

1 STATE OF NEW HAMPSHIRE

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

4 November 1, 2007 - 9:11 a.m.  
5 Concord, New Hampshire

Day IX

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

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

Jody O'Marra, Clerk

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

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2  
3 **Reptg. Communication Workers of America,**  
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I N D E X

<b>Witness</b>	<b>DIRECT</b>	<b>CROSS</b>	<b>REDIRECT</b>	<b>RECROSS</b>
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**P R O C E E D I N G S**

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

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

11 CHAIRMAN GETZ: Okay. Thank you.

12 CMSR. MORRISON: Good morning.

13 CMSR. BELOW: Good morning.

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

18 CHAIRMAN GETZ: Good morning.

19 CMSR. MORRISON: Good morning.

20 CMSR. BELOW: Good morning.

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

24 CHAIRMAN GETZ: Good morning.

1 CMSR. MORRISON: Good morning.

2 CMSR. BELOW: Good morning.

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

5 CHAIRMAN GETZ: Good morning.

6 CMSR. MORRISON: Good morning.

7 CMSR. BELOW: Good morning.

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

11 CHAIRMAN GETZ: Good morning.

12 CMSR. MORRISON: Good morning.

13 CMSR. BELOW: Good morning.

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

18 CHAIRMAN GETZ: Good morning.

19 CMSR. MORRISON: Good morning.

20 CMSR. BELOW: Good morning.

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

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

4 CHAIRMAN GETZ: Good morning.

5 CMSR. MORRISON: Good morning.

6 CMSR. BELOW: Good morning.

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

9 (No verbal response)

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

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

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

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

24 **SUSAN M. BALDWIN, SWORN**

DIRECT EXAMINATION

1  
2 BY MS. HATFIELD:

3 Q. Good morning, Ms. Baldwin.

4 A. Good morning.

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

6 A. Susan M. Baldwin.

7 Q. And, by whom are you employed?

8 A. I am self-employed.

9 Q. And, what is your business address?

10 A. 17 Arlington Street, Newburyport, Massachusetts.

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

13 A. Yes, I did.

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

17 A. Yes, I do.

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

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

1 confidential, and highly confidential.

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

4 A. Yes, I do.

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

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

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

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

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

16 WITNESS BALDWIN: Good morning.

17 **CROSS-EXAMINATION**

18 BY MR. RUBIN:

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

21 A. Yes, I have.

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

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

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

11 CHAIRMAN GETZ: Ms. Fabrizio.

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

14 WITNESS BALDWIN: Good morning.

15 **CROSS-EXAMINATION**

16 BY MS. FABRIZIO:

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

1 concerns?

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

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

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

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

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

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

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

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

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

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

10 A. Generally, yes.

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

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

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

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

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

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

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

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

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

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

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

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

13 A. Yes.

14 Q. Are you familiar with this table?

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

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

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

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

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

10 A. Generally, yes, I am.

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

14 A. No, I don't.

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

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

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

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

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

13 A. Yes.

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

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

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

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

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

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

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

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

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

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

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

8 A. Could you restate the question.

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

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

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

11/1/07 DAY 9 VERIZON/FAIRPOINT-PUBLIC

1 CHAIRMAN GETZ: Thank you.

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

3 CHAIRMAN GETZ: Mr. Del Vecchio?

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

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

11 (PUBLIC HEARING RESUMES AT PAGE 35)

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1 (PUBLIC HEARING RESUMES FROM PAGE 21)

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

5 MS. CARMODY: Timing is everything.

6 CHAIRMAN GETZ: Thank you.

7 **EXAMINATION BY CMSR. BELOW**

8 BY CMSR. BELOW:

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

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

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

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

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

18 Q. And not at the time of cutover?

19 A. Yes. Yes.

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

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

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

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

14 A. That's correct.

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

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

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

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

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

19 CMSR. BELOW: Okay. Thank you.

20 BY CMSR. BELOW:

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

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

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

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

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

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

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

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

11 CHAIRMAN GETZ: Redirect, Ms. Hatfield?

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

13 **REDIRECT EXAMINATION**

14 BY MS. HATFIELD:

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

18 A. Yes.

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

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

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

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

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

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

11 A. Yes, I see that.

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

14 A. Yes, I do.

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

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

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

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

7 CHAIRMAN GETZ: Anything further for  
8 this witness?

9 (No verbal response)

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

12 WITNESS BALDWIN: Thank you.

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

1 that?

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

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

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

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

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

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

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

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

1 that was even asked.

2 MS. HATFIELD: We could call the --

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

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

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

1 address this issue?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 CHAIRMAN GETZ: So, 12 days.

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

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

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

4 MS. HATFIELD: In terms of --

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

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

1 we have already.

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

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

13 CHAIRMAN GETZ: Okay.

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

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

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

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

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

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

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

16 WITNESS SKRIVAN: Mr. Skrivan.

17 CHAIRMAN GETZ: -- Mr. Skrivan back.

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

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

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

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

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

12 CHAIRMAN GETZ: Okay.

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

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

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

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

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

22 MR. RUBIN: Very good. Thank you.

23 CHAIRMAN GETZ: Okay. Anything else?

24 Ms. Hatfield, do you --

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

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

MS. HATFIELD: Okay. Thank you.

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

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

WITNESS LIPPOLD: Good morning.

WITNESS SKRIVAN: Good morning.

1                   **BRIAN LIPPOLD, Previously sworn**

2                   **MICHAEL SKRIVAN, Previously sworn.**

3                   **CROSS-EXAMINATION, Resumed**

4 BY MS. ROSS:

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

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

8 A.    (Lippold) Yes.

9 A.    (Skrivan) Yes.

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

13 A.    (Lippold) Yes.

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

16 A.    (Lippold) Yes.

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

23 A.    (Lippold) Yes.

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

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

2 A. (Lippold) Yes.

3 Q. Okay. Does FairPoint intend to include settlement  
4 items, which are listed in Paragraph 2a of this  
5 agreement, in the Tariff 84, the New Hampshire Tariff  
6 84? Let me just, for the benefit of the rest of the  
7 room, this is the beginning of 2a, down at the bottom,  
8 and here's the balance of it.

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

10 Q. Does FairPoint intend to make these settlement items  
11 listed in 2a of this agreement available under Tariff  
12 84 in New Hampshire?

13 A. (Lippold) We do not. My understanding is that any 271  
14 elements are intended to be provided under a commercial  
15 agreement.

16 Q. Okay. So, you're going to require CLECs to negotiate  
17 purchase terms for the settlement items that you  
18 consider 271 elements, is that correct?

19 A. (Lippold) That is correct.

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

21 A. (Lippold) I would generically refer to them as  
22 "commercial services agreements".

23 Q. Okay. Thank you. And, will those agreements be filed  
24 with the Commission?

1 A. (Lippold) They will not.

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

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

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

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

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

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

20 A. (Skrivan) Yes, it would.

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

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

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

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

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

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

7 A. (Skrivan) No.

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

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

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

17 A. (Lippold) Yes.

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

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

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

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

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

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

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

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

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

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

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

1 would think.

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

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

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

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

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

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

21 A. (Lippold) Was that a question?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 MR. MCHUGH: Okay.

13 **REDIRECT EXAMINATION**

14 BY MR. MCHUGH:

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

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

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

23 A. (Lippold) Okay.

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

1 Section 8a, Mr. Lippold.

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

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

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

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

16 A. (Lippold) Yes.

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

1 A. (Lippold) Yes, I do.

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

3 A. (Lippold) I do.

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

8 A. (Lippold) Yes, it does.

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

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

13 (No verbal response)

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

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

17 MR. MCHUGH: Sure.

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

21 MR. MCHUGH: Sure.

22 **RE-CROSS-EXAMINATION**

23 BY MS. ROSS:

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

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

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

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

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

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

16 (PUBLIC HEARING RESUMES AT PAGE 84)

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1 (PUBLIC HEARING RESUMES FROM PAGE 69)

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

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

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

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

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

21 (No verbal response)

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

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

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

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

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

23 MS. ROSS: Okay.

24 CHAIRMAN GETZ: That would just be a

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

3 MS. ROSS: Thank you.

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

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

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

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

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

24 Okay. Hearing nothing, then that's how

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

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

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

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

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

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

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

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

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

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

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

16 CHAIRMAN GETZ: Okay. Thank you.

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

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

24 MR. DEL VECCHIO: Shuttle diplomacy.

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

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

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

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

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

21 MR. COOLBROTH: That's right.

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

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1 You need to check with your client?

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

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

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

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

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

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

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

21 Mr. Mandl?

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

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

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

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

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

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

24 MS. FABRIZIO: Okay.

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

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

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

16 Ms. Hatfield?

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

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

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

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

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

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

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

17 MR. MCHUGH: Right.

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

21 MS. FABRIZIO: Okay.

22 CHAIRMAN GETZ: Anything else?

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

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

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

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

10 CHAIRMAN GETZ: Well...

11 MR. COOLBROTH: --- the exhibits?

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

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

1 Pennichuck/Nashua case, but...

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the briefs and take the matter under advisement.

2 Thank you.

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

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