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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

May 25, 2010 - 1:07 p.m.
Concord, New Hampshire

DAY 2

{P.M. SESSION ONLY}

RE: DT 10-025
FAIRPOINT COMMUNICATIONS, INC.:
Reorganization.

PRESENT: Chairman Thomas B. Getz, Presiding
Commissioner Clifton C. Below
Commissioner Amy L. Ignatius

Jody Carmody, Clerk

APPEARANCES: Reptg. FairPoint Communications, Inc.:
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Frederick J. Coolbroth, Esq. (Devine...)
Harry Malone, Esq. (Devine, Millimet & Branch)
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Reptg. BayRing Communications:
Alan M. Shoer, Esq. (Adler, Pollack...)

Reptg. Otel Telekom:
Gregory M. Kennan, Esq. (Fagelbaum & Heller)

Reptg. One Communications:
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Reptg. CRC Communications of Maine:
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COURT REPORTER: STEVEN E. PATNAUDE, LSR No. 52

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(Whereupon the hearing resumed at 1:07 p.m. following the recess, continuing with the cross-examination by Mr. Linder of Witnesses Peter G. Nixon and Michael T. Skrivan.)

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

MR. LINDER: Thank you.

BY MR. LINDER:

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

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

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

[WITNESSES: Nixon|Skrivan]

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

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

7 A. (Skrivan) Yes.

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

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

14 MR. JUDD: That's correct.

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

17 BY MR. LINDER:

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

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

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

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[WITNESSES: Nixon|Skrivan]

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

4 A. (Skrivan) Yes.

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

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

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

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

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

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

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

19 A. (Skrivan) No.

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

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

3 A. (Skrivan) Yes.

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

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

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

[WITNESSES: Nixon|Skrivan]

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

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

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

10 A. (Skrivan) Correct.

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

18 A. (Skrivan) Yes.

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

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

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1 that we would comply with all of those.

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

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

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

1 that sentence?

2 A. (Skrivan) Yes, I do.

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

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

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

16 A. (Skrivan) That's correct.

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

21 A. (Skrivan) Yes.

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

[WITNESSES: Nixon|Skrivan]

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

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

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

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

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[WITNESSES: Nixon|Skrivan]

1 preclude us from providing public interest payphones.

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

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

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

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

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

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

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[WITNESSES: Nixon|Skrivan]

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

4 MR. JUDD: Thank you.

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

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

12 MR. LINDER: The "3P".

13 MR. JUDD: Thank you very much.

14 MR. LINDER: Thank you very much.

15 CHAIRMAN GETZ: Thank everyone.

16 Mr. Kennan.

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

19 CHAIRMAN GETZ: Mr. Shoer.

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

21 Good afternoon.

22 BY MR. SHOER:

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

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

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

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

15 MR. McHUGH: Of what document?

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

19 BY MR. SHOER:

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

[WITNESSES: Nixon|Skrivan]

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

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

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

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

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

11 MR. McHUGH: Is it a FairPoint exhibit?

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

15 MS. FOLEY: Sixteen.

16 MR. SHOER: Sixteen, Pat?

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

19 MR. SHOER: Forty-seven.

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

24 (Atty. Shoer and Atty. McHugh

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[WITNESSES: Nixon|Skrivan]

1 conferring.)

2 MR. McHUGH: I found the cite.

3 MR. SHOER: Thank you.

4 (Atty. McHugh handing document to Mr.

5 Skrivan.)

6 BY MR. SHOER:

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

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

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

21 A. (Skrivan) Yes.

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

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[WITNESSES: Nixon|Skrivan]

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

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

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

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

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

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

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

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

23 Q. Uh-huh.

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

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[WITNESSES: Nixon|Skrivan]

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

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

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

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

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

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

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

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[WITNESSES: Nixon|Skrivan]

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

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

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

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

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

16 A. (Skrivan) Yes.

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

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

23 Q. How are they related?

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

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1 general.

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

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

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

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

[WITNESSES: Nixon|Skrivan]

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

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

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

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

16 A. (Skrivan) Yes.

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

18 A. (Skrivan) Yes.

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

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

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

24 MR. McHUGH: Is it a data request?

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[WITNESSES: Nixon|Skrivan]

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

4 WITNESS SKRIVAN: I don't have that.
5 (Atty. McHugh handing document to
6 Witness Skrivan.)

7 BY MR. SHOER:

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

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

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

15 A. (Skrivan) January of 2010?

16 Q. January of 2010. See that?

17 A. (Skrivan) Yes.

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

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

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

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

5 A. (Skrivan) Yes.

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

9 A. (Skrivan) Yes.

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

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

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

15 A. (Skrivan) Yes.

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

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

22 BY MR. SHOER:

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

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

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

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

6 A. (Skrivan) Yes.

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

10 A. (Skrivan) I recall that discussion.

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

13 CHAIRMAN GETZ: Thank you. Ms. Foley.

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

16 WITNESS NIXON: Good afternoon.

17 BY MS. FOLEY:

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

20 A. (Nixon) I do.

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

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

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

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

2 A. (Nixon) I have it.

3 A. (Skrivan) Yes.

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

9 A. (Nixon) Yes.

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

14 A. (Nixon) I was.

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

19 A. (Nixon) I have it.

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

21 A. (Skrivan) Yes.

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

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1 discussed?

2 A. (Skrivan) Yes.

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

5 A. (Skrivan) Yes.

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

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

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

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

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

17 A. (Skrivan) Yes.

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

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

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1 included in the original stay order.

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

5 A. (Skrivan) Yes.

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

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

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

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

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

15 WITNESS SKRIVAN: Yes.

16 BY MS. FOLEY:

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

18 A. (Skrivan) Yes.

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

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

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1 Commission for reimbursement."

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

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

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

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

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

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

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1 I don't agree with that at all.

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

6 BY MS. FOLEY:

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

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

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

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

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

21 CHAIRMAN GETZ: Ms. Bragdon.

22 MS. BRAGDON: Right up close.

23 BY MS. BRAGDON:

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

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

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

6 (Documents handed to Witness Skrivan.)

7 BY MS. BRAGDON:

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

11 A. (Skrivan) Yes.

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

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

21 Okay, I see my answer.

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

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1 A. (Skrivan) Uh-huh.

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

5 A. (Skrivan) Correct.

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

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

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

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

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

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

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

1 that issue?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 A. (Skrivan) Yes.

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

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

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

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

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

15 A. (Skrivan) Yes.

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

19 A. (Skrivan) That could happen.

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

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

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

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

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

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

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

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

20 A. (Skrivan) Correct.

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

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

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

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

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

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

13 CHAIRMAN GETZ: Thank you. Ms. Cole?

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

18 BY MS. COLE:

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

22 A. (Nixon) Yes.

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

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1 A. (Nixon) I am.

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

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

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

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

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

12 A. (Nixon) I am.

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

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

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

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

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

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

24 MS. COLE: Thank you very much. Nothing

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1 further.

2 CHAIRMAN GETZ: Thank you. Ms. Geiger.

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

4 Having trouble viewing Mr. Skrivan, and I hope you can

5 hear me. Is this mike on? Thank you.

6 BY MS. GEIGER:

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

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

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

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

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

1 would benefit wholesale customers?

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

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

12 A. (Skrivan) Yes.

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

17 A. (Skrivan) Yes.

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

21 A. (Skrivan) Yes, I do.

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

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

4 A. (Skrivan) Yes.

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

7 A. (Skrivan) Yes.

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

10 A. (Skrivan) Yes.

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

13 A. (Skrivan) Yes.

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

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

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

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

4 A. (Skrivan) Yes.

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

20 A. (Skrivan) Yes.

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

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

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

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

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

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

17 A. (Skrivan) Yes.

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

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

[WITNESSES: Nixon|Skrivan]

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

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

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

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

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

15 A. (Skrivan) Yes.

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

20 A. (Skrivan) Yes.

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

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1 A. (Skrivan) Yes, I do.

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

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

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

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

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

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

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

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

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

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

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

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

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

[WITNESSES: Nixon|Skrivan]

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

5 A. (Skrivan) Yes.

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

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

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

13 A. (Skrivan) Yes.

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

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

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1 indirectly interconnect with each other.

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

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

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

13 CHAIRMAN GETZ: Thank you. Mr. Judd.

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

15 BY MR. JUDD:

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

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

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

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

4 A. (Nixon) They are.

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

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

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

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

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

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

7 A. (Nixon) I am not.

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

13 A. (Nixon) I do not.

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

16 MR. JUDD: Thank you very much.

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

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

20 BY MR. JUDD:

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

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

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

6 A. (Nixon) I did.

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

12 A. (Nixon) I did.

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

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

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

21 A. (Nixon) That's correct.

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

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1 A. (Nixon) Yes, I have.

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

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

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

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

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

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

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

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

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

[WITNESSES: Nixon|Skrivan]

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

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

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

1 Regulatory Settlement"?

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

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

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

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

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

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

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

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

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

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

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

[WITNESSES: Nixon|Skrivan]

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

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

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

10 A. (Nixon) I am.

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

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

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

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

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

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

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

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

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

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

24 A. (Nixon) Right.

[WITNESSES: Nixon|Skrivan]

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

3 A. (Nixon) That's correct.

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

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

6 Again, the provision calls that we would pay the

7 penalty, but the Company would retain the money for

8 investment in our network with pre-approved projects.

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

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

11 reserved that penalty internally within the Company, we

12 were in good faith seeking pre-approval of the

13 projects, and building those projects with an

14 expectation of completion within the three years, that

15 none of those events would trigger a breach.

16 Q. So, as long as that investment is completed within

17 three years, you're saying that you would be, if you

18 make the commitment and you complete it within three

19 years, you would be in compliance, is that correct?

20 A. (Nixon) That's correct.

21 Q. And, during that three-year period, while you're still

22 awaiting completion of the project, is it the Company's

23 position that during that three-year period you're in

24 compliance?

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1 A. (Nixon) That's correct.

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

5 A. (Nixon) That's correct.

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

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

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1 Q. Thank you.

2 CHAIRMAN GETZ: If I can interrupt?

3 MR. JUDD: Of course.

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

11 WITNESS NIXON: That's correct.

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

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

19 CHAIRMAN GETZ: Okay. Thank you.

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

22 BY MR. JUDD:

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

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

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

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

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

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

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

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

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

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

24 MR. JUDD: Thank you. I have nothing

[WITNESSES: Nixon|Skrivan]

1 further.

2 CHAIRMAN GETZ: Commissioner Below.

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

5 BY CMSR. BELOW:

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

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

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

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

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

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

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1 correct?

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

3 Q. Okay.

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

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

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

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

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

15 A. (Nixon) I do not.

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

17 Q. Okay.

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

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

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

6 A. (Nixon) That's correct.

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

8 CHAIRMAN GETZ: Commissioner Ignatius.

9 CMSR. IGNATIUS: Thank you.

10 BY CMSR. IGNATIUS:

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

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1 next year?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 A. (Skrivan) Yes.

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

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1 that correct?

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

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

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

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

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

[WITNESSES: Nixon|Skrivan]

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

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

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

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

11 CHAIRMAN GETZ: One second.

12 (Chairman and Commissioners conferring.)

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

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

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

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

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

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

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

4 **REDIRECT EXAMINATION**

5 BY MR. MCHUGH:

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

9 A. (Nixon) Yes, I do.

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

13 A. (Nixon) It does.

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

17 A. (Nixon) It does.

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

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

24 MS. BRAGDON: Yes.

[WITNESSES: Wilusz|Mullholand|Winchester|Tisdale]

1 MR. SHOER: Yes.

2 CHAIRMAN GETZ: Okay. Thank you.

3 MR. SHOER: We have a foursome.

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

8 CHAIRMAN GETZ: Ms. Bragdon.

9 **WENDY WILUSZ, SWORN**

10 **KATH MULLHOLAND, SWORN**

11 **NICHOLAS WINCHESTER, SWORN**

12 **EDWARD TISDALE, SWORN**

13 **DIRECT EXAMINATION**

14 BY MS. BRAGDON:

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

19 A. (Winchester) Yes, I do.

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

22 A. (Winchester) Yes, I would.

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

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

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[WITNESSES: Wilusz|Mullholand|Winchester|Tisdale]

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

4 A. (Tisdale) Yes.

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

7 A. (Tisdale) Yes.

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

9 A. (Tisdale) No.

10 MS. BRAGDON: Thank you.

11 MR. SHOER: Thank you.

12 BY MR. SHOER:

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

15 A. (Wilusz) I do.

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

20 A. (Wilusz) They would.

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

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

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1 MR. SHOER: Thank you.

2 CHAIRMAN GETZ: Ms. Cole.

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

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

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

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

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

22 CHAIRMAN GETZ: Sure.

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

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

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

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

24 So, it functions in three different

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1 ways.

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

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

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

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

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

18 MR. McHUGH: Correct.

19 (Chairman and Commissioners conferring.)

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

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

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

10 MR. McHUGH: Mr. Murtha.

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

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

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

23 MS. COLE: Thank you, Commissioner.

24 BY MS. COLE:

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[WITNESSES: Wilusz|Mullholand|Winchester|Tisdale]

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

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

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

7 A. (Mullholand) Yes.

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

10 A. (Mullholand) Yes.

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

12 A. (Mullholand) Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (No verbal response)

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[WITNESSES: Wilusz|Mullholand|Winchester|Tisdale]

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

3 CMSR. BELOW: Okay.

4 BY CMSR. BELOW:

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

12 A. (Mullholand) Yes.

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

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

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

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

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

24 I guess my question is similar. What

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

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

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

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

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

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

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

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

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

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

15 CHAIRMAN GETZ: Commissioner Ignatius.

16 CMSR. IGNATIUS: Thank you. Good

17 afternoon.

18 WITNESS MULLHOLAND: Good afternoon.

19 BY CMSR. IGNATIUS:

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

21 A. (Wilusz) "Wilusz".

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

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

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

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

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

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

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

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

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

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

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[WITNESSES: Wilusz|Mullholand|Winchester|Tisdale]

1 up getting resolved.

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

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

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

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

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

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

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

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[WITNESSES: Wilusz|Mullholand|Winchester|Tisdale]

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

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

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

19 (No verbal response)

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

22 WITNESS WILUSZ: Thank you.

23 WITNESS MULLHOLAND: Thank you.

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

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

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

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

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

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

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

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1 Bailey explain and present the numbers on the chalk.

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

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

11 (No verbal response)

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

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

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

23 MR. PATNAUDE: Yes.

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

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[WITNESSES: Bailey|Lisciandro]

1 **KATHRYN M. BAILEY, SWORN**

2 **JOHN F. LISCIANDRO, SWORN**

3 **DIRECT EXAMINATION**

4 BY MR. ROTH:

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

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

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

12 A. (Lisciandro) Yes.

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

16 A. (Lisciandro) Yes.

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

18 A. (Lisciandro) I do.

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

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

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

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

5 A. (Witness Lisciandro nodding affirmatively).

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

9 A. (Lisciandro) Yes.

10 Q. And, have you reviewed that information?

11 A. (Lisciandro) I have.

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

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

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[WITNESSES: Bailey|Lisciandro]

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

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

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

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

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

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

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[WITNESSES: Bailey|Lisciandro]

1 for the record please.

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

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

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

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

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

16 Q. I'm sorry for you.

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

18 (Laughter.)

19 BY MR. ROTH:

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

23 A. (Bailey) I am.

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

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[WITNESSES: Bailey|Lisciandro]

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

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

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

7 A. (Bailey) I do.

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

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

15 CHAIRMAN GETZ: Please.

16 **BY THE WITNESS:**

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

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[WITNESSES: Bailey|Lisciandro]

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

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

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

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

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

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

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

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

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

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

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

18 MS. ROSS: Don't say it.

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

21 **BY THE WITNESS:**

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

[WITNESSES: Bailey|Lisciandro]

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

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

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

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[WITNESSES: Bailey|Lisciandro]

1 expenditure capital commitment.

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

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

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

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[WITNESSES: Bailey|Lisciandro]

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

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

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

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

20 MR. MCHUGH: None.

21 CHAIRMAN GETZ: Ms. Hatfield.

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

24 WITNESS LISCIANDRO: Good afternoon.

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CROSS-EXAMINATION1
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BY MS. HATFIELD:

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

A. (Lisciandro) Okay.

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

A. (Lisciandro) Yes.

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

CHAIRMAN GETZ: Thank you. Mr. Kennan?

MR. KENNAN: Thank you, Mr. Chairman.
Good afternoon, Ms. Bailey, Mr. Lisciandro.

WITNESS LISCIANDRO: Good afternoon.

BY MR. KENNAN:

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

[WITNESSES: Bailey|Lisciandro]

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

5 A. (Bailey) Correct.

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

8 A. (Bailey) It does.

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

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

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

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

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

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

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[WITNESSES: Bailey|Lisciandro]

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

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

6 A. (Bailey) Yes.

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

9 A. (Bailey) Yes.

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

12 A. (Bailey) Yes.

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

16 A. (Bailey) Yes.

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

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

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

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[WITNESSES: Bailey|Lisciandro]

1 A. (Lisciandro) Yes.

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

3 A. (Lisciandro) Okay.

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

7 A. (Lisciandro) Yes.

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

10 A. (Lisciandro) Yes.

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

12 A. (Lisciandro) Yes.

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

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

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[WITNESSES: Bailey|Lisciandro]

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

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

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

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

11 A. (Lisciandro) I do.

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

17 A. (Lisciandro) Okay.

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

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

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[WITNESSES: Bailey|Lisciandro]

1 information they provided to us.

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

8 A. (Lisciandro) Yes.

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

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

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

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

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

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[WITNESSES: Bailey|Lisciandro]

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

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

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

9 A. (Lisciandro) Okay.

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

14 A. (Lisciandro) Correct.

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

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

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[WITNESSES: Bailey|Lisciandro]

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

4 A. (Lisciandro) Yes.

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

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

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

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

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

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

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

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

20 Q. It is not fixed right now?

21 A. (Lisciandro) Right.

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

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[WITNESSES: Bailey|Lisciandro]

1 changed?

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

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

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

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

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

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

16 A. (Lisciandro) It could.

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

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

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

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[WITNESSES: Bailey|Lisciandro]

1 of the loan?

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

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

5 A. (Lisciandro) That's correct.

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

8 A. (Lisciandro) That's correct.

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

11 A. (Lisciandro) Correct.

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

15 A. (Lisciandro) Yes.

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

17 A. (Lisciandro) Okay.

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

21 A. (Lisciandro) Yes.

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

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[WITNESSES: Bailey|Lisciandro]

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

3 Q. Further declines from even your bottom --

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

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

7 A. (Lisciandro) Yes.

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

13 A. (Lisciandro) Yes.

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

15 A. (Lisciandro) No.

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

18 CHAIRMAN GETZ: Thank you. Mr. Shoer.

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

20 BY MR. SHOER:

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

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[WITNESSES: Bailey|Lisciandro]

1 available? Staff Advocate-6?

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

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

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

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

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

18 MR. SHOER: Yes, BayRing-30.

19 **BY THE WITNESS:**

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

23 BY MR. SHOER:

24 Q. Yes.

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[WITNESSES: Bailey|Lisciandro]

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

4 Q. Uh-huh.

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

11 Q. And that they still passed the covenants?

12 A. (Lisciandro) Yes.

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

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

16 Q. You did not run that?

17 A. (Lisciandro) No.

18 Q. Okay. Is there any particular reason?

19 A. (Lisciandro) No.

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

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

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1 numbers.

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

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

8 Q. You made no changes to the costs?

9 A. (Lisciandro) No changes.

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

15 A. (Lisciandro) Correct.

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

20 A. (Lisciandro) Yes.

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

24 A. (Lisciandro) Correct.

[WITNESSES: Bailey|Lisciandro]

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

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

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

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

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[WITNESSES: Bailey|Lisciandro]

1 MR. SHOER: Thank you.

2 CHAIRMAN GETZ: Ms. Foley?

3 MS. FOLEY: No questions.

4 CHAIRMAN GETZ: Ms. Bragdon?

5 MS. BRAGDON: No questions.

6 CHAIRMAN GETZ: And, Ms. Cole?

7 MS. COLE: Yes. One second please.

8 Thank you.

9 BY MS. COLE:

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

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

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

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

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[WITNESSES: Bailey|Lisciandro]

1 operational issues that still need to be addressed.

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

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

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

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

11 CHAIRMAN GETZ: Thank you. Ms. Geiger?

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

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

16 MR. LINDER: No.

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

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

20 BY MR. JUDD:

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

24 A. (Lisciandro) Yes.

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[WITNESSES: Bailey|Lisciandro]

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

3 A. (Lisciandro) Yes.

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

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

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

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

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

22 A. (Lisciandro) Correct.

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

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[WITNESSES: Bailey|Lisciandro]

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

6 Q. Ms. Bailey.

7 A. (Bailey) Mr. Judd.

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

11 A. (Bailey) Correct.

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

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

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

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

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

20 A. (Lisciandro) Yes.

21 Q. Are you aware of the limitations?

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

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

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[WITNESSES: Bailey|Lisciandro]

1 obligations?

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

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

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

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

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

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

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

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1 the PUC.

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

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

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

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

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

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

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

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

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

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

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

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

10 CMSR. BELOW: Thank you.

11 BY CMSR. BELOW:

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

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

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

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

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

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

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

9 A. (Bailey) I did.

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

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

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

24 CHAIRMAN GETZ: Commissioner Ignatius.

[WITNESSES: Bailey|Lisciandro]

1 CMSR. IGNATIUS: Thank you.

2 BY CMSR. IGNATIUS:

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

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

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

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

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

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

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

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

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

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

17 A. (Bailey) Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 A. (Bailey) Yes.

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

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

16 Q. Of course.

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

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

3 CHAIRMAN GETZ: Mr. Roth, any redirect?

4 MR. ROTH: Yes. One question.

5 **REDIRECT EXAMINATION**

6 BY MR. ROTH:

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

10 A. (Bailey) Yes.

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

15 A. (Bailey) Correct.

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

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

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

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1 Ignatius?

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

8 MR. ROTH: Thank you. That's all I
9 have.

10 CHAIRMAN GETZ: Okay. Then, that's
11 everything for this panel. So, the witnesses are excused.
12 Thank you.

13 WITNESS LISCIANDRO: Thank you.

14 CHAIRMAN GETZ: Anything that we need to
15 address further today?

16 MS. BRAGDON: Yes.

17 CHAIRMAN GETZ: Ms. Bragdon.

18 MS. BRAGDON: I know this is a little
19 out of order, but I spoke with Mr. McHugh during the
20 break. Is there any possibility CRC, and Ms. Foley is
21 going to make a similar request, that we could move our
22 exhibits in at this time, since we will not have any
23 questions for Staff, Non-Advocate Staff tomorrow?

24 CHAIRMAN GETZ: Well, we can -- and, Mr.

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1 Shoer?

2 MR. SHOER: May I join in that request.

3 CHAIRMAN GETZ: Right. Well, let's see
4 then. So, basically, are there any other takers on that
5 proposal?

6 MR. KENNAN: I guess I'll throw my hat
7 in, too. Although, I believe I'll be back tomorrow,
8 Mr. Chairman.

9 CHAIRMAN GETZ: Okay. So, then, we have
10 a - let's see the best way to phrase this. So, then, the
11 CRC and One Comm and BayRing and --

12 MR. KENNAN: Otel.

13 CHAIRMAN GETZ: -- Otel would like to
14 move their exhibits into evidence. Is there any objection
15 to admitting them?

16 MS. FOLEY: I did just want to make one
17 clarifying statement, if I could, with regard to the One
18 Communications' exhibits. What's been marked as "OC-23"
19 are comments One Communications filed with the New
20 Hampshire PUC in Docket DT 07-011, and what's been marked
21 as OC-24 are comments that One Communications filed with
22 the Federal Communications Commission. Both of those
23 documents are in the nature of briefs in that they contain
24 arguments of counsel. We are seeking to have them

1 admitted for the purpose of referring to them in our
2 brief, to show that we've made these arguments in the
3 dockets noted at the times they were made, not necessarily
4 for the truth of any factual assertions within them.

5 CHAIRMAN GETZ: Okay. Thank you. Well,
6 then, the critical issue is the next one. Is there any
7 objections to the parties' motion to admit those exhibits
8 into evidence?

9 MR. MCHUGH: No objection, Mr. Chairman,
10 from FairPoint. But, before you release them, I want to
11 make sure everybody, who's not going to be here tomorrow,
12 stipulates for the record that the FairPoint exhibits are
13 so admitted without objection. You don't have to do that
14 until tomorrow, but I don't want them to have objections
15 after they leave.

16 MS. BRAGDON: No objection from CRC.

17 MS. FOLEY: No objection.

18 MR. SHOER: No. Fair request. That's a
19 fair request. No objection from BayRing.

20 MR. KENNAN: None from Otel.

21 CHAIRMAN GETZ: Okay. Thank you then.

22 MR. ROTH: Mr. Chairman, the admission
23 of the chalk as an exhibit is outstanding. And, I would
24 ask that it be admitted. And, --

1 CHAIRMAN GETZ: Well, it's premature to
2 admit it. I think earlier I identified it as "Staff
3 Advocate 3" for identification.

4 MR. JUDD: May I address that request?

5 CHAIRMAN GETZ: Well, --

6 MR. JUDD: Not to have it admitted, but
7 the exhibit itself.

8 CHAIRMAN GETZ: Yes.

9 MR. JUDD: I was going to suggest that
10 the Commission accept Mr. Roth's offer of putting Ms.
11 Bailey to work tonight to produce that in a different
12 format. My concern is --

13 MR. ROTH: I don't recall making that
14 offer.

15 MR. JUDD: Well, I believe that you did.
16 But, putting that aside --

17 CHAIRMAN GETZ: Well, let's --

18 MR. JUDD: If I could finish my --

19 CHAIRMAN GETZ: No. Please.

20 MR. JUDD: Okay.

21 CHAIRMAN GETZ: I think what I had said
22 earlier was that the last we knew this machine was working
23 and we can just print it, and it would be Staff Advocate
24 Number 3. Is there a problem with that?

1 MR. JUDD: My concern was the clarity of
2 it, Mr. Chairman. With her testimony, it is very clear,
3 and I think it's a very helpful exhibit. My concern is,
4 as a stand-alone document, it might not have the same
5 clarity. And, I was attempting to help with the quality
6 of the record in advocating that, and I'll make an
7 example, that she referred to different colors and whatnot
8 on the exhibit. I was simply looking for clarity. I make
9 know objection. And, again, I think it's very helpful
10 information, and she brought great clarity to something
11 that was confusing.

12 CHAIRMAN GETZ: Okay. Well, I think
13 what we will do, since we have a whole nother day ahead of
14 us, we'll print this tonight, see how it comes out. And,
15 my benefit, I take your point about the colors in her
16 description, though, she did mention columns and column
17 headings. But let's take a run at printing that tonight.
18 And, if we need to --

19 MR. JUDD: Thank you.

20 CHAIRMAN GETZ: -- correct the record
21 tomorrow, we'll do that. Getting back to the motion to
22 enter the CLEC exhibits -- Ms. Geiger?

23 MS. GEIGER: Mr. Chairman, thank you. I
24 expect to be here tomorrow and can wait till then to move

1 my exhibits into the record. But, for the sake of
2 administrative convenience, if you want to do all the CLEC
3 exhibits now, that's fine with me.

4 CHAIRMAN GETZ: And, segTEL?

5 MS. MULLHOLAND: My attorney has
6 departed, but it's okay with segTEL as well.

7 CHAIRMAN GETZ: And, the same issue,
8 Mr. McHugh, you don't object, as long as they don't object
9 to yours? And, I'm seeing nodding heads from Ms. Geiger
10 and --

11 MS. GEIGER: Yes.

12 MS. MULLHOLAND: No objection from
13 segTEL.

14 CHAIRMAN GETZ: -- segTEL as well.

15 (Chairman and Commissioners conferring.)

16 CHAIRMAN GETZ: Okay. So, we will grant
17 the motions to admit into evidence all of the various CLEC
18 exhibits that have been set forth on the documents that
19 have noted the exhibits that were listed for
20 identification.

21 MS. BRAGDON: Thank you.

22 CHAIRMAN GETZ: And, is there anything
23 else that I've forgotten, because we were jumping around
24 there for a moment?

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(No verbal response)

CHAIRMAN GETZ: Okay. Then, we will start tomorrow morning at 9:00 with the Non-Staff Advocate panel. And, we will adjourn for today. Thank you, everyone.

(Whereupon the hearing was adjourned at 5:13 p.m., and the hearing resume on May 26, 2010, commencing at 9:00 a.m.)