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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

July 8, 2009 - 10:16 a.m.
Concord, New Hampshire

RE: DT 09-059
FAIRPOINT COMMUNICATIONS, INC.:
Petition of FairPoint Communications
for Waiver of Certain Requirements
Under the Performance Assurance Plan
and Carrier to Carrier Guidelines.
(Prehearing conference)

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

Sandy Deno, Clerk

APPEARANCES: Reptg. FairPoint Communications, Inc.:
Harry Malone, Esq. (Devine, Millimet...)
Michael Morrissey, Esq.

Reptg. BayRing Communications:
Alan M. Shoer, Esq.

Reptg. CRC Communications of Maine:
Trina M. Bragdon, Esq.

Reptg. One Communications:
Paula Foley, Esq.

Reptg. Comcast Phone of New Hampshire:
Douglas L. Patch, Esq. (Orr & Reno)

Court Reporter: Steven E. Patnaude, LCR No. 52

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

Reptg. segTEL, Inc.:
Jeremy Katz
Kath Mullholand

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

Reptg. PUC Staff:
Robert Hunt, Esq.

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I N D E X

PAGE NO.

STATEMENTS OF PRELIMINARY POSITION BY:

Mr. Malone	6, 25, 30
Mr. Shoer	9, 26
Ms. Bragdon	12, 29
Ms. Foley	13
Mr. Patch	14
Mr. Katz	16, 28
Ms. Hatfield	19
Mr. Hunt	20, 29
Mr. Morrissey	23

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

2 CHAIRMAN GETZ: Okay. Good morning,
3 everyone. We'll open the prehearing conference in docket
4 DT 09-059. On March 26, 2009, FairPoint Communications
5 filed a petition for a waiver of certain requirements
6 under the Performance Assurance Plan to remove certain
7 FairPoint reporting obligations under the PAP and carrier
8 to carrier guidelines and associated penalties with the
9 PAP. And, on April 6th, 2009, Freedom Ring Communications
10 filed an objection to the FairPoint petition. An order of
11 notice was issued on June 8th setting the prehearing
12 conference for today.

13 I'll note for the record that the
14 affidavit of publication has been filed. And, we also
15 have Petitions to Intervene by a number of parties,
16 including Comcast Phone of New Hampshire and Verizon
17 Access Transmission, CRC Communications, and segTEL. I
18 think that's the complete list.

19 Let's take appearances please.

20 MR. MALONE: I'm Harry Malone, with
21 Devine, Millimet, on behalf of FairPoint Communications.

22 CHAIRMAN GETZ: Good morning.

23 MR. MORRISSEY: And, Michael Morrissey,
24 also on behalf of FairPoint Communications.

{DT 09-059} [Prehearing conference] {07-08-09}

1 CHAIRMAN GETZ: Good morning.

2 MR. SHOER: Alan Shoer, on behalf of
3 BayRing Communications.

4 CHAIRMAN GETZ: Good morning.

5 MR. SHOER: Good morning. With me here
6 is Ben Thayer of BayRing.

7 CHAIRMAN GETZ: Good morning.

8 MS. BRAGDON: Good morning. Trina
9 Bragdon, on behalf of CRC Communications.

10 CHAIRMAN GETZ: Good morning.

11 MS. FOLEY: Good morning. Paula Foley,
12 from One Communications. We also filed a Petition to
13 Intervene in this docket.

14 CHAIRMAN GETZ: Okay. Thank you.

15 MR. PATCH: Good morning. Doug Patch,
16 from the law firm of Orr & Reno, representing Comcast
17 Phone of New Hampshire, LLC. And, with me this morning is
18 are Stacey Parker and James White.

19 CHAIRMAN GETZ: Good morning.

20 MR. KATZ: Good morning. Jeremy Katz,
21 from segTEL, and with me is Kath Mullholand also.

22 CHAIRMAN GETZ: Good morning.

23 MS. HATFIELD: Good morning,
24 Commissioners. Meredith Hatfield, for the Office of

{DT 09-059} [Prehearing conference] {07-08-09}

1 Consumer Advocate, on behalf of residential ratepayers.
2 And, the OCA has not filed a notice of intent to fully
3 participate in this proceeding. We are here to simply
4 monitor the case.

5 CHAIRMAN GETZ: Thank you.

6 MS. HATFIELD: Thank you.

7 MR. HUNT: Good morning. Rob Hunt,
8 Staff attorney, and Kate Bailey, the Director of
9 Telecommunications.

10 CHAIRMAN GETZ: Okay. Good morning.
11 Well, then, Mr. Malone, we'll start with you for an
12 opportunity for a statement of the position of FairPoint.

13 MR. MALONE: Thank you, Mr. Chairman.
14 In the March 26th petition, FairPoint requested a
15 temporary waiver for the month of March of billing credits
16 due to CLECs for certain metrics under the terms of the
17 New Hampshire Performance Assurance Plan, and also a
18 permanent waiver of other metrics that are no longer
19 available or applicable.

20 The temporary waiver request qualifies
21 as an "extraordinary event" waiver, one of the three
22 reasons that the PAP provides for waivers. The cutover to
23 new systems was an undertaking that was unparalleled in
24 the industry, and FairPoint exercised great diligence in

{DT 09-059} [Prehearing conference] {07-08-09}

1 organizing the transition. Despite this effort, there
2 were still cutover problems that were beyond FairPoint's
3 foresight and control. Some of the metrics were
4 unavailable because of programming errors that were not
5 revealed until after cutover and the systems went live.
6 For other metrics, some of the comparative data necessary
7 to generate them was not available as a result of manual
8 order processing or a delay in the billing cycle. These
9 were situations that normal and reasonable preparations
10 could not prevent. Thus, the cutover is extraordinary
11 event for which a waiver is appropriate.

12 In regard to the permanent waiver, the
13 Commission should grant this request as a policy matter,
14 because these metrics are now either irrelevant or
15 unreasonably burdensome to produce. Due to the design of
16 the new systems, the comparative data for certain metrics
17 can no longer be generated without significant
18 reprogramming. Some of these metrics can be replaced by
19 benchmark evaluations, but others are simply not
20 available. For other metrics, the services associated
21 with them are either no longer requested or the orders are
22 no longer processed in a manner that the metrics
23 contemplate.

24 It should be emphasized that the
{DT 09-059} [Prehearing conference] {07-08-09}

1 requested waivers must be viewed in the context of the
2 public policy underpinnings of the PAP and in no way
3 reflect a lack of commitment on the part of FairPoint to
4 provide satisfactory service to its wholesale customers.
5 The PAP was established to help enforce the
6 pro-competitive policies of the Telecommunications Act of
7 1996 and to motivate Verizon to make its operation systems
8 open to competitors. It does not reflect the realities of
9 the telecommunications marketplace of 2009. The fact that
10 for the period prior to the January 2009 cutover the PAP
11 penalties were minimal is a clear indication that the
12 policy objectives of the PAP were achieved, and it is
13 questionable as to whether it has outlived its usefulness.

14 Even if this waiver request is granted,
15 many other metrics will remain, and FairPoint will
16 continue to operate in the spirit of the PAP so that the
17 interests of competition will be preserved. I should also
18 remind you that the PAP was established to benefit
19 competition and not individual competitors. Thus, this
20 request is in the public interest because, while it
21 maintains the basic integrity of the PAP, it relieves
22 FairPoint of unnecessary burdens and frees up resources
23 that can be devoted to improving its overall customer
24 support. Thank you.

{DT 09-059} [Prehearing conference] {07-08-09}

1 CHAIRMAN GETZ: Okay. Thank you.
2 Before we turn to Mr. Shoer, though, let me ask this
3 question: Is there any objections to any of the Petitions
4 to Intervene in this proceeding?

5 MR. MALONE: No.

6 CHAIRMAN GETZ: Okay. Note that there
7 are no objections, and recognizing that the various
8 Petitions to Intervene have demonstrated rights, duties,
9 privileges or other interests that will be affected by the
10 proceeding, we'll grant the Petitions to Intervene.
11 Mr. Shoer.

12 MR. SHOER: Thank you. Thank you,
13 Commissioner. On behalf of BayRing, we, obviously, have a
14 strong interest in the PAP and using these metrics. It's
15 our position that it's impossible to just kind of use this
16 proceeding to split off into a, really, what is
17 essentially a very narrow request, without -- without
18 considering the fact that, at the same time these requests
19 are going in, FairPoint has ceased paying the obligated --
20 ceased its obligations to make payments under the PAP, and
21 has, in our view, not only violated the spirit of the PAP,
22 contrary to what Mr. Malone just said, but it's also
23 violating the law and the requirements imposed by this
24 Commission to oversee the PAP while we work towards a

{DT 09-059} [Prehearing conference] {07-08-09}

1 simplified version. This was not the -- This was not the
2 way that this agreement was constructed when the
3 Commission conditioned its order.

4 This is a piecemeal approach. There
5 should be a comprehensive look at the PAP, with a
6 simplified version, as all -- all parties agreed that,
7 well, at least as far as BayRing and the other companies
8 agreed with FairPoint. This was not the process that we
9 signed on to, this was not the process that the Commission
10 ordered. So, we generally object to that.

11 Asking us to go through these individual
12 metrics right now, while we're essentially being dangled
13 over the cliff in a choke hold, with payments being
14 withheld, significant payments being withheld, on a
15 monthly basis, is an impossible -- an impossible situation
16 for us to -- to objectively, you know, provide input,
17 without having the Commission at least order in the
18 meantime that those payments and that the spirit and the
19 letter of the PAP be followed. Once that order is in
20 place, once the Commission takes it upon itself to declare
21 that it will not allow FairPoint to unilaterally determine
22 when it will ignore the PAP, when it will ignore its
23 payment obligations, then we can get into a, I think, a
24 serious discussion about individual metrics and

{DT 09-059} [Prehearing conference] {07-08-09}

1 cooperatively develop a simplified PAP, and not approach
2 it in this piecemeal approach.

3 There was supposed to be a simplified
4 proposal, a PAP proposed with simplified metrics. I don't
5 think that's been filed in New Hampshire yet. I believe
6 it's been filed in Maine. It was ordered to be filed in
7 Maine. I think it was filed in Vermont. I don't know why
8 it was not filed in New Hampshire for the benefit of the
9 New Hampshire CLECs that are here. That's where we should
10 be focusing our intention, not on -- not on picking off
11 these individual metrics, while our payments are being
12 withheld at the same time. That's the overall general
13 problem we have with that.

14 As far as the actual specific petition,
15 our objections were filed. We pointed out that, as far as
16 we're concerned, that this is -- that the waiver requests
17 that are being requested here are not authorized under the
18 PAP, number one. And, if we go through the sections of
19 the PAP, we do not believe they authorize the type of
20 relief that FairPoint is seeking here.

21 Number two -- Number two, we do not
22 believe that this, essentially, that this isn't the way
23 that this process should move forward, without having
24 these larger issues consolidated.

{DT 09-059} [Prehearing conference] {07-08-09}

1 CHAIRMAN GETZ: Thank you. Ms. Bragdon.

2 MS. BRAGDON: Good morning. I'll talk
3 first in general, and then in specifics. Our general
4 position is that we're very concerned about any PAP waiver
5 being given, given the assurances that were made by
6 FairPoint during the proceedings, and before cutover, that
7 they would be able to abide by the PAP. Also, we agree
8 with BayRing, that the particular circumstances and issues
9 set forth in FairPoint's waiver request do not meet the
10 conditions in Section J of the PAP or set forth what the
11 particulars that the Company must show in order to qualify
12 for a waiver. We also disagree with the statements made
13 by FairPoint regarding the purpose of the PAP and the
14 particular circumstances. And, at some point, I don't
15 know if this is the right time, we'd like to be heard sort
16 of on those details and also on this latest waiver request
17 for the February through June penalties.

18 As to the very specifics in the
19 petition, I think that those issues can be addressed.
20 There's a collaborative process that's been started
21 between the CLECs and FairPoint in all three states to
22 work towards a new PAP. And, some of the particular
23 issues raised in the petition would probably be best
24 suited in those discussions. Some other metrics are

{DT 09-059} [Prehearing conference] {07-08-09}

1 particularly concerning, because now FairPoint is coming
2 forth and saying, you know, "our new CS systems can't
3 measure these things." And, that's of particular concern,
4 because there were assurances made throughout the process
5 that FairPoint would -- new systems would be able to
6 measure everything. And, so, we would object to waiver of
7 those without further consideration.

8 And, I will note that, in Maine, we
9 learned that FairPoint and Capgemini was aware of this
10 inability to measure over a year ago. And, that concerns
11 us that it's just coming out now. So, thank you.

12 CHAIRMAN GETZ: Thank you. Ms. Foley.

13 MS. FOLEY: Thank you. On behalf of One
14 Communications, we agree with the objection filed by
15 BayRing back in April of '09. And, we also agree with the
16 statements that BayRing made this morning, and also CRC.
17 It's our position that FairPoint does not meet the grounds
18 for a PAP waiver under the "uncontrollable events"
19 standard. The terms of the PAP do not allow a PAP waiver
20 to apply to parity metrics. And, the PAP also requires
21 that petitions for waiver be filed within 45 days of the
22 end of the month in which the uncontrollable event
23 occurred. FairPoint does not meet either one of those
24 standards.

{DT 09-059} [Prehearing conference] {07-08-09}

1 FairPoint developed its systems, and
2 that was not an uncontrollable event. FairPoint made the
3 decision not to abide by the PAP because it would be too
4 costly and inefficient to do so. However, approval of PAP
5 qualifications is required before the modifications are
6 implemented. Rather than seek to modify the PAP
7 requirements, FairPoint decided not to comply and to seek
8 retroactive approval of the changes that it implemented.
9 Therefore, FairPoint does not meet the requirements of the
10 PUC's approval order that FairPoint be subject to the
11 current PAP.

12 And, lastly, permanent revisions to the
13 PAP must be part of the collaborative process that's
14 already underway between CLECs and FairPoint to revise the
15 PAP. Thank you.

16 CHAIRMAN GETZ: Thank you. Mr. Patch.

17 MR. PATCH: Thank you, Mr. Chairman.

18 I'm Doug Patch, representing Comcast Phone of New
19 Hampshire, LLC. We appreciate the opportunity to offer
20 some brief comments this morning. In general, it is
21 Comcast's position that the existing FairPoint Performance
22 Assurance Plan in New Hampshire should remain in effect
23 until a new three-state PAP and carrier to carrier
24 guidelines covering Maine, New Hampshire and Vermont are

{DT 09-059} [Prehearing conference] {07-08-09}

1 adopted in a collaborative process that involves
2 FairPoint, the staffs of the three state commissions, and
3 wholesale customers.

4 Comcast Phone also opposes FairPoint's
5 proposal to eliminate or waive any PAP metrics for its
6 espoused reasons, that being because FairPoint designed
7 its systems without the capability to capture the
8 necessary information.

9 The Commission specifically considered
10 the treatment of the PAP in its Order Number 24,823 dated
11 February 25th, 2008. In fact, the Commission approved the
12 Settlement Agreement between the Joint Petitioners,
13 FairPoint and Verizon, and the Commission Staff, which
14 itself included the Stipulated Settlement by and among
15 FairPoint and various CLECs. The Stipulated Settlement
16 provided for only a one month suspension of PAP reporting
17 and penalties. In Paragraph 6 of the Stipulated
18 Settlement, FairPoint agreed to adhere to applicable PAP
19 and carrier to carrier C2C guidelines in the three states,
20 and be subject to potential penalties and enforcement
21 mechanisms. FairPoint also agreed, after merging closing,
22 that it would work cooperatively with CLECs and state
23 regulatory staff in good faith to develop and implement a
24 simplified, uniform three-state PAP.

{DT 09-059} [Prehearing conference] {07-08-09}

1 The Commission approved this treatment
2 of the PAP in New Hampshire in Order 24,823, the cite for
3 that is Pages 30 to 32 and Page 76. And, it is for these
4 reasons that Comcast Phone opposes FairPoint's petition as
5 a general matter. Comcast Phone, in particular, opposes
6 any temporary waiver of metrics on the timeliness of daily
7 usage feed files, the timeliness of carrier bills, or
8 metrics related to call blocking, order accuracy, or Call
9 Center speed of answer. Comcast Phone does not oppose the
10 specific substitution that FairPoint has proposed of
11 eliminating the metric reporting requirements for Verizon
12 interfaces that FairPoint does not use, those being EDI,
13 EB, and CORBA, and replacing them with exactly the same
14 requirements for the interfaces FairPoint now uses, WISOR,
15 eWPTS3 [eWPTS?], and Web/GUI. However, Comcast opposes
16 any grace period for reporting the metrics for the new
17 interfaces.

18 Except for the substitution of metrics
19 for the new FairPoint interfaces, in place of former
20 Verizon interfaces, all other changes in the PAP should
21 await a completion of the collaborative three-state
22 process. Thank you.

23 CHAIRMAN GETZ: Thank you. Mr. Katz.

24 MR. KATZ: First, simply to save time,

{DT 09-059} [Prehearing conference] {07-08-09}

1 segTEL agrees with the positions taken by the other CLECs
2 this morning. Second, segTEL would like to note that we
3 have not received a single PAP report from FairPoint since
4 the closing on April 1st, 2008. We've only received two
5 PAP credit notices, specifying only the amount of the PAP
6 credit we would receive. SegTEL's ability to participate
7 constructively and promote our interests in this docket
8 are impaired without even receiving these reports, being
9 able to evaluate the effect the proposed changes would
10 have on our circumstances.

11 SegTEL has repeatedly tried to get the
12 reports, and including engaging and accessing our account
13 team, our single point of contact, management escalation
14 routes, and finally culminating in correspondence to
15 Attorneys Morrissey and Coolbroth, as representatives of
16 FairPoint. None have responded, and we still don't have
17 these reports. If there's anything at the outset that can
18 be done that would enhance our ability to participate
19 constructively in this docket, it would be to find out
20 where our reports are and when FairPoint intends to
21 provide them to us.

22 Next, to the extent that FairPoint is
23 proposing to evaluate waivers and alterations to the PAP
24 on policy grounds, rather than legal grounds, segTEL wants

{DT 09-059} [Prehearing conference] {07-08-09}

1 to make sure that policy claims are evaluated against
2 actual CLEC experience, including testimony, as to how
3 deep the failures have been in FairPoint's compliance,
4 both in parity and in actual process.

5 In looking at the damage and the
6 problems that come about from FairPoint's inability to
7 maintain wholesale/retail parity, as evidenced by the PAP
8 credits and failures that have come about, segTEL believes
9 that prior FCC rulings and experiences underscore the
10 importance of enforcing the PAP and enforcing parity. We
11 look back to the year 2000 in the Bell Atlantic consent
12 decree, in FCC Docket EB-00-IH-0085, where a consent
13 decree was issued for Bell Atlantic's failure to provide
14 parity, which started with a mandatory \$3 million fine,
15 and escalated based on weekly inability to restore
16 wholesale/retail parity, first with \$4 million and then \$8
17 million and then \$12 million fines for failure to maintain
18 parity.

19 That is, in our minds, a sense of
20 exactly how damaging and how problematic the failure to
21 abide by the PAP is. And, that's all we have to say for
22 now. Thank you.

23 CMSR. BELOW: Could I get a
24 clarification? You said you haven't received any PAP

{DT 09-059} [Prehearing conference] {07-08-09}

1 reports since April 2008?

2 MR. KATZ: Uh-huh.

3 CMSR. BELOW: Are those PAP reports
4 specific to segTEL?

5 MR. KATZ: Yes.

6 CMSR. BELOW: And, were those required
7 under the Settlement Agreement with FairPoint --

8 MR. KATZ: Yes.

9 CMSR. BELOW: -- and the CLECs? Okay.

10 MR. KATZ: They were required by the
11 PAP.

12 CHAIRMAN GETZ: Ms. Hatfield.

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

14 As I said in my appearance, the OCA has not filed a letter
15 to formally be a part of this proceeding. But we are here
16 to monitor, in light of the fact that we see this as
17 further evidence of FairPoint's failure to stand behind
18 many of the promises that they made to the State in the
19 Settlement Agreement that they signed with several
20 parties. And, we would urge the Commission, in
21 consideration of this docket, as well as the more recent
22 docket 09-113, in which FairPoint seeks waivers for PAP
23 penalties, that the Commission take these dockets in
24 consideration, in conjunction with several other open

{DT 09-059} [Prehearing conference] {07-08-09}

1 issues with respect to FairPoint, and not allow the
2 Company to have the Commission look at these things
3 separately. We view them as part of a much larger problem
4 that requires immediate action. Thank you.

5 CHAIRMAN GETZ: Mr. Hunt.

6 MR. HUNT: Thank you. First, Staff
7 doesn't necessarily agree that the events leading to this
8 filing for a waiver of certain PAP matrix [metrics?] are
9 necessarily "extraordinary" or "uncontrollable". On the
10 other hand, it looks as though some of the requests are
11 reasonable and could legitimately be granted in terms of a
12 waiver.

13 And, basically, we look forward to
14 discussing those issues with the parties during the tech
15 session.

16 CHAIRMAN GETZ: Okay. Before I give
17 Mr. Malone an opportunity to respond, normally, we would
18 have a tech session following the prehearing conference.
19 I guess I'm concerned about how useful that will be,
20 because we've gotten, at least to my understanding of the
21 various positions, effectively a Motion to Dismiss,
22 suggestions to make certain rulings prior to proceeding,
23 that would be -- and I think that would be certainly the
24 way that one of the ways BayRing is characterizing this,

{DT 09-059} [Prehearing conference] {07-08-09}

1 and we've gotten some proposals to broaden the scope.
2 And, actually, I did want to follow up, Ms. Hatfield, with
3 you. I think there was a motion or a position by some of
4 the CLECs to broaden the scope on the PAP. Are you
5 suggesting to broaden it even further than the CLECs would
6 suggest?

7 MS. HATFIELD: Mr. Chairman, thank you.
8 I would support the CLECs' suggestion that this be part of
9 the larger conversation about -- with respect to the
10 commitments made, to go through a collaborative process to
11 develop a new PAP. I think it also might be appropriate
12 to consolidate this docket with 09-113.

13 With respect to the other issues, I'm
14 not sure what approach the Commission should take,
15 especially in light of the fact that 07-011, it's unclear
16 to us whether that's an open docket or whether the
17 Commission is simply monitoring the Company. And, perhaps
18 this does call for a new docket, to look at all of the
19 problems related to cutover, as well as FairPoint's
20 financial issues, which, as I'm sure you're aware, the OCA
21 has asked the Commission to do on prior occasions.

22 So, these issues, the CLEC issues are
23 distinct in many ways, but, in our view, they are -- they
24 do seem to be very much related to other problems that the

{DT 09-059} [Prehearing conference] {07-08-09}

1 Company is having recovering from cutover, and the extent
2 to which financial issues come into play, we think is a
3 critical issue.

4 CHAIRMAN GETZ: Okay. Well, Mr. Malone,
5 I will give you the opportunity to respond, of course, to
6 any of the statements you've heard prior, but I
7 specifically would like to hear about whether it would be
8 useful to have a technical session, you know, maybe it's
9 an agreed upon approach that comes out of it, or maybe
10 it's alternative recommendations on how we proceed. But I
11 don't want to -- I want to make sure that the technical
12 session is to some useful end, rather than basically what
13 we get out of it is FairPoint asking us to proceed as
14 proposed and the CLECs either asking that this be
15 dismissed or expanded in some way. And, I guess maybe we
16 have enough information before us to make that kind of --
17 take those issues under advisement and make some kind of
18 ruling. But let me just give you a chance to respond, and
19 if anybody else wants to weigh in on process, then I'll
20 give the opportunity. So, Mr. Malone.

21 CMSR. BELOW: Mr. Chairman, just could I
22 add another thing to respond to, which is where do you see
23 the status of the collaborative effort to do an overall
24 simplification of the PAP, you know, across the three

{DT 09-059} [Prehearing conference] {07-08-09}

1 states, in relation to your request here?

2 MR. MORRISSEY: Mr. Chairman, may I
3 address that particular issue? In a historical context,
4 as you know, the PAP in Maine, Vermont, and New Hampshire
5 was molded on the PAP established in New York and in
6 Massachusetts. Those PAPs have gone through a, you know,
7 a simplification process, have -- had been changed. In
8 these three states, for good reasons, primarily the
9 merger, that process was put on a back burner, and this is
10 the restart of that process, as was indicated was going to
11 occur during the merger talks. That process is likely to
12 be a long process. And, we're trying to do it on a
13 collaborative basis, hopefully, on a three-state basis, so
14 that we have a uniform PAP in the three states in which we
15 operate. But, realistically, that is going to be a fairly
16 long process. We would hope to reach consensus, you know,
17 with FairPoint and the CLECs, as to what would be an
18 appropriate PAP going forward, but reaching that consensus
19 will not happen in a short time.

20 In the short time, we're faced with, you
21 know, technical violations of the PAP, which were the
22 subject of this particular waiver request. We had the
23 choice of either being in violation or making a filing
24 indicating -- requesting a waiver so we would not be in

{DT 09-059} [Prehearing conference] {07-08-09}

1 violation every month, which we would be, because we
2 simply cannot report those metrics.

3 The other petition regards our request
4 for relief from the penalties for the particular months,
5 and those again are somewhat time-sensitive. To roll the
6 latter two into the overall simplification process, I
7 don't think would serve anyone's needs. It would probably
8 even be to the detriment of the CLECs in certain
9 instances. As an example, as pointed out, we are not
10 paying the credits for the relief that we sought in terms
11 of the penalties. If, in fact, that was deferred, and, in
12 fact, the penalties were paid, while that was deferred, I
13 believe the CLECs would have a problem as "how do they
14 report those credits?" Since they are still subject to an
15 ongoing investigation of a possible waiver.

16 And, for those reasons, we would ask
17 that the first two, the two petitions, the waivers before
18 the Commission be decided in a timely fashion, and not be
19 rolled into the general PAP simplification process, which
20 we believe will take a long time.

21 CHAIRMAN GETZ: Can you explain a little
22 bit further on the problem? Did I take it that you're
23 saying that there's some problem that the CLECs would have
24 by getting the money?

{DT 09-059} [Prehearing conference] {07-08-09}

1 MR. MORRISSEY: Well, no, not getting
2 the money. Not getting the money, although it might be
3 problematic theoretically. But let's suppose that you
4 ordered us, thinking hypothetically here, to give the PAP
5 credits, you know, for those months that we've asked the
6 waiver. And, yet, there is, because the waiver request is
7 part of an ongoing proceeding, there's an open question as
8 to whether those credits will, in fact, inure to the
9 benefit of the CLECs. In other words, you might rule, if
10 we were rolled into a long proceeding that goes for a
11 year, a year from now, that, in fact, FairPoint's waiver
12 was sound and is granted, then there are credits on the
13 books which will have to be then reversed. So, there will
14 be an uncertainty as to how those amounts should be
15 accounted for by the CLECs.

16 CHAIRMAN GETZ: Any other issues that
17 you wanted to respond to or procedural issues?

18 MR. MALONE: Just one, Mr. Chairman,
19 regarding the overall urgency of this proceeding. I would
20 have to disagree with Mr. Shoer in his metaphor of
21 "dangling over the cliff". Based on the information that
22 we have, up until the time of the cutover, the PAP penalty
23 payments or billing credits were a nominal amount,
24 measured in maybe tens of thousands of dollars a month at

1 most among all CLECs. We shouldn't get the impression
2 that this is a stream of payments that they have come to
3 rely on that's going to have, you know, major effects on
4 their cash flow in the short-term.

5 And, you know, I think we also want to
6 emphasize that FairPoint is not Verizon. And, it's not --
7 FairPoint doesn't believe it's in their interest to
8 discriminate against the CLECs or to undermine their
9 ability to compete. It's a different approach than
10 Verizon had. And, so, you know, whether we're able to
11 technically meet the metrics of the PAP, it's still the
12 Company's intention to offer the best service that they
13 can to their wholesale customers. Thank you.

14 CHAIRMAN GETZ: Okay. Let me give an
15 opportunity solely on process issues, and the -- I guess,
16 certainly there's no harm, I would suspect, in having a
17 technical session to see if there's some agreement or some
18 consensus recommendation on how to proceed. But does
19 anybody want to address how the technical session might go
20 and what -- any other procedural issues on where we head?
21 So, Mr. Shoer.

22 MR. SHOER: Well, just again, I think,
23 not to belabor the point, but I think it's difficult to
24 engage in that type of a process, without the Commission

{DT 09-059} [Prehearing conference] {07-08-09}

1 taking a step to set the ground rules, to set the
2 framework.

3 And, with all due respect, I think
4 Mr. Morrissey -- what Mr. Morrissey is characterizing is
5 true, with respect to the long process that it's going to
6 take to get to a final simplified metric plan. But, in
7 the meantime, this notion that they should essentially
8 just withhold and hold all of the bill credits, which, by
9 the way, let's be blunt about it, the bill credits that
10 are supposed to be provided are in reflection of poor
11 service quality. So, to ask that for you to hold those
12 bill credits until what this long process takes place,
13 essentially punishes the CLECs twice. It says to CLECs,
14 "you're going to have poor service quality". Because,
15 contrary to what Mr. Malone said, is that we're dealing
16 with the FairPoint systems that are providing poor quality
17 of service today. And, the penalty payments may have been
18 lower a year ago, two years ago, when Verizon was
19 providing service, I can tell you for a fact, at least as
20 far as my client is concerned, BayRing, those penalty
21 payments have gone up considerably, significantly, as a
22 reflection of poor service quality.

23 So, it's just -- it's a bizarre concept
24 in my mind to suggest that they should be rewarded for

{DT 09-059} [Prehearing conference] {07-08-09}

1 providing poor service quality, and that's what
2 Mr. Morrissey is suggesting, let them hold that cash back.
3 We think you have plenty of information at your disposal
4 right now, you, the Commissioners, with all due respect,
5 to order them, as a framework for us going forward, to
6 make those -- to continue to provide the bill credits that
7 are due the CLECs under the PAP. There's no authority to
8 allow FairPoint to independently withhold those. They
9 have no authority to do that.

10 So, with that framework in place, we can
11 talk about the metrics. But we need that framework from
12 you.

13 CHAIRMAN GETZ: All right. Thank you.
14 Mr. Katz.

15 MR. KATZ: The PAP credits, in 2007,
16 going into the transition service period in 2008, tended
17 to be low, because Verizon was complying with the law and
18 they had systems that worked. So, it's really no surprise
19 that the PAP penalties have ballooned now that the systems
20 don't work. I agree with Attorney Shoer, but perhaps a
21 solution to dealing with what happens if credits would
22 have to be disgorged by one party or the other, would be
23 for the Commission to set up an escrow account, and
24 require that the full amount of the PAP determination be

{DT 09-059} [Prehearing conference] {07-08-09}

1 paid into an escrow held at the Commission for the
2 pendency of this docket. Because, frankly, I think that,
3 at least at segTEL, and probably among some other CLECs,
4 there's a concern that, if a million to \$2 million per
5 month of PAP penalties were to accrue for perhaps the five
6 to ten months that we might need to go through this
7 docket, at the end of day that money just might not be in
8 FairPoint's possession. And, placing it into escrow for
9 the benefit of however this docket is determined, would
10 probably be a reasonably equitable solution to detail with
11 the issues brought about by Attorney Morrissey.

12 CHAIRMAN GETZ: Thank you. Anyone else
13 on process? Ms. Bragdon.

14 MS. BRAGDON: Just on the process issue,
15 I think it would be worth having the technical session to
16 talk maybe of some specifics, but also to talk about how
17 the -- the last waiver that was filed. I know that's not
18 the docket we're here on today, but it's all interwoven.
19 And, maybe there would be some discussion during the
20 technical conference about how to approach that case.
21 And, in Maine, we have done discovery on the request and
22 some procedural issues. So, that might be a benefit.

23 CHAIRMAN GETZ: Thank you. Anyone else?

24 MR. HUNT: Staff does, Mr. Chairman,

{DT 09-059} [Prehearing conference] {07-08-09}

1 believe that a technical session would help to at least
2 narrow some issues in this docket, and potentially allow
3 for a discussion of consolidation of this docket and the
4 other related docket.

5 CHAIRMAN GETZ: All right. Mr. Malone,
6 last opportunity.

7 MR. MALONE: Just to say, Mr. Chairman,
8 that, you know, that under the theme of many of the
9 comments that you've received from the CLECs have to do
10 with performance problems. And, FairPoint fully
11 acknowledges that there have been performance problems.
12 Paying out bill credits is not going to fix those
13 problems. What will have a better chance of fixing those
14 problems is if FairPoint is able to take that cash and
15 plow it back into fixing the problems that everyone knows
16 that they have. And, we don't think that escrow is a
17 particularly good solution to this either, because, as we
18 mentioned in our petition, and everyone knows, FairPoint
19 does have cash flow issues, and putting it into escrow
20 does not help those cash flow issues either.

21 CHAIRMAN GETZ: All right. Thank you.
22 Then, it does sound like there could be some benefit from
23 a tech session and a discussion of either narrowing or
24 defining issues more clearly. So, I guess then we will

{DT 09-059} [Prehearing conference] {07-08-09}

1 close this prehearing conference, wait for a
2 recommendation from the tech session, and take the matter
3 under advisement. Thank you, everyone.

4 (Whereupon the prehearing conference
5 ended at 10:53 a.m.)

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{DT 09-059} [Prehearing conference] {07-08-09}