they produced during the process, at this point, any
11 request that I'm aware of where people, like the CLECs,
12 for example, want the full test review strategy document
13 that I've been talking about. So, I'd just like to make
14 that clear.

15 MR. KREIS: Ms. Brockway.

16 MS. BROCKWAY: I'll rise only to say
17 that I'll take that risk, Mr. Coolbroth.

18 MR. KREIS: Okay. Do we -- Is there
19 anything about this that needs to be said that hasn't
20 already been said? I guess that's a dumb question. Why
21 would you be standing up otherwise?

22 MR. DEL VECCHIO: I want to respond, to
23 the extent that Mr. Linder was asking Verizon, what its
24 view was as to his appearing in the hearing room, to the

1 extent he's excluded from receiving a certain document.
2 Again, I don't know whether the testimony makes reference
3 to the one portion of one response that we are
4 particularly addressing, the so called "HSR material".
5 But, to the extent that it does, yes, he would not be
6 permitted to be in the room. That's the general practice.
7 He cannot be given something in the course of discovery
8 because of a legitimate and sustainable reason, then you
9 would not be permitted to hear it in the hearing room,
10 because otherwise you would open up the document to
11 disclose it to the world. So, I just wanted to make that
12 point clear, as far as Verizon.

13 MR. KREIS: Thank you. The point I
14 would make in response to all that is, I'm proceeding on
15 the assumption that, since all of you are veterans of
16 practicing here, you all will keep faith with the
17 Commission's general approach to these things, which is to
18 try to minimize the need to throw people out of the
19 hearing room. And, that sometimes means, you know,
20 looking at a confidential -- having a witness sitting on
21 the stand looking at a confidential exhibit, but not
22 necessarily revealing the confidential information in a
23 way that would require clearing the hearing room. And, I
24 want to assume that that's how you'll all handle this,

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1 because you all realize that it's in all of your interests
2 to maximize the extent to which the process is open. And,
3 you're all nodding your assent to that. So, that's good.

4 Okay. Ms. Hollenberg.

5 MS. HOLLENBERG: In terms of going
6 forward, what I'm hearing is that there's an agreement on
7 two levels of confidentiality for the prefiled testimony,
8 plus a public level. And, that I've heard FairPoint say
9 that they are willing to undertake the process of
10 re-redaction. I've also heard that Verizon is raising a
11 concern about the HSR materials. What my question is now
12 is that, are we going to wait for a Commission order on
13 the HSR issue, with respect to Mr. Linder, before the
14 Companies, I presume, they're going to undertake jointly
15 the process of re-redacting the testimony? Because there
16 is an extent to which FairPoint cannot re-redact the OCA's
17 testimony. It is the extent to which the OCA's testimony
18 referred to Verizon's information.

19 MR. KREIS: My short answer to that
20 question is "no", I don't think we should wait till we
21 resolve the HSR issue and the issue having to do with the
22 testing cutover document. I think we should and can move
23 forward now with reclassifying the information that we
24 have agreed needs to be reclassified. And, so, what I'd

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1 like the Petitioners to do is to tell me how fast they can
2 undertake that?

3 MR. McHUGH: I think, in terms of
4 getting it to Attorney Linder, and we indicated that he
5 could have the unredacted testimony. For purposes of
6 expediting that, it's -- well, I think, a fairly easy
7 matter of temporarily, or permanently, depending on what
8 the result is of redacting only the Hart-Scott-Rodino
9 materials, and understanding that the testimony was
10 voluminous, I believe that only OCA Witness Brevitz
11 actually quoted from the Hart-Scott-Rodino document is my
12 recollection. And, I don't know, Lynn, if you recall, was
13 there any? I don't recall any portion --

14 MS. FABRIZIO: I don't recall.

15 MR. McHUGH: -- in Mr. Vickroy's
16 testimony. So, I believe that that can be done fairly
17 easy. I also believe that none of the testimony in either
18 of the OCA or Staff's most confidential testimony at all
19 quoted from the test strategy review document that I
20 referenced the Hearings Examiner to earlier. So, I think,
21 getting information to Attorney Linder, we can probably do
22 that very early next week, just realizing that we have
23 testimony due on Monday. But we could, if it's only --
24 really only those view, we could get to Attorney Linder

1 very quickly.

2 MR. KREIS: Does "early next week" mean
3 "by next Wednesday"?

4 MR. MCHUGH: Sure.

5 MR. KREIS: Is that something that
6 Ms. Schmidt can live with, Mr. Linder.

7 MR. LINDER: Yes. Thank you.

8 MR. KREIS: Okay. So, if they got you,
9 leaving aside the Hart-Scott-Rodino materials, if they got
10 you everything else by next Wednesday, you would be happy?

11 MR. LINDER: Yes. Thank you.

12 MR. KREIS: Okay. I realize that the
13 term "happy" is a term of art to a certain extent. Okay.
14 Now, the broader question of reclassifying all of the
15 testimony, how fast can we -- how fast could the
16 Petitioners come up with their reclassified version of
17 this stuff, that then -- that I then, and any other
18 parties that want to, could chew over and see if everybody
19 can agree?

20 MR. MCHUGH: I think we should be able
21 to do it by next Friday. I'm only hesitant to commit,
22 because I need FairPoint folks who are now in a hearing.
23 And, then, in Maine, there are conferences on Monday and
24 Tuesday. Then, I need the folks from FairPoint to make

1 the final decision. But maybe we can say we can endeavor
2 to do it by Friday of next week, maybe the following
3 Monday at the latest, which I believe would be the 17th.
4 That's when the Vermont hearings resume. And, so, we
5 could get it done by then, because then I would lose many
6 people to the hearing process.

7 MR. KREIS: Okay.

8 MR. McHUGH: But that would give me the
9 weekend to consult with those folks as need be.

10 MR. KREIS: Sorry to ruin your weekend.

11 MR. McHUGH: That's okay. It's not the
12 only one.

13 MR. KREIS: Not the only person whose
14 weekend has just been ruined. Okay. And, so, by Monday
15 you will furnish a reclassified version of all this
16 material to me and to OCA and to Staff. And, does Labor
17 -- Labor's in on this process, too, the Labor intervenors?

18 MS. BROCKWAY: I'm not sure we need to
19 be, your Honor.

20 MR. KREIS: Okay.

21 MS. BROCKWAY: But we'd be happy to
22 assist, but I don't --

23 MR. KREIS: Nope. I'm happy to have you
24 not involved, actually. The fewer people who get mixed up

1 in this the better.

2 MR. MCHUGH: I was talking by Monday,
3 the 17th.

4 MR. KREIS: Right.

5 MR. MCHUGH: Okay. I'm sorry.

6 MR. KREIS: No, this coming Monday is
7 some other day less than the 17th, the 10th.

8 MR. COOLBROTH: We are not aware of any
9 reconstitution or redistribution of the Labor testimony.
10 We were satisfied with their filing.

11 MR. KREIS: Okay. So, this process will
12 involve OCA, Staff, the General Counsel, the Petitioners.
13 Would it make sense to -- well, why don't we -- why don't
14 you do that, do that, furnish those materials to the
15 General Counsel, Staff, OCA, and then we'll all take a
16 look at it and see if it is all reasonable. I want to
17 assume that whatever you do will be just so good, so
18 appropriate, that we'll just say "Okay, fine. Let's do
19 that."

20 MS. HATFIELD: And, your Honor, would
21 that include also the reclassification of the underlying
22 discovery document or just the testimony?

23 MR. KREIS: Well, I think at this point,
24 we really ought to focus on the prefiled testimony itself,

1 whatever was attached to the prefiled testimony. And,
2 then, I think that you ought to look at their reclassified
3 stuff and see if it generates the need to deal with any
4 specific discovery documents. Because I'm just -- I'm a
5 little leery about that, because I don't know what the
6 magnitude of that will be and how necessary.

7 MS. HATFIELD: Well, as Ms. Hollenberg
8 said, the first attempt that FairPoint made to unredact
9 our testimony did implicate many underlying documents that
10 had already been classified under other levels.

11 MR. KREIS: "Many", like how many,
12 roughly, order of magnitude?

13 MS. HOLLENBERG: Do you want me to give
14 you some specific examples or --

15 MR. KREIS: I just want -- kind of
16 getting a sense of --

17 MS. HOLLENBERG: -- a general sense?

18 MR. KREIS: Yes.

19 MS. HOLLENBERG: I mean, I think, out of
20 the -- for instance, I think they had 11 re-redactions for
21 the Baldwin testimony. And, my recollection is, without
22 specifically counting or referring to my notes, is that I
23 think 9 of the 11 referred to a document that had been
24 previously designated as "confidential".

1 MR. COOLBROTH: Mr. Examiner, the
2 redesignation of information that's in the testimony does
3 not necessarily result in a redesignation of the document.
4 It depends on the information that's disclosed in the
5 testimony. And, there are -- we've provided over 2,000
6 data responses. We agree that it certainly is not a
7 process that we can undertake by the end of next Friday.

8 MR. KREIS: Okay. Would it be okay if I
9 let them just work on the testimony and anything that's
10 attached to the testimony, and then, if we need to take
11 that next step, we can? I mean, once you get me involved,
12 I can be pretty vigilant about this stuff, so that it, you
13 know, you won't be left with tons of homework that nobody
14 is helping us.

15 MS. HATFIELD: Well, we think that's
16 fair, but we do expect that that next step will need to be
17 taken, especially in preparation for the hearing. And, I
18 also did want to mention that Labor filed their highest
19 level, and they called it "super confidential". So, the
20 parties in the docket should at least be made aware that
21 that designation no longer exists or isn't valid or now
22 it's called "highly confidential". But I would think, if
23 the Commission does issue an order after this prehearing
24 conference, that the parties will then hopefully all be on

1 notice that this conversation is going to be taking place.

2 MR. KREIS: So, is everybody in
3 agreement that what Labor has described as "super
4 confidential" is now what we're agreeing we'll call
5 "highly confidential"?

6 MS. HATFIELD: But I do think that might
7 include HSR material. So, that --

8 MR. KREIS: Leaving the HSR stuff
9 outside.

10 MR. DEL VECCHIO: That's correct,
11 Mr. Hearing Examiner. I just want to note that, for
12 purposes of reclassifying discovery responses, we've
13 already done this. There were only two categories, as you
14 know, the two categories of prime. The prime is the one
15 piece, that one was filed, being HSR. But, otherwise,
16 we've done it.

17 MS. HOLLENBERG: And, I would say that I
18 don't disagree that Verizon has a different designation
19 system that has less levels of confidentiality than
20 FairPoint. I think that's accurate. If I could just make
21 the point that, in addition to the labor and effort that's
22 going to be associated with re-redacting the testimony,
23 we're also talking about confidential testimony and
24 exhibits, which presumably can't be sent over the

1 internet. And, they're voluminous. We're talking I think
2 Ms. Baldwin's testimony was over a couple of hundred
3 pages, as well as Mr. Brevitz. So, while it may not be
4 decided today, I'm also interested in understanding who is
5 going to bear the burden and expense of redistributing the
6 new version. And, then, my second point is, I'm hoping
7 that the Commission through the Hearings Examiner will
8 notify the other parties who are not present today as to
9 what will be happening in the next few weeks, so that they
10 can expect to receive new versions of the testimony.

11 MR. KREIS: Okay. Yes. Well, what will
12 happen is, I will send to the Executive Director a letter
13 that contains my report and recommendations, based on what
14 we do here today. And, that will, obviously, get
15 circulated to the whole service list. So, to the extent
16 people read the stuff they get, they will placed on notice
17 on what we have done or tried to do here today.

18 But, as to the next question, who bears
19 the sort of logistical burden of distribution and copying,
20 I would think that that should be the Petitioners. But
21 I'll hear from the Petitioners about that.

22 MR. MCHUGH: We've already agreed, when
23 we first started the process, we agreed to do that. So,
24 we'll get to --

1 MR. KREIS: Just ruin a couple of more
2 weekends. Mr. Linder.

3 MR. LINDER: A clarification. The OCA
4 just raised the issue, which I've been wondering about.
5 The Labor filed three pieces of testimony, two of them
6 were public, which we received, and then the third one was
7 super confidential, which we did not receive, which was
8 just mentioned. And, just a clarification. Would Legal
9 Assistance be receiving that next week, along with the
10 testimony of the OCA and Staff?

11 MR. McHUGH: Subject to the
12 Hart-Scott-Rodino. And, I don't believe Labor had
13 anything about the test review process I've described.
14 But, subject to those two, yes.

15 MR. LINDER: Okay.

16 MR. KREIS: Okay.

17 MR. LINDER: Thank you.

18 MR. McHUGH: Sure.

19 MR. LINDER: Thank you.

20 MS. BROCKWAY: And, a further
21 clarification here. I take it again that it's with the
22 OCA testimonies that -- well, let me back up. Do we now
23 then have a piece of testimony, which I think is
24 Mr. Barber's highly confidential testimony, under our new

1 designation, will this be subject to the same process that
2 was just outlined with respect to the Monday, the 17th --
3 no, the unredacted to Mr. Linder by Wednesday, subject to
4 -- in other words, do we have a responsibility to take
5 this forward or is this, at this point, until there's a
6 glitch there, if there would be, between the Petitioners
7 and Mr. Linder?

8 MR. KREIS: Well, what I'm endeavoring
9 to do is to force the Petitioners to do all the heavy
10 lifting here.

11 MS. BROCKWAY: Well, that's fine by us.
12 I just wanted to make sure. I see Mr. Coolbroth nodding.

13 MR. COOLBROTH: I think we're lifting.

14 MR. KREIS: Okay. So, is there anything
15 else that we need to address before I kind of try and
16 cycle back, kind of summarize what I hope everybody in the
17 room has agreed to? And, then, let everybody go and have
18 lunch or whatever. Anything else? Mr. Del Vecchio.

19 MR. DEL VECCHIO: I just had two, one
20 logical point and one just substantive observation before
21 you wrap it up, if you will, Mr. Hearing Examiner. The
22 first has to do with the transcript. We would like to get
23 an expedited copy of the transcript, and we would ask that
24 the Commission take no action on your report until and

1 unless the parties have had an opportunity to get the
2 transcript, so we may make reference to it as appropriate
3 in support our position.

4 And, then, secondly, and I think this
5 goes to a point which you raised, Mr. Hearing Examiner,
6 with which I think we all agree. There's a need to
7 provide as full a record as possible, for purpose of the
8 Commission making this decision, while, at the same time,
9 protecting the interests of the various parties that have
10 given information that meets the statutory definition of
11 "proprietary and confidential". And, you had I think
12 reasonably observed that something that is scarce on the
13 facts and discussion might not be desirable. I think,
14 speaking on behalf of Verizon, that we're fully confident
15 that this Commission can come up with an order that is
16 fully documented supporting its position, while still
17 protecting the interests of the parties that have provided
18 proprietary information.

19 And, one order that comes to my mind
20 immediately, and which I didn't even mention, was the
21 Yellow Pages order, which was over 140 or so pages,
22 sustained appellate review, yet also had a significant
23 number of proprietary pieces of information embedded in
24 it, requiring at times the special treatment during the

1 hearings, and also, on occasion, excluding certain persons
2 from participating in the hearing room. So, I would
3 simply bring that again to your attention.

4 MR. KREIS: Thank you. Without actually
5 knowing how fast Mr. Patnaude could do an expedited
6 transcript of this hearing, I'm going to make the
7 assumption that the request you made about the preparation
8 of such a transcript, and the necessity of the Commission
9 not taking any action until you've had a chance to review
10 that transcript and make any objections to my
11 recommendations based on that review, is fine. I think
12 that's reasonable. Ms. Brockway.

13 MS. BROCKWAY: Sorry, I'm confused
14 again. Does that mean that the agreements which I heard,
15 with respect to providing re-redacted or unredacted
16 testimony to Mr. Linder subject to a couple of conditions
17 and providing re-redacted or differently redacted
18 materials to at least OCA, and I don't know whether --
19 about Staff, are off the table now?

20 MR. KREIS: No. The Petitioners --

21 MS. BROCKWAY: What else has been done
22 here today, which is not done by agreement? That's what
23 I'm asking.

24 MR. KREIS: Okay. Here's my

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1 understanding of what remains in dispute amongst the
2 things that we have talked about today. It basically
3 relates to the Hart-Scott-Rodino materials, that's a
4 concern of Verizon's, and the document that FairPoint has
5 referred to as the "Operating Systems Test Process
6 Document". They -- The Petitioners are, with respect to
7 Hart-Scott-Rodino, Verizon is reserving their rights.
8 And, with respect to the testing document, FairPoint is
9 reserving the right to cause those documents to be limited
10 to disclosure only to OCA and Staff. Now, they understand
11 that that's not going to be my recommendation. They're
12 reserving their right to object to that recommendation.
13 Verizon at least would like the opportunity to review the
14 transcript of this hearing, before they make that
15 objection. So, what they want to make sure the Commission
16 doesn't do is issue a final Commission adjudicated order
17 on those questions until Verizon has had a chance to do
18 that.

19 Have I helped to clarify that?

20 MS. HOLLENBERG: So, if I might just
21 make a comment to reflect my understanding. There's going
22 to be a fully unredacted version prepared. There's going
23 to be a version prepared with HSR and the information that
24 FairPoint took exception to redacted, which will go to

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1 Mr. Linder. Then, there will be a confidential version.
2 And, then, there will be a public. So, we have four
3 versions of testimony?

4 MR. KREIS: No, it's three versions.
5 There's three versions. There's public, there's
6 confidential, and then there's highly confidential. And,
7 excluded from the public -- well, I guess, yes, there are
8 four versions, in the sense that excluded from all of
9 those will be these Hart-Scott-Rodino materials and the
10 testing document, or references to it, to information from
11 it.

12 MS. BROCKWAY: My understanding is that
13 we have worked already with Verizon on the
14 Hart-Scott-Rodino materials. Subject to our agreement, we
15 continue to have access to them and keep them
16 confidential.

17 MR. KREIS: Right. I realize that some
18 of you already have access to these two documents we've
19 been talking about or the two sets of documents we've been
20 talking about. What we're really working on here is
21 generating a set of stuff that can be used at hearing in
22 an appropriate way. And, we're also trying to get Ms.
23 Schmidt everything she needs and her attorney needs to
24 prepare for hearing.

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1 MS. BROCKWAY: And, your Honor, I have
2 caused some confusion by making an oral motion, which your
3 Honor has pointed is out of order.

4 MR. KREIS: No, I didn't say "the motion
5 was out of order." I just said "I can't rule on your
6 motion."

7 MS. BROCKWAY: All right.

8 MR. KREIS: "I can only make a
9 recommendation."

10 MS. BROCKWAY: To the extent that it was
11 in order, other parties who are not hear today, not
12 realizing that that topic would come up, probably should
13 be given an opportunity to weigh in on it. And, I don't
14 know whether comments on your order -- on your Honor's
15 recommendations would be the way. But they have not had a
16 chance for this kind of colloquy.

17 MR. KREIS: Sure. I think that the way
18 I would propose to handle that is to make my
19 recommendation, confident that anybody who objects to any
20 of my recommendations will have an opportunity to make
21 those objections. Having to make some concessions, in
22 reality, everybody was notified about this event today,
23 and those parties that chose not to come essentially did
24 so at their peril.

1 So, let me just cycle back and tell you
2 what I think that we have agreed on. What I am prepared
3 to recommend to the Commission is that the Commission
4 adopt a rubric at hearing that involves three different
5 kinds of information; "public", "confidential", and
6 "highly confidential". These are essentially the three
7 flavors of information that FairPoint has proposed. And,
8 I will recommend to the Commission that the Commission
9 conduct the hearings in a manner that adheres to those
10 three classifications. And, based on that recommendation,
11 we're going to go ahead and have the Joint Petitioners do
12 the hard work of reclassifying all the prefiled testimony
13 to conform to those categories. And, they are going to do
14 that by Monday, the 17th, they're going to submit their
15 effort at having done that to me, to Staff, and to the
16 OCA. We're all going to look at that. And, to the extent
17 that there isn't an agreement that they have done it
18 right, probably what I'll do is convene some kind of
19 informal meeting where we can have -- where we can talk
20 about that and straighten those questions out.

21 Is that consistent with everybody else's
22 understanding? Does anybody -- Is everybody okay with
23 that recommendation as a fair accommodation of all of the
24 issues that were -- understanding that there are outside

1 parties that might not agree with it? Because the reason
2 -- is everybody okay with that as a reasonable compromise
3 of sorts?

4 MS. HATFIELD: And, your three levels
5 will also note that there are these other two issues
6 outstanding?

7 MR. KREIS: Yes. Leaving aside the
8 Hart-Scott-Rodino and the testing document.

9 MR. DEL VECCHIO: So, these are the two
10 prime exceptions?

11 MR. KREIS: Yes, two. Right.

12 MR. McHUGH: Yes.

13 MR. KREIS: Okay. And, the reason I say
14 that is, I have a pretty good record of getting the
15 Commission to adopt my recommendations when everybody who
16 talked about them agreed to them. So, in other words,
17 what I'm saying is, if you proceeded on the assumption
18 that the Commission will adopt those recommendations, you
19 probably would be fine. And, it would make sense for you
20 to -- for the Petitioners to start undertaking that work,
21 on the assumption that those recommendations will be
22 adopted. As to recommendations that I make that everybody
23 doesn't agree on, well, I won't characterize my record. I
24 don't bat a thousand (1.000).

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1 Okay. Is there anything else we need to
2 take up today?

3 (No verbal response)

4 MR. KREIS: Hearing nothing, I will
5 thank all of you for your help in addressing these
6 contentious, difficult, and important issues. And, I will
7 close this prehearing conference. Thank you very much.

8 (Whereupon the prehearing conference
9 ended at 11:01 a.m.)

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