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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

December 14, 2011 - 1:39 p.m.  
Concord, New Hampshire

NHPUC DEC22'11 AM 9:52

RE: DT 11-248  
FAIRPOINT COMMUNICATIONS, INC.:  
Municipal Property Tax Surcharge.  
*(Prehearing conference and Hearing  
on Temporary Rates)*

PRESENT: Commissioner Amy L. Ignatius, Presiding  
Commissioner Clifton C. Below

Sandy Deno, Clerk

APPEARANCES: Reptg. FairPoint Communications, Inc.:  
Harry N. Malone, III, Esq. (Devine Millimet)  
Daniel E. Will, Esq. (Devine Millimet)

Reptg. New Hampshire Municipal Association:  
Cordell A. Johnston, Esq.  
Michael Williams, Esq.

Reptg. segTEL:  
Carolyn Cole, Esq.  
Kath Mullholand

Reptg. BayRing Communications:  
Darren Winslow

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

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

George E. Sansoucy, *pro se*

**Reptg. Residential Ratepayers:**

Meredith Hatfield, Esq., Consumer Advocate  
Office of Consumer Advocate

**Reptg. PUC Staff:**

Matthew J. Fossum, Esq.  
Kate Bailey, Director/Telecom Division  
Michael Ladam, Telecom Division  
David Goyette, Telecom Division

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## P R O C E E D I N G

1  
2 CMSR. IGNATIUS: Good afternoon. I'm  
3 going to open the hearing in DT 11-248, which is a  
4 municipal property tax surcharge matter brought by  
5 FairPoint Communications, Inc. On November 15th, 2011,  
6 Northern New England Telephone Operations, LLC, filed a  
7 tariff change seeking to implement a surcharge to cover  
8 all or a portion of property taxes that they estimate will  
9 be assessed by municipalities during the April 1, 2011  
10 through March 31, 2012 tax year. NNETO's filing indicates  
11 that it has received invoices from 44 municipalities, and  
12 an additional 45 have indicated that they will likely soon  
13 bill NNETO.

14 The Commission concluded that the tariff  
15 was more properly addressed as a filing subject to RSA  
16 378:6, I(a), rather than 378:6, IV, as the Company had  
17 proposed.

18 And, the Commission set a hearing for  
19 today for the purpose of determining whether a charge,  
20 either a surcharge or some other charge, be implemented on  
21 a temporary basis pending the Commission's investigation,  
22 and also to consider requests for intervention and take  
23 statements of initial position.

24 So, with that, I think what's best is we

1 take appearances, and then I'll lay out what I think the  
2 best course of the afternoon is. You may have a different  
3 schedule, so we can see what the best way to get through  
4 the multiple things that are at issue here today.

5 So, let's start with appearances please.

6 MR. MALONE: Thank you, Madam  
7 Commissioner. I'm Harry Malone, with the law firm of  
8 Devine Millimet, representing Northern New England  
9 Telephone Operations, LLC. Joining me today are my  
10 partner, Dan Will, and Mr. Mike Reed, who is the State  
11 President for FairPoint for Maine, who is sitting in for  
12 Pat McHugh, the New Hampshire State President, who is out  
13 of the country today. And, next to him is Mr. Kevin  
14 O'Quinn, who is the Director of Regulatory Reporting for  
15 Northern New England Telephone Operations, LLC.

16 CMSR. IGNATIUS: Welcome. Thank you.

17 MR. JOHNSTON: Good afternoon. I'm  
18 Cordell Johnston, representing the New Hampshire Municipal  
19 Association. With me, down at the end of the table, is my  
20 colleague, Mike Williams.

21 CMSR. IGNATIUS: Good afternoon.

22 MR. SANSOUCY: Good afternoon,  
23 Commissioner Ignatius. I'm George Sansoucy. I'm  
24 representing the interests of 35 communities in the State

1 of New Hampshire. With me is Andrea Curtis of my office,  
2 who will be assisting me in this endeavor.

3 CMSR. IGNATIUS: Good afternoon. Thank  
4 you.

5 MS. COLE: Good afternoon,  
6 Commissioners. I'm Carolyn Cole, General Counsel of  
7 segTEL. And, with me is Kath Mullholand.

8 CMSR. IGNATIUS: Good afternoon.

9 MR. WINSLOW: Good afternoon. My name  
10 is Darren Winslow. I'm with BayRing Communications.

11 CMSR. IGNATIUS: Good afternoon.

12 MS. HATFIELD: Good afternoon,  
13 Commissioners. Meredith Hatfield, for the Office of  
14 Consumer Advocate, on behalf of residential ratepayers.  
15 And, I would just note for the record that the OCA has not  
16 filed a Letter of Participation yet. At this point, we're  
17 monitoring the case to see if we will get involved.

18 CMSR. IGNATIUS: All right.

19 MS. HATFIELD: Thank you.

20 CMSR. IGNATIUS: Thank you.

21 MR. FOSSUM: And, good afternoon.

22 Matthew Fossum, representing the Staff of the New  
23 Hampshire Public Utilities Commission. And, with me today  
24 are Kate Bailey, Michael Ladam, and David Goyette, from

1 Commission Staff.

2 CMSR. IGNATIUS: Thank you. I can tell  
3 you, my thought had been that we first consider  
4 interventions, then take positions of the parties, with  
5 the exception of temporary rate issues and hold those off,  
6 and then move to a temporary rate hearing. But are there  
7 other matters or a different schedule that you had been  
8 thinking would be appropriate? Ms. Hatfield.

9 MS. HATFIELD: Yes. Thank you. At some  
10 point the OCA would like to give our position or some  
11 thoughts on the Motion for Confidential Treatment that was  
12 filed by the Company today.

13 CMSR. IGNATIUS: Well, thank you,  
14 because I have not seen a Motion for Confidential  
15 Treatment. So, it sounds like we have something that's in  
16 a box somewhere that hasn't made it to my file. If we can  
17 be sure, Mr. Malone, if you have any extras --

18 MR. MALONE: We have copies and we can  
19 provide them.

20 CMSR. IGNATIUS: And, we maybe can take  
21 a break to review those -- excuse me, to review the  
22 motion.

23 Any other preliminary matters or  
24 requested process that you were thinking otherwise?

1 (No verbal response)

2 CMSR. IGNATIUS: If not, why don't we  
3 then consider interventions, because we are going to move  
4 from this into a temporary rate hearing. We want to be  
5 sure we hear any intervention issues. What we have on  
6 file thus far are a Request to Intervene filed by  
7 Mr. Sansoucy, segTEL, BayRing Communications, and the  
8 Municipal Association, all of whom are here today. Are  
9 there any other entity seeking intervention?

10 (No verbal response)

11 CMSR. IGNATIUS: It appears not. We  
12 have no objections to interventions that have been filed.  
13 Are there any objections anyone has to make orally this  
14 afternoon?

15 MR. MALONE: Madam Commissioner, we did  
16 file written objections late this morning, early this  
17 afternoon, to the interventions of Mr. Sansoucy and NHMA.  
18 Copies were served by electronic mail. I'd be happy to  
19 provide you with hard copies of those interventions -- or,  
20 objections right now.

21 CMSR. IGNATIUS: We will need those.  
22 Thank you.

23 (Atty. Malone distributing documents.)

24 CMSR. IGNATIUS: And, have the parties

1 received these two objections?

2 MR. SANSOUCY: Yes.

3 MR. JOHNSTON: Yes, Madam Commissioner.

4 CMSR. IGNATIUS: Thank you. Mr. Malone,  
5 because we haven't had a chance yet to review them,  
6 perhaps you can orally summarize the position right now.

7 MR. MALONE: Yes. I'll -- thank you.

8 I'll start with the NHMA petition. First of all, RSA  
9 541-A:32 provides that "The presiding officer shall grant  
10 one or more petitions for intervention if:", among other  
11 things, "the petition states facts demonstrating that the  
12 petitioner's rights, duties, privileges, immunities or  
13 other substantial interests may be affected by the  
14 proceeding", or, if a "presiding officer determines that  
15 the interests of justice and the orderly and prompt  
16 conduct of the proceedings would not be impaired".

17 It is our reading of the NHMA petition  
18 that they have three principal grounds for intervention.  
19 The first is that FairPoint's surcharge "is an effort to  
20 blame municipalities for an increase in customer rates,  
21 and to build legislative support for reinstating the  
22 property tax exemption." Second, that NHMA requires the  
23 aid of the Commission to command FairPoint "to disclose  
24 information [regarding its]... poles and conduits". And,

1 third, that because NHMA members "are rate-paying  
2 customers" who will be affected by the surcharge.

3 And, we submit that, based on the  
4 standard for intervention, they have not met that standard  
5 on any of those grounds. The first is that, regarding the  
6 tax increase, that is a fact. The bills have been issued.  
7 It's a fact that speaks for itself. And, whatever  
8 position the parties may have on that particular issue,  
9 this is not the forum to either attack or defend those tax  
10 bills. You know, this is -- this proceeding is not an  
11 exercise in public relations, and the Commission should  
12 not be committing all the parties' time and resources in  
13 that endeavor. It's a political question. It's outside  
14 the purview of the Commission, and it should be taken up  
15 in other forums.

16 Also, you know, the second ground, to  
17 enlist the Commission's help in extracting information  
18 from FairPoint; once again, that's not the Commission's  
19 role. You know, NHMA alleges that its members have been  
20 hindered in their ability to assess their taxes, but  
21 that's belied by the fact that FairPoint has received over  
22 100 tax bills already, and has received information that  
23 it will be getting more.

24 If there are, you know, there are other

1 forums, and, for instance, the Board of Tax and Land  
2 Appeals, where this can be taken up. Once again, it's not  
3 the Commission's role to be enforcing tax law.

4 Finally, the intervention as ratepayers  
5 does not really serve the public interest. Its members  
6 will be affected no more or less than any other ratepayer  
7 in the country -- or, in the state. And, when you figure  
8 that there's a 25 line cap, that means that, assuming each  
9 municipality has, you know, one billing number, the impact  
10 will be \$24.75 a month, which we do not feel is  
11 significant enough under the standard to merit  
12 intervention.

13 CMSR. IGNATIUS: Thank you.

14 MR. MALONE: Thank you.

15 CMSR. IGNATIUS: I'm going to give the  
16 Municipal Association the last opportunity to respond as  
17 the one seeking intervention. So, are there any other  
18 parties or Staff that want to respond to the Request to  
19 Intervene or the objection?

20 MR. FOSSUM: Yes. Staff does, actually.  
21 We don't -- Staff doesn't object to NHMA's Petition to  
22 Intervene, but does want some clarification, and hopefully  
23 NHMA can provide that in whatever response that it  
24 ultimately gives.

1                   According to its petition, it's a  
2                   "non-profit member organization comprising 233 of the 234  
3                   cities and towns in New Hampshire". But the remainder of  
4                   the petition doesn't make clear whether NHMA has requested  
5                   intervention in this case on behalf of those 233  
6                   municipalities or in its own right. And, I believe that  
7                   there is a meaningful difference between advocating on  
8                   behalf of those municipalities and its own interests.

9                   Also, to the extent that the Municipal  
10                  Association is intervening in this case on behalf of the  
11                  member municipalities, I think it's relevant to know to  
12                  what extent it's representing all of those municipalities  
13                  or whether it is representing only some subset of them.  
14                  So that we would know whether any of those  
15                  non-participating municipalities may have other interests  
16                  that may be expressed later.

17                  CMSR. IGNATIUS: Thank you. Ms.  
18                  Hatfield.

19                  MS. HATFIELD: Thank you. The OCA also  
20                  has no objections to the Motions for Intervention. And,  
21                  in addition to what Attorney Fossum just said, it also  
22                  might be helpful to know if there is overlap between who  
23                  the NHMA represents and who Mr. Sansoucy represents, which  
24                  I think there probably would be, looking at the list of

1 municipalities that Mr. Sansoucy is representing.

2 But, generally, it does seem as though  
3 there will be factual disputes in this case regarding the  
4 amount of the charge. And, it does seem as though having  
5 these parties participating could be helpful to the  
6 Commission in developing the record. So, that's one of  
7 the reasons we think that we don't object to having them  
8 participate.

9 CMSR. IGNATIUS: Thank you.

10 Mr. Johnston.

11 MR. JOHNSTON: Yes. Thank you, Madam  
12 Chair. Well, the basis for our Petition to Intervene is  
13 obviously stated in the petition. I guess, first to  
14 answer Attorney Fossum's question, it is our intent that  
15 we are advocating on behalf of our municipal members, not  
16 solely on our own behalf.

17 And, our primary basis for intervening  
18 is that we believe that the -- that treating the property  
19 tax expense as a -- trying to treat it as a so-called  
20 "Municipal Property Tax Surcharge" is a  
21 mischaracterization. I've said, and Attorney Malone  
22 correctly said, that we characterized it as "an attempt to  
23 blame municipalities" for this expense. I believe it is  
24 an attempt to blame municipalities. But, in any event,

1 it's a mischaracterization. It is something that is  
2 properly included in the -- in FairPoint's rates, not as a  
3 separate surcharge. And, I think -- I think that it's the  
4 municipalities who have an interest in bringing that  
5 mischaracterization to light. A consumer probably doesn't  
6 care a whole lot. If they're going to be paying this  
7 expense, they probably don't care whether it's reflected  
8 in the rate or as a separate surcharge. But, when it  
9 shows up as a "Municipal Property Tax Surcharge", I, as a  
10 telephone consumer, look at that and think "oh, I have to  
11 pay more, because the municipality is imposing some kind  
12 of what looks like a special tax." And, I think that's  
13 inappropriate. There are all kinds of expenses that a  
14 phone company might have that it might want to list  
15 separately or, if they can do this, why wouldn't they list  
16 other expenses as a surcharge. If they have, and I  
17 believe they're unionized, if they enter into a new  
18 collective bargaining agreement with their employees, I  
19 don't think they would be entitled to impose an "Employee  
20 Salary Surcharge" as a separate line on their phone bill.  
21 And, if they tried to do that, the AFL-CIO, or whatever  
22 union it is, would be in here protesting.

23 So, that is the essential basis for our  
24 intervention. I think that the municipalities have -- are

1 the ones who have an interest in ensuring that this is  
2 done correctly.

3 Attorney Malone said "this is not an  
4 exercise in public relations." I believe that it's  
5 FairPoint that has made it an exercise in public  
6 relations. I do believe this is an attempt, this is  
7 something that will be used to go to the Legislature to  
8 try to reinstate the exemption for the poles and conduits  
9 that existed for a number of years. So, I think it's  
10 already become an exercise in public relations. And,  
11 unfortunately, we have to be here to defend against that.

12 CMSR. IGNATIUS: Mr. Johnston, do you  
13 have a response to the question about overlap between your  
14 representation and Mr. Sansoucy's representation?

15 MR. JOHNSTON: Well, certainly,  
16 Mr. Sansoucy's clients, and I guess I'd let him speak to  
17 this in part, but his clients are all members of the  
18 Municipal Association. So, certainly, there is an overlap  
19 in the -- in who those entities are. I'm not sure, I  
20 think we may have different perspectives. But, yes, there  
21 is an overlap between the municipalities.

22 (Commissioner Ignatius and Commissioner  
23 Below conferring.)

24 CMSR. IGNATIUS: All right. Why don't

1 we move to the intervention request by Mr. Sansoucy and  
2 the Company's opposition to that, and FairPoint's  
3 opposition to that, and we'll do a similar go-around.

4 MR. MALONE: Okay. Thank you, Madam  
5 Commissioner. Once again, the standard for intervention  
6 that applies to Mr. Sansoucy would be the same that we  
7 articulated earlier. It's our understanding of his  
8 petition that he really has one ground for his  
9 intervention, and that's that "it is likely that a number  
10 of the tax bills related to the proceeding were based on  
11 valuations prepared by Sansoucy for his client towns and  
12 cities in New Hampshire." And, we interpret that as  
13 essentially saying that "he wants to intervene to be a  
14 witness to his own work."

15 If Mr. Sansoucy is relevant to this  
16 proceeding at all it would be perhaps to be called as a  
17 witness by his clients. And, there's some doubt as to  
18 whether that would be relevant, because the facts of his  
19 assessments and the fact of the tax bills is undisputed.  
20 It is what it is, and it's outside the purview of this  
21 Commission.

22 For that reason, we believe that his  
23 participation would not be relevant as a party. And, we  
24 ask that you deny his Petition for Intervention.

1 CMSR. IGNATIUS: Responses from any of  
2 the parties before we get to Mr. Sansoucy?

3 MR. FOSSUM: Yes. I'm sorry. Staff --  
4 excuse me. I apologize.

5 CMSR. IGNATIUS: Mr. Fossum.

6 MR. FOSSUM: Staff does have one --  
7 well, one comment. I guess, two now, in light of the  
8 information that Mr. Sansoucy's municipal clients  
9 essentially and almost entirely overlap with the Municipal  
10 Association. I think that creates some question about  
11 whether they should be, "they" being Mr. Sansoucy and the  
12 Municipal Association, should be granted independent  
13 intervenor status, independent one from the other.

14 On the other ground as articulated by  
15 FairPoint, without taking a position on Mr. Sansoucy's  
16 request, to the extent that he would be intervening to  
17 represent his interests as the one who had valued  
18 FairPoint's property, we, at least preliminary, agree that  
19 the valuations themselves and the tax bills that resulted  
20 from them are not really the question that will be  
21 presented to this Commission.

22 We point out that FairPoint, in its  
23 initial filing, did claim that some of the valuations were  
24 inaccurate. Staff would be interested in understanding

1        what FairPoint intends to do about those alleged  
2        inaccuracies. But, for the moment, the charge that  
3        FairPoint has requested to impose is not dependent upon  
4        those actual valuations or the tax bills themselves.

5                                And, we agree with FairPoint that, to  
6        the extent there may be a question about the tax bills  
7        themselves, this isn't the appropriate forum for that  
8        dispute.

9                                CMSR. IGNATIUS: Thank you.

10       Mr. Sansoucy.

11                               MR. SANSOUCY: Thank you, Commissioner  
12       Ignatius. First and foremost, my Petition to Intervene  
13       simply states that "we have an interest in intervening  
14       because I represent 35 communities", which we did value  
15       FairPoint this year. In addition to, that is just to  
16       FairPoint, we did value TDS and Granite State and some of  
17       the other telephone companies, under this new piece of  
18       valuation, based on the exemption being lifted that you're  
19       being asked to put into a tariff.

20                               This is nothing new. Prior to the  
21       exemption, we used to value Verizon. And, Verizon carried  
22       the tax expense in its expenses, and appropriately netted  
23       it against other costs, and they did not tariff it.

24                               Secondly, FairPoint has mischaracterized

1 my intervention and my interest. I think you know that I  
2 know what my position is here, and this is not a forum to  
3 dispute the value, to dispute the tax bill, or the  
4 assessment or the proper method of valuation. I am fully  
5 aware of the fact that, outside of eminent domain, you are  
6 not a *ad valorem* valuation court. And, that is not my  
7 interest. My interest is to protect the communities that  
8 we have valued and their interest in that the -- a sur-  
9 charge on the bill is exactly as Mr. Johnson [Johnston?]  
10 has stated; it's inflammatory. It leads -- it misleads  
11 the public to think that the individual community is  
12 leveling a singular tax on their telephone bill. Also, it  
13 does not properly distribute a reasonable tax expense,  
14 whatever that might be, in a normal accrual fashion of  
15 bookkeeping, taxes paid, taxes accrue, any taxes abated  
16 are netted against taxes paid, across all of the various  
17 users of the telephone property that would then become  
18 part of the rate structure that FairPoint would use to  
19 charge the long distance carriers or anyone else using  
20 their property. The request is to level a single tariff  
21 on all of the landline users, not spread it out amongst  
22 all of the other CLECs, ILECs, and long distance users  
23 that would be built into the tariff structure -- not  
24 tariff, I'm sorry, the rate structure of FairPoint. So,

1 my interest is that a singular tariff is not correct.

2 Thirdly, they have indicated that it's  
3 "based on the exemption". It is not. Two things  
4 converged in one year here. First is, the exemption was  
5 lifted only on poles and conduits, and the valuation  
6 proceeded. Less than half the towns in the state issued a  
7 value and a tax bill, and that is because the Department  
8 of Revenue Administration --

9 CMSR. IGNATIUS: Mr. Sansoucy?

10 MR. SANSOUCY: Yes.

11 CMSR. IGNATIUS: Tell me how this is  
12 relevant to your Request to Intervene?

13 MR. SANSOUCY: I believe that I can be  
14 of significant assistance to this Staff -- Commission in  
15 these proceedings with questions related to what the towns  
16 are and are not going to do, who is doing what, and the  
17 fact that there are two completely separate issues. One  
18 is, the Supreme Court issue of the use of a public  
19 right-of-way, which is an interest in real estate, which  
20 has nothing to do with the exemption being lifted. That's  
21 an ordinary tax. Public Service pays taxes on its real  
22 estate; it's embedded in expenses, it's not a tariff. The  
23 gas company pays taxes; it's in their expenses. The poles  
24 and wires portion is a different issue, different

1 valuation than the use of the public right-of-way. That,  
2 if it's reinstated as an exemption, is not going to go  
3 away. We're not here to argue the value, but so much as  
4 how it's handled in the rate structure.

5 So, I think I can be of assistance.  
6 I've done nearly half the bills that they have. I also  
7 know how it's being done, and what the State is not doing  
8 at the DRA with regard to the other half of the  
9 communities, and how much likely tax will be imposed over  
10 the next year to two.

11 CMSR. IGNATIUS: Thank you.

12 (Commissioner Ignatius and Commissioner  
13 Below conferring.)

14 CMSR. IGNATIUS: We're going to take a  
15 moments to discuss the intervention issues and be back  
16 with you. What do we do? Do we suspend?

17 CMSR. BELOW: Recess.

18 CMSR. IGNATIUS: "Recess", that was the  
19 word. Thank you.

20 (Whereupon a recess was taken at 2:05  
21 p.m. and the hearing reconvened at 2:11  
22 p.m.)

23 CMSR. IGNATIUS: We're back on the  
24 record. Thank you. We have considered the Requests for

1 Intervention. Two of the requests were not met with  
2 objection, from segTEL and from BayRing Communications,  
3 and we find that both of those are granted intervention  
4 for this proceeding.

5 We have considered the two that were  
6 objected to by the Company, by FairPoint, Mr. Sansoucy and  
7 the New Hampshire Municipal Association. We have  
8 concluded that the New Hampshire Municipal Association is  
9 appropriately granted intervention, representing nearly  
10 all of the towns, municipalities, the municipalities in  
11 the state, and significant ratepayers as well throughout  
12 the state. We, because Mr. Sansoucy's clients he  
13 describes as being "members of the Association", and seems  
14 to be a subset of the Association, we do not find a basis  
15 for intervention on behalf of Mr. Sansoucy. There is a  
16 real question as to which particular municipality that  
17 overlaps between the two, having multiple representation,  
18 does not provide us greater ability to reach  
19 determinations in this case, which is one of the  
20 standards, that it would be of assistance to our  
21 proceedings. And, we don't find a basis in Mr. Sansoucy's  
22 Request to Intervene under the statute. So, we will deny  
23 that Request to Intervene.

24 You're -- Mr. Sansoucy, you're always

1 welcome, as any member of the public to make a public  
2 comment, a statement on the record, as part of the  
3 temporary rate proceeding that follows after this, or as  
4 part of the permanent proceeding down the road. But we  
5 will not grant you intervention status.

6 With that, I think we then look to  
7 positions of the parties, to the extent they feel they  
8 need to make them. If there are issues that only relate  
9 to temporary rate issues, then I think we can withhold  
10 those and build those into the formal temporary rate  
11 hearing itself this afternoon. But, if there are other  
12 issues as to the overall filing made by FairPoint, other  
13 than temporary rates, I ask people to make those  
14 statements right now. And, at the conclusion of those  
15 positions of the parties, offer Mr. Sansoucy an  
16 opportunity to make a public comment on that also.

17 So, Mr. Malone, I'll let you go first as  
18 the moving party.

19 MR. MALONE: Thank you, Madam  
20 Commissioner. I just have a few sentences, actually. As  
21 you may remember in the suspension order of November 28th,  
22 the Commission disagreed with FairPoint's characterization  
23 of this tariff filing as a "surcharge", and determined  
24 that it was a general increase in rates. And, we stated

1 our position in our preliminary statement. And, we would  
2 just like to reiterate that we respectfully disagree with  
3 that position. But we also understand that it's a complex  
4 issue, and it's not amenable to immediate determination.  
5 So, because time is of the essence, we will reserve our  
6 rights for further argument on that subject, but we are  
7 happy to move right on to the temporary rate proceeding.

8 CMSR. IGNATIUS: Thank you.

9 Mr. Johnson. I'm sorry.

10 CMSR. BELOW: Before you go ahead.

11 What, if you're, in part, concerned that our determination  
12 that it was a filing under RSA 378:6, I(a) versus IV, IV  
13 says "any tariff for services filed for Commission  
14 approval". It doesn't talk about "surcharges", it talks  
15 about a "tariff for services" filed by a telephone  
16 utility. What service is being provided with this  
17 proposed tariff filing?

18 MR. MALONE: That's a good question,  
19 Mr. Commissioner. We selected that one because we felt  
20 that it was more applicable to this type of filing than  
21 the -- than 378:1, which deals with an overall general  
22 rate increase. We felt that we were simply increasing the  
23 rate of an existing service, and that that was probably  
24 better with a surcharge than with a rate. I mean, we were

1 just adding on that charge, and it was better as a  
2 surcharge than as part of a general rate case proceeding.

3 CMSR. BELOW: Okay.

4 CMSR. IGNATIUS: Mr. Johnston.

5 MR. JOHNSTON: Thank you. And, I think  
6 our position is pretty simple. That, again, as mentioned,  
7 this is not appropriate to be treated as a surcharge, it  
8 should be treated as a general increase in rates. And, I  
9 am, by no means, an expert on public utility rates. But,  
10 to my knowledge, there is no other utility in the state  
11 that recovers its property tax expense in this manner.  
12 So, it ought to be treated as a general increase in rates.  
13 And, I think also the Commission should explore whether  
14 there are other means of recovering the expense  
15 specifically through attachment fees.

16 CMSR. IGNATIUS: All right. Ms. Cole.

17 MS. COLE: Thank you, Madam  
18 Commissioner. SegTEL provides fiber based services  
19 throughout New Hampshire. In over 99 percent of its  
20 network builds, segTEL rents space in the poles, conduits  
21 and rights-of-way owned by incumbent utilities, including  
22 FairPoint. These incumbent utilities maintain the rights  
23 to occupy the public right-of-way via licenses issued by  
24 municipal and state authorities. Competitive access to

1 the rights acquired by the incumbents is mandated by  
2 federal law. SegTEL's rental occupancy explicitly comes  
3 without the conveyance of property rates from the  
4 incumbent facility owners and is in the form of a  
5 temporary and revocable facility rental. SegTEL's rental  
6 costs that it remits to facility owners in the form of  
7 annual and semi-annual fees are a complex percentage of  
8 the costs of owning and maintaining the utility facilities  
9 within the rights-of-way and include, among other things,  
10 the cost of property tax to municipalities.

11 SegTEL generally supports FairPoint's  
12 proposal in this docket, but has several concerns and  
13 primary interests, which are: (a) Ensuring that  
14 FairPoint, as an incumbent utility, does not double  
15 recover its costs of maintaining facilities in the  
16 right-of-way. Specifically, to the extent that property  
17 taxes in the future are being recovered via a tariffed  
18 surcharge on retail end users, the cost of pole rental  
19 should be correspondingly decreased to account for the  
20 removal of property tax cost inputs.

21 (b) Ensuring that municipalities do not  
22 receive double recovery in their taxation of the  
23 right-of-way from the taxation CLEC -- of taxation of CLEC  
24 facilities that are not directly licensed by the

1 municipality, but rather are already taxed by virtue of  
2 the property tax levied upon the incumbent facility owner.

3 (c) Creating a proper and enforceable  
4 vehicle for cost recovery from end users in the instances  
5 where segTEL directly acquires and maintains access to the  
6 public right-of-way and places its own poles and/or  
7 conduits systems instead of renting third party  
8 facilities.

9 (d) Evaluating whether it is  
10 appropriate and/or equitable for ratepayers in low or  
11 non-taxing municipalities to subsidize high taxing  
12 municipalities and determining whether it is more  
13 appropriate to the property tax surcharge to be applied on  
14 a municipality by municipality basis.

15 (e) Determining any impact on the  
16 wholesale tariff and regulatory scheme that these changes  
17 may create including, but not limited to, increased costs  
18 of resale lines.

19 And, (f), determining whether the  
20 addition of a surcharge of this nature is actually a form  
21 of single issue ratemaking and whether such activity is  
22 appropriate in the absence of a complete rate case.

23 Finally, I'm not sure if it is  
24 appropriate at this point to interject our objection, to

1 the extent that you have not read the objection for -- to  
2 FairPoint's Motion for Confidential Treatment. But, to  
3 the extent that I can say that segTEL objects to the  
4 FairPoint Motion for Confidential Treatment entered today,  
5 to the extent that it seeks to remove from the public  
6 record information that is neither commercially sensitive  
7 nor restricted from public access. The descriptions of  
8 FairPoint's filings appear to show nothing more than a  
9 compilation table of real estate assessments and tax  
10 charges. Municipal real estate assessments, as well as  
11 municipal tax rates, are matters of public record, and the  
12 single act of compiling this data into tabular format for  
13 this docket should not trigger confidentiality concerns.  
14 Since this information is readily available to the public  
15 on demand already, segTEL can not ascertain any  
16 substantial harm from its public disclosure, and the  
17 proceedings in this case would benefit from broad  
18 disclosure of the information described within this  
19 motion. Thank you.

20 CMSR. IGNATIUS: Thank you. And, thank  
21 you for reminding us of the confidentiality issues.  
22 Perhaps, before the commencement of the temporary rate  
23 hearing itself, we'll take any arguments that are  
24 presented and take a look at the document itself, so that

1 we, if we're able to, give any clarity on that issue as  
2 well. And, if there are others who want to speak to that  
3 who haven't yet, we'll give you a chance as we go around.

4 Mr. Winslow?

5 MR. WINSLOW: We have no comments at  
6 this time.

7 CMSR. IGNATIUS: Thank you.

8 Ms. Hatfield.

9 MS. HATFIELD: Thank you. And, thank  
10 you for allowing me to speak, even though we haven't filed  
11 a letter at this point. We don't have a position at this  
12 time on FairPoint's proposal. We do have several  
13 questions related to what the Company is allowed to do  
14 under the Settlement Agreement that was approved in Docket  
15 DT 07-011, with respect to rate changes, and also  
16 questions about whether or not those limits were changed  
17 DT 10-025, in the bankruptcy proceeding.

18 With respect to the confidentiality  
19 motion, we agree with segTEL with regard to the substance  
20 of the motion. And, then, specifically, in the motion, I  
21 believe the Company suggests that, if the Commission does  
22 find that it is confidential, that the Commission should  
23 "limit access to it", and this is in Paragraph 5 of the  
24 motion. And, then, at the end of that paragraph, they

1 request that "the Commission not disclose the information  
2 to any person other than the appropriate Staff of the  
3 Commission." And, we object to that language. And, we  
4 request that, if the Commission does find that it's  
5 confidential, that they remind FairPoint that the OCA has  
6 a legal right to access that information. And that, to  
7 remind the Company that the OCA is also subject to 91-A.  
8 So, if the Commission found it to be confidential, we  
9 would treat it that way. Thank you.

10 CMSR. IGNATIUS: Thank you. Mr. Fossum.

11 MR. FOSSUM: Thank you. Staff's initial  
12 position -- well, it's that FairPoint, to the extent that  
13 it's required to pay legitimately assessed property taxes  
14 on its plant in service, those taxes are a legitimate cost  
15 of FairPoint doing business and it's entitled to seek  
16 recovery of that cost. Staff, however, seeks to ensure  
17 that those costs are recovered in an appropriate manner  
18 and in an appropriate amount. So, we do intend to  
19 investigate whether the surcharge that FairPoint has  
20 proposed is the appropriate means to recover this expense,  
21 and whether the amount of the charge as proposed by  
22 FairPoint is appropriate and results in just and  
23 reasonable rates.

24 Also, very briefly, because Mr. Malone

1 had also addressed the issue of the Commission's ruling  
2 regarding, in its suspension order, regarding treatment of  
3 this case under 378:6, Paragraph I, as opposed to  
4 Paragraph IV, the Staff, in Staff's judgment, the  
5 Commission correctly determined that the proposed tariff  
6 does not fit under Paragraph IV, and that this petition is  
7 more appropriately dealt with under Paragraph I.

8 Staff does not, at this time, have any  
9 position on FairPoint's Motion for Confidential Treatment.

10 CMSR. IGNATIUS: Mr. Fossum, in the  
11 statement, written statement of FairPoint, there's a  
12 concern about proceedings under 378:6, Paragraph I, that  
13 things that are akin to a general rate case can take a  
14 long time, there's a 12-month period authorized for that.  
15 Does the Staff have any expectation of what a procedural  
16 schedule might look like in this case? Would it be akin  
17 to a general rate case type of schedule?

18 MR. FOSSUM: No. Staff does not have  
19 any expectations on that at the moment, in part because we  
20 had not known until just a few minutes ago who would be  
21 the interveners and the arguments that the intervening  
22 parties would make. It, though unlikely, it could have  
23 been possible that parties would have agreed to the  
24 imposition of a certain charge in a certain way that may

1 have truncated the process to some degree. That all said,  
2 I don't believe Staff envisions an entire year-long rate  
3 case proceeding. But I think that any determination about  
4 a procedural schedule will have to await discussions of  
5 the parties in the technical session to follow.

6 CMSR. IGNATIUS: Thank you. Any other  
7 comments on confidentiality, and then I'll turn back to  
8 Mr. Malone as the moving party for a final word on this?  
9 Mr. Johnston.

10 MR. JOHNSTON: I would just like to add  
11 that we would agree with segTEL's objection to the Motion  
12 for Confidential Treatment. I think it was well stated.  
13 I don't have anything to add to that.

14 CMSR. IGNATIUS: All right. Thank you.  
15 Mr. Malone?

16 MR. MALONE: Madam Commissioner, I  
17 assume that we will -- will we be taking up the issue of  
18 the Motion for Confidential Treatment separately or would  
19 you like me to respond to it now?

20 CMSR. IGNATIUS: I think it would be  
21 helpful if you could respond to it and summarize your  
22 pleading, and then we will pull copies of it and take a  
23 look during a break. But, if you can describe it right  
24 now, that would be helpful.

1 MR. MALONE: All right. We have no  
2 response to any of the statements of the other parties, so  
3 I'll go directly to the confidential motion. It is true  
4 that there's a considerable amount of information that is  
5 publicly available regarding FairPoint's tax bills  
6 regarding its lines. But much of the information that we  
7 provided is a breakdown of how the costs of those taxes  
8 are allocated to FairPoint's various operations. And,  
9 this is information that relates to the structure of its  
10 revenues and the structure of its business internally  
11 regarding cost allocation. And, we believe that that  
12 information should be held confidential, and that the --  
13 that the filings that we've made so far would allow  
14 someone to get a sense of how FairPoint allocates its  
15 costs and also certain marketing decisions as to what  
16 kinds of charges it makes in regard to those cost  
17 allocations. And, so, we believe that there's a good case  
18 that this is trade secret information that should be  
19 protected under a protective order.

20 CMSR. IGNATIUS: Can you help me  
21 understand, because we have a couple of different  
22 documents that I'm assuming you're referring to, a  
23 calculation sheet with a title "NH Poles and Conduit  
24 Property Tax Appraised Value and Estimated Tax 2011". Is

1 that a confidential document you're seeking  
2 confidentiality over?

3 MR. MALONE: One moment, Commissioner.

4 (Atty. Malone conferring with Mr. Reed.)

5 MR. MALONE: No. We would not be  
6 seeking confidential treatment of that spreadsheet that  
7 you're referencing, which is a list of the -- it's a  
8 compilation of the tax bills that we received and what  
9 payments we've made against those tax bills.

10 CMSR. IGNATIUS: Thank you. We also had  
11 marked in our confidential folders a one and a half page  
12 statement of FairPoint with a number of dollar figures and  
13 access line figures that have been marked as  
14 "confidential". I assume that that is what you're seeking  
15 protection for?

16 MR. MALONE: Yes.

17 CMSR. IGNATIUS: And, in another folder,  
18 though it may be a duplicate of the same thing, I think is  
19 the same -- it's, I guess, an updated, isn't it?

20 MR. MALONE: Right. Yes.

21 CMSR. IGNATIUS: December 12th version,  
22 and the first one that I was referring to was the  
23 November 15th version. So, are the numbers actually  
24 different?

1 MR. MALONE: They are. They indicate an  
2 increased number of tax bills received and the tax -- the  
3 total tax bill.

4 CMSR. IGNATIUS: Can you explain to me  
5 why the number -- why the amount of the tax bill that you  
6 -- tax bills in total that you received should be  
7 confidential?

8 MR. MALONE: It should not be.

9 CMSR. IGNATIUS: I'm sorry. You have  
10 the number of municipalities who have submitted bills is  
11 stated in a non-confidential basis, 114. But the total  
12 amount, the aggregated amount you mark as "confidential".  
13 Why is that?

14 MR. MALONE: Excuse me, Madam  
15 Commissioner.

16 (Atty. Malone conferring with Mr. Reed.)

17 MR. MALONE: All right. I'm sorry.  
18 We're ready, Madam Commissioner. Could you repeat your  
19 question.

20 CMSR. IGNATIUS: I'm looking at the  
21 section entitled "Rate Development".

22 MR. MALONE: Yes.

23 CMSR. IGNATIUS: You identify 114  
24 municipalities without confidentiality that have --

1 MR. MALONE: Right.

2 CMSR. IGNATIUS: -- you have received  
3 invoices from. And, then, resulting in approximately, and  
4 then the dollar figure you have marked as "confidential",  
5 and how much is due in December of 2011 also confidential.  
6 Why are those dollar figures confidential, in your  
7 opinion?

8 MR. MALONE: They need not be  
9 confidential.

10 CMSR. BELOW: So, the main thing you're  
11 concerned about is that number of retail access lines  
12 versus resold access line counts?

13 MR. MALONE: Yes.

14 CMSR. BELOW: Okay.

15 CMSR. IGNATIUS: So, that takes us down  
16 through the bottom of the first page and on the top of the  
17 second page. And, then, still on the second page, in that  
18 opening paragraph, you have the "estimate of annual amount  
19 in property taxes [you] expect to be assessed this year",  
20 and that is a confidential figure?

21 MR. MALONE: It does not need to be  
22 confidential.

23 CMSR. IGNATIUS: All right. The next  
24 sentence is an extrapolation assuming 230 municipalities,

1 and you get to another confidential figure. Does that  
2 need to be confidential?

3 MR. MALONE: No, it does not.

4 CMSR. IGNATIUS: Does not. Through to  
5 the end of that sentence, none of that needs to be  
6 protected, in your opinion?

7 MR. MALONE: That's correct.

8 CMSR. IGNATIUS: All right. And, then,  
9 another paragraph that has a result of the Company passing  
10 through to customers a total of, and you have a  
11 confidential figure there?

12 MR. MALONE: That number is  
13 confidential, because we believe that, using that number,  
14 someone could back into the cost allocations that we  
15 employ.

16 CMSR. IGNATIUS: And, then, your -- the  
17 end of that document has a little calculation of how  
18 access lines and charges result in the number above. I  
19 assume that you're also seeking protection over?

20 MR. MALONE: Yes.

21 (Commissioner Ignatius and Commissioner  
22 Below conferring.)

23 CMSR. IGNATIUS: If we can locate two  
24 copies of the confidentiality motion, that would help.

1 Mr. Malone, if you have them or we can photocopy extras as  
2 well. And, while you're doing that, are there any other  
3 comments that parties would want to make on the  
4 confidentiality issue, before we take a break to  
5 deliberate that?

6 MR. SANSOUCY: Madam Commissioner?

7 CMSR. IGNATIUS: Mr. Sansoucy, I'll get  
8 to you in a moment, all right? You'll have an opportunity  
9 for a public statement.

10 Mr. Malone, I'm sorry, just a quick  
11 question.

12 MR. MALONE: Uh-huh.

13 CMSR. IGNATIUS: This is not date  
14 stamped. Has this actually been filed with the  
15 Commission?

16 MR. MALONE: Yes. It was filed -- no,  
17 it was filed this morning -- it was filed this afternoon,  
18 I guess, when we walked in the door.

19 CMSR. IGNATIUS: Okay. And, this is the  
20 Motion for Confidential Treatment?

21 MR. MALONE: Right.

22 CMSR. IGNATIUS: Thank you. All right.  
23 We have copies. We'll make sure it gets its way into the  
24 record. Any other responses on the issue of

1 confidentiality?

2 MR. FOSSUM: Staff has one question.  
3 On, I guess, the two-page, page and a half memorandum that  
4 we were just walking through, there's the full paragraph  
5 on the second page, says -- the sentence that begins with  
6 "This will result in NNETO passing through to customers a  
7 total of", and the total there was requested to be kept  
8 confidential, as I understood it, because the claim was  
9 that somebody knowing that number could then back into  
10 information about access lines or resold lines. But it's  
11 not clear to Staff how it is that somebody would do that.

12 MR. MALONE: No. I'm sorry, that's not  
13 what we meant. It wasn't backing into the distribution of  
14 resold lines and access lines, it was the cost  
15 allocations.

16 But I have been informed by Mr. O'Quinn  
17 that those cost allocations are a matter of federal law  
18 and therefore are also public information. So, if I  
19 understand it, then nothing in that memorandum is  
20 confidential anymore. And, we will withdraw our Motion  
21 for Confidential Treatment of that information.

22 CMSR. IGNATIUS: Does that include the  
23 access line --

24 MR. MALONE: Yes.

1 CMSR. IGNATIUS: -- references on the  
2 first page?

3 MR. MALONE: No? No. No. The access  
4 line information would remain confidential.

5 CMSR. IGNATIUS: What I would request,  
6 when we take a break -- well, maybe there's nothing --  
7 it's only the access lines being sought confidentiality.  
8 We'll take a break and look at that. And, in the  
9 meantime, if you can share with the parties, because I  
10 assume you have redacted versions of this document, to  
11 read to them what the numbers are, and then perhaps follow  
12 that with a new submission that has them clearly stated.  
13 But, for their sake today, to at least read aloud to  
14 people what those numbers now are, --

15 MR. MALONE: All right.

16 CMSR. IGNATIUS: -- so that we are all  
17 dealing with the same thing. And, that I assume people  
18 have this spreadsheet as well? That doesn't need to be  
19 distributed?

20 MR. MALONE: No. No. I do not have a  
21 copy of that. We'll have to distribute a copy of that as  
22 well.

23 CMSR. IGNATIUS: If it's possible to do  
24 that right now during the break, that's good. If that's

1 too -- if people don't have things accessible or unable to  
2 copy, you can follow that up in the next couple of days.

3 All right. Mr. Sansoucy, if you would  
4 like to make a public comment, we were doing preliminary  
5 positions on this docket itself. And, if you have  
6 anything you'd like to say, --

7 MR. SANSOUCY: On the total docket?

8 CMSR. IGNATIUS: Yes.

9 MR. SANSOUCY: Yes. Thank you. With  
10 regards to the confidentiality, I'd just like to please  
11 caution, if at all possible, that anything that's public  
12 at the federal level, the FCC, the ARMIS report, the  
13 access lines, and all of the information related to the  
14 towns and cities is absolutely public. And, if there can  
15 be cross-calculation, then that's the way it goes.

16 Next, the next item in this is that, I  
17 want to go back to and reiterate that this is a rate  
18 issue, not a surcharge issue. There may be methods with  
19 which to expedite a rate case, because this is a  
20 re-institution of an existing tax, it's a lifting of an  
21 exemption, not a new tax, that has come into the  
22 telephone. It is also a rate issue, not a surcharge,  
23 because not all the towns are going to be doing this. The  
24 concept that has been advanced, that they look forward and

1 say "we're going to have 230 towns", half the towns in the  
2 state use the DRA values. And, the DRA is not valuing the  
3 telephone company under 83-F, and they're not sending out  
4 values. Half the towns in the state may take years to  
5 actually value telephone property.

6 Also, there will be, because it's a new,  
7 new in this decade, as opposed to the 1990's, there will  
8 be abatement appeals, there will be disputes, there will  
9 be adjustments to the bills, we expect to see that. And,  
10 you will have normal ratemaking procedures, which is taxes  
11 billed and accrued, taxes paid, additional taxes billed  
12 and accrued in a second half bill, abatements issued as a  
13 net credit, which are all normal ratemaking procedures,  
14 not surcharges. They're very, very difficult to handle in  
15 a surcharge issue.

16 I agree with segTEL in that, the minute  
17 you do it as a surcharge, you then have to sort out if it  
18 has been fairly leveled against the other users of the  
19 poles and wires, the CLECs, versus the incumbent.

20 The rules of accounting will prevail in  
21 a rate case. A rate case can be put quickly, as a  
22 relatively quick docket, it's not a big issue. But it  
23 does have to be netted against other expenses that haven't  
24 occurred in the costs of FairPoint. The assumption being

1 that no other costs have gone down and only taxes have  
2 gone up. And, I think that's where Staff is correct, in  
3 that you look at it as a rate proceeding, and you're going  
4 to net this against other costs. Taxes may go up and  
5 other costs may go down, and you'll have zero net gain.

6 The distribution to all of the people  
7 renting the pole or the calculation for the attachment  
8 fees, *etcetera*, are properly done if this is as a rate,  
9 not as a surcharge. The surcharge is going to be leveled  
10 against the residential ratepayers. I find it bizarre,  
11 because people are going to read that bill and it's going  
12 to just inflame additional people that are going to say  
13 "I'm off of FairPoint." It's almost self-destructive to  
14 even ask for a surcharge, at least in New Hampshire.  
15 That's why it's bizarre to me that they're even asking for  
16 it so people can see it. Is it going to trip another  
17 50,000 users to get off of the FairPoint system? We don't  
18 know the answer to that, but it could.

19 The fact that the State is not valuing  
20 it creates a complication for a surcharge. Because, if  
21 you are going to calculate some amount of communities and  
22 some average value that creates a surcharge, you don't  
23 know how many communities are going to ultimately come in.  
24 The fact is that the big ones are in, there's no doubt

1 about that, some of them. But, I know, I can tell you  
2 sitting here today, and one of the reasons I've  
3 intervened, because I'm involved with this weekly. Some  
4 of the larger communities, like Manchester, are still  
5 dealing with how to get the information, the value of the  
6 conduit. A lot of the value of the conduit is not in, for  
7 example.

8 This is a land tax. The bulk of this in  
9 some communities is the use of the public right-of-way  
10 that we have been required now, as assessors, to put in --  
11 to tax, in addition to just the poles and conduits.  
12 Nowhere else, for any other utility in New Hampshire in  
13 ratemaking, is a separate -- is the tax on land/real  
14 estate separately billed as a surcharge on the tax bill.  
15 In some communities, especially the entire lower tier of  
16 the state, the tax is higher, the value is higher on the  
17 use of the public right-of-way, as required by the Supreme  
18 Court decision that came down in Rochester, where we have  
19 to value the use of the public right-of-way. The value of  
20 the use of the public right-of-way is more than the value  
21 of the half interest of the poles. So, it's, in many  
22 communities, it's more of a land/real estate tax than even  
23 as a pole and conduit tax. And, that has -- never has  
24 that been put on as an individual surcharge. And, those

1 are going to go up and down with the value of property in  
2 the community. Every five years they're going to be  
3 equalized, and that type of variability in tax expense is  
4 properly managed in a rate proceeding as an expense, not  
5 as a surcharge.

6 I think that's it. Thank you for the  
7 opportunity.

8 CMSR. IGNATIUS: Thank you. I think  
9 that concludes the preliminaries. Took us a while. I  
10 think what we'd like to do is take a ten-minute break.  
11 Commissioner Below and I will look at the Motion for  
12 Confidentiality and documents that those are associated  
13 with. And, we will return at about five of 3:00 to go to  
14 the temporary rate hearing.

15 Yes, Mr. Fossum.

16 MR. FOSSUM: Before we have the recess,  
17 just for purposes of the temporary rate hearing, are the  
18 Commissioners expecting to hear from witnesses at all or  
19 will it be -- or is the expectation more presentations and  
20 offerings by the parties?

21 CMSR. IGNATIUS: I had assumed  
22 witnesses, but has there been discussion among the parties  
23 about that?

24 MR. FOSSUM: Only very briefly.

1 MR. MALONE: Right. We're prepared to  
2 put a witness on, if it would help the Commission.

3 CMSR. IGNATIUS: Yes. I think, if it's  
4 a hearing on whether or not temporary rates are  
5 appropriate, a witness would be very helpful. Thank you.

6 (Whereupon a recess was taken at 2:47  
7 p.m. and the hearing reconvened at 3:00  
8 p.m.)

9 CMSR. IGNATIUS: We're back on the  
10 record. As our order had stated, this afternoon was a  
11 time for a hearing on the issue of temporary rates in this  
12 case, both whether they are appropriate, and, if so, at  
13 what level. And, so, we move now to those issues. Oh,  
14 I'm sorry, before that, let me report on the  
15 confidentiality questions.

16 We have reviewed the Motion for  
17 Confidential Treatment, as well as the arguments for and  
18 against made this afternoon, and conclude that it is  
19 appropriate to grant the motion as it has been revised at  
20 the hearing this afternoon. I appreciate, Mr. Malone,  
21 your willingness to look at those numbers and rethink  
22 whether they really need to be confidential. I don't know  
23 if the parties have been given the new -- given access to  
24 the numbers yet, but urge you to do so either this

1 afternoon or following in the mail in the next day or two,  
2 so that the parties have the full document with the  
3 numbers that are now not confidential, now publicly  
4 available as you've stated on the record before.

5 As to access to the remaining  
6 confidential figures, they are -- they're pieces of  
7 information that relate to competitive position within the  
8 market, the surcharge -- excuse me, the access line  
9 counts. And, as we often have with competitively  
10 sensitive information, as opposed to generally financially  
11 sensitive information, we do not make those sorts of  
12 numbers available to competitors. And, so, we will have  
13 the Consumer Advocate's Office and the Staff have access  
14 to those access line numbers, but not make them available  
15 to segTEL and BayRing, as they are competitively  
16 sensitive.

17 The Municipal Association is not a  
18 competitor, therefore is entitled to see those access line  
19 numbers. But admonish the Association that those are  
20 confidential, they are to be protected, they are not to be  
21 shared with those outside of this case, and used only for  
22 the purpose of this case.

23 If there's nothing else, let's commence  
24 with the temporary rate portion of the afternoon.

1 Mr. Malone, you have a witness?

2 MR. MALONE: Yes, we do. Can I make a  
3 brief opening statement?

4 CMSR. IGNATIUS: You may. As you're  
5 doing that, you want to get your person settled, --

6 MR. MALONE: Okay.

7 CMSR. IGNATIUS: -- and we can be ready  
8 to roll.

9 MR. MALONE: All right. Thank you,  
10 Madam Commissioner. RSA 378:27 provides that the  
11 Commission can prescribe reasonable temporary rates until  
12 permanent rates are determined. The temporary rate  
13 standards are less stringent than the standard for  
14 permanent rates, permitting temporary rates to be  
15 determined expeditiously, without the investigation as  
16 might be deemed necessary to the determination of  
17 permanent rates. And, the New Hampshire Supreme Court has  
18 held that the burden of proof required by the temporary  
19 rate statute can be satisfied by the filing of a report  
20 with the Commission, which FairPoint has done. This  
21 report demonstrates that FairPoint is entitled to a charge  
22 of 99 cents for the duration of this proceeding, because  
23 (1) it is undisputed that FairPoint has received now 114  
24 tax bills from municipalities and has paid \$3 million

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1       against those tax bills. That, while FairPoint reserves  
2       the right to dispute the assessments on which those bills  
3       are based, it is clear that the municipalities currently  
4       have the lawful right to issue those bills.

5                       It is highly likely, bordering on  
6       certain, that FairPoint will receive tax bills from  
7       approximately 230 municipalities, and that these bills  
8       will total millions of dollars.

9                       (4) These costs are not re-elected in  
10      FairPoint's -- are not reflected in FairPoint's current  
11      rates. Based on current estimates, even when these costs  
12      are allocated among unregulated services, interstate  
13      services and pole attachments, the per line allocated  
14      intrastate cost still exceeds 99 cents per line. Which  
15      I'd like to emphasize means we are not asking the  
16      ratepayers to absorb the full cost of these property  
17      taxes. And, a surcharge of 99 cents per line, capped to  
18      25 lines per customer billing account, is a partial  
19      passthrough of these costs, does not represent a return of  
20      profit to FairPoint.

21                      And, we have brought Mr. O'Quinn to  
22      verify the contents of the memo -- the report that was  
23      distributed, and to provide the Commission with a more  
24      detailed breakdown in how we arrived at these, this

1 charge. Thank you.

2 CMSR. IGNATIUS: Thank you. I think our  
3 plan will be, after Mr. O'Quinn is sworn for some brief  
4 direct examination, then cross-examination in this order:  
5 Mr. Johnston, Ms. Cole, Mr. Winslow, Ms. Hatfield, and  
6 Mr. Fossum. Ms. Hatfield, I assume you're participating  
7 in the proceeding?

8 MS. HATFIELD: Myself, are you speaking  
9 -- did you say that?

10 CMSR. IGNATIUS: Yes. I mean, you said  
11 that OCA wasn't certain which way it was going. But, to  
12 the extent you're participating, that would be the order  
13 of the cross-examination.

14 MS. HATFIELD: Yes. And, actually,  
15 Madam Chair, our office did just file a Letter of  
16 Participation. I have copies that I can distribute later.

17 CMSR. IGNATIUS: Thank you.

18 MS. HATFIELD: And, if I could just  
19 actually ask one other procedural item. The OCA doesn't  
20 have a copy of the December 12th unredacted materials.  
21 And, it would be most helpful if the Company can provide  
22 that before the time for our cross?

23 (Atty. Malone handing document to Atty.  
24 Hatfield.)

[WITNESS: O'Quinn]

1 MS. HATFIELD: Thank you. Thank you  
2 very much.

3 CMSR. IGNATIUS: All right.

4 Mr. Patnaude, can you swear our witness?

5 (Whereupon *Kevin O'Quinn* was duly sworn  
6 by the Court Reporter.)

7 MR. MALONE: Mr. Will will be conducting  
8 our direct examination.

9 CMSR. IGNATIUS: Thank you.

10 MR. WILL: Good afternoon, Mr. O'Quinn.

11 WITNESS O'QUINN: Good afternoon.

12 **KEVIN O'QUINN, SWORN**

13 **DIRECT EXAMINATION**

14 BY MR. WILL:

15 Q. Could you please state your name for the record.

16 A. Kevin O'Quinn.

17 Q. And, who is your employer, Mr. O'Quinn?

18 A. I'm employed by FairPoint Communications, in the role  
19 of Directory -- Director of Financial Reporting to the  
20 regulatory commissions in Maine, New Hampshire, and  
21 Vermont, and the FCC.

22 Q. Okay. And, I'll ask you, if you don't mind, to try to  
23 keep your voice up, if you can, just so everyone can  
24 hear you. For purposes of today, Mr. O'Quinn, is it

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[WITNESS: O'Quinn]

1 fair to say that FairPoint and Northern New England  
2 Telephone Operations are one in the same?

3 A. Yes.

4 Q. Okay. Just briefly describe, if you would please, your  
5 duties and responsibilities.

6 A. I'm responsible for the regulatory reporting to the  
7 state commissions in New Hampshire, Maine, and Vermont,  
8 as well as the regulatory reporting that we do to the  
9 FCC, generally known as the "ARMIS reports".

10 Q. And, very briefly, Mr. O'Quinn, could you just provide  
11 us with your educational background?

12 A. Sure. I graduated from the College of Holy Cross with  
13 a degree in Economics. I received a Master's degree in  
14 Accounting from Northeastern University. And, I'm  
15 certified as a public accountant in the State of  
16 Massachusetts, licensed as a Certified Public  
17 Accountant in Massachusetts.

18 Q. Great. Mr. O'Quinn, since the lifting of the pole tax  
19 exemption, how many tax -- property tax bills relating  
20 to the poles has FairPoint received?

21 A. As described and portrayed in the memorandum that was  
22 filed yesterday, we have received 114 invoices from the  
23 municipalities in this state as of the end of the day  
24 Friday.

[WITNESS: O'Quinn]

1 Q. And, how many -- what percentage approximately of the  
2 total municipalities in the state does 114 represent?

3 A. It's approximately 50 percent of the municipalities.

4 Q. Okay. And, how much in these taxes has FairPoint paid  
5 to date?

6 A. FairPoint has paid approximately 3.1 million, again, as  
7 of Friday, for the invoices we have received to date.

8 Q. Okay. Now, you mentioned a minute ago a memorandum  
9 dated December 12, 2011 that was filed yesterday?

10 A. Yes.

11 Q. And, do you have that before you?

12 A. Yes, I do.

13 MR. WILL: And, may I ask the  
14 Commissioners, do you also have that?

15 CMSR. IGNATIUS: We do.

16 MR. WILL: Thank you.

17 BY MR. WILL:

18 Q. Mr. O'Quinn, FairPoint is here today seeking temporary  
19 rates in the amount of 99 cents per access line, is  
20 that correct?

21 A. Yes.

22 Q. And, this December 12 memo lays out the basis, if you  
23 will, for that request, the calculation that leads to  
24 that request?

[WITNESS: O'Quinn]

1 A. That's correct.

2 Q. Could you please walk us through that request and the  
3 calculation?

4 A. Yes. I think it's probably best to look at the --  
5 begin with the area under the bold heading called "Rate  
6 Development". And, as described here and mentioned  
7 earlier, we have received invoices from 114  
8 municipalities that quantify to a total of \$3,284,000  
9 approximately that are associated again with those 114  
10 invoices. And, additionally, we've received either  
11 letters of intent, or in some level of communication  
12 with us, that six other communities will be assessing,  
13 another 17 are asking for information, that we  
14 understand to be information that will give them the  
15 ability to submit invoices to us. We then looked at  
16 the number of access lines that we would propose  
17 surcharging. And, in order to recover not only the  
18 3.1 million that we've paid out year-to-date, but also  
19 our estimate of what the potential total invoices will  
20 be. Which, turning to the second page, we quantified  
21 that, excuse me, the total level of invoices will  
22 approximate \$6.6 million. And, from there, in looking  
23 at what a traditional allocation of costs would be,  
24 come up with a surcharge level of about 99 cents. And,

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1 I do need to clarify something there. The 99 cents is  
2 not so much a mathematical calculation that is intended  
3 to recover costs, *per se*, but it's more of a business  
4 marketing decision. It is painful for FairPoint to  
5 raise rates and -- actually, to raise prices. And,  
6 this additional cost pose a dilemma for us, in that we  
7 have a need to recover this new incremental cost, and  
8 99 cents was an amount arrived at with the help of --  
9 in direction of our marketing people, understanding it  
10 was well below what traditionally would be allocated  
11 out of the estimated bill.

12 Q. Okay. And, I'm going to ask you a couple of questions  
13 about that allocation concept or idea in just a minute.  
14 But, before I do, I think you testified that the  
15 Company estimates the total liability associated with  
16 this tax to be, as it's listed on the second page of  
17 the December 12 memorandum, \$6,626,027?

18 A. Yes.

19 Q. And, can you just please describe generally how you  
20 extrapolate that number based on the tax bills you've  
21 received to date?

22 A. Okay. Basically, it's the -- to date, we have received  
23 invoices of 3,284,000 from 114 municipalities. When we  
24 apply that amount to the -- you know, what the average

[WITNESS: O'Quinn]

1 of that, we apply that to the municipalities that we  
2 believe potentially will be billing us and likely will  
3 be billing us, and add that to the dollar amount we've  
4 already received, that totals to 6.6 million. And,  
5 that's how we quantified the amount.

6 Q. Okay. Now, the 99 cents that you're here requesting  
7 today, how much will that -- how much will that recover  
8 over a 12-month period?

9 A. We estimate that to be approximately 3.1 million.

10 Q. Okay. Now, Mr. O'Quinn, you also have before you, I  
11 believe, a spreadsheet, which you prepared for today's  
12 hearing, is that right?

13 A. Yes.

14 MR. WILL: Okay. Madam Commissioner, I  
15 would ask to mark the document as "Exhibit 1" to this  
16 hearing.

17 CMSR. IGNATIUS: And, can you show me?  
18 Is it the one we've been talking about or something  
19 different?

20 MR. WILL: It's actually one you haven't  
21 seen yet. It's marked "confidential", but we, over the  
22 course of today's proceedings, have determined it no  
23 longer be confidential. So, I can provide copies to  
24 everyone else as well.

[WITNESS: O'Quinn]

1 CMSR. IGNATIUS: Please do.

2 MR. WILL: Can I approach?

3 CMSR. IGNATIUS: Yes. And,

4 Ms. Hatfield?

5 MS. HATFIELD: Well, just a procedural  
6 question. It seems to me it might be easier if the  
7 Company marked its filing as "Exhibit 1". I'm open to  
8 other approaches, but, traditionally, that might be  
9 helpful.

10 CMSR. IGNATIUS: No, you're right.  
11 That's a good point. The packet that came in  
12 November 15th, 2011, which consisted of a cover letter and  
13 a -- what I call a "technical statement", it doesn't  
14 really say that at the top, and a number of attachments to  
15 it, if that were to be marked as "Exhibit 1", I think that  
16 makes sense.

17 (The document, as described, was  
18 herewith marked as **Exhibit 1** for  
19 identification.)

20 MR. WILL: Then, I guess in keeping,  
21 Madam Commissioner, could we mark please the material we  
22 filed yesterday, which includes the December 12th update  
23 to that November 15 memorandum, as "Exhibit 2"?

24 CMSR. IGNATIUS: Yes. So, is that the

[WITNESS: O'Quinn]

1 two-page document with "December 12th" at the top?

2 MR. MALONE: Right.

3 MR. WILL: Thank you.

4 (The document, as described, was  
5 herewith marked as **Exhibit 2** for  
6 identification.)

7 CMSR. IGNATIUS: And, the chart of  
8 municipalities may have been an attachment, because it got  
9 pulled and put in a confidential folder in my documents,  
10 was the chart that shows municipalities' tax estimates.  
11 Is that a part of the November 15 documents?

12 MR. WILL: I believe, Madam  
13 Commissioner, it's part of the package filed yesterday.

14 CMSR. IGNATIUS: All right. And, it  
15 still says "confidential" at the very bottom, but I  
16 understand from Mr. Malone that this is not a confidential  
17 document, so we can strike that at --

18 MR. WILL: Correct. Thank you.

19 CMSR. IGNATIUS: -- at the base.  
20 Ms. Mullholand?

21 MS. MULLHOLAND: If it's no longer  
22 confidential, may we get a copy?

23 MR. MALONE: Yes.

24 CMSR. IGNATIUS: Yes. Please get copies

[WITNESS: O'Quinn]

1 to all who don't have it. So, that's contained -- this  
2 chart we're talking about is contained within the Exhibit  
3 2 packet?

4 MR. WILL: Correct. And, so, given  
5 that, Madam Commissioner, the additional spreadsheet that  
6 I'd like to mark now I guess then would be Exhibit 3.

7 CMSR. IGNATIUS: Thank you.

8 (The document, as described, was  
9 herewith marked as **Exhibit 3** for  
10 identification.)

11 (Atty. Will distributing documents.)

12 MR. WILL: Madam Commissioner, while  
13 we've distributed what we've marked as Exhibit 3, I just  
14 wanted to clarify that the other spreadsheet, the  
15 compilation that we've been talking about, we will refile  
16 that as non-confidential.

17 CMSR. IGNATIUS: All right. And, it  
18 appears as though it came in, actually, with the  
19 November 15 filing, that's how it's been logged in, rather  
20 than the December 12th. But, if you re-submit it, then we  
21 know we're covered.

22 MR. WILL: Okay.

23 CMSR. IGNATIUS: Why don't we reserve an  
24 Exhibit Number 4 for the newly filed sheet without

[WITNESS: O'Quinn]

1 "confidential" on it.

2 (Exhibit 4 reserved)

3 CMSR. IGNATIUS: And, there's another  
4 piece of that filing that is -- were the actual municipal  
5 property bills themselves. And, I take it those you're  
6 not seeking protection for?

7 MR. MALONE: That's correct.

8 MR. WILL: That's correct.

9 CMSR. IGNATIUS: Thank you. And, they  
10 were contained in which filing? The November 15th or were  
11 they updated with the 12th?

12 MR. MALONE: The November 15th filing  
13 contained the original 44 bills. Yesterday's filing did  
14 not contain any bills. But we will supplement the record  
15 with copies of all of the bills we've received so far.

16 MR. WILL: That was an inadvertent  
17 omission on our part.

18 CMSR. IGNATIUS: That's no problem. So,  
19 why don't we reserve Exhibit 5 for the updated packet of  
20 municipal bills. You don't need to resubmit those that  
21 have already come in.

22 MR. MALONE: Okay.

23 MR. WILL: Thank you.

24 CMSR. IGNATIUS: But the additional

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1 ones.

2 (Exhibit 5 reserved)

3 CMSR. IGNATIUS: And, Exhibit 4 we are  
4 reserving for the re-submission of the municipal tax and  
5 estimated tax sheet that is not confidential, correct?

6 Thank you. Please proceed.

7 MR. WILL: Thank you, Madam  
8 Commissioner.

9 BY MR. WILL:

10 Q. So, Mr. O'Quinn, turning back now to the spreadsheet  
11 that you prepared for today's hearing, which we've  
12 marked as "Exhibit 3", do you have that before you?

13 A. Yes, I do.

14 Q. Okay. Is FairPoint proposing to recover all of these  
15 costs from the ratepayers?

16 A. No.

17 Q. And, does your spreadsheet help explain that  
18 allocation?

19 A. Yes.

20 Q. And, could you please walk us through that spreadsheet?

21 A. Sure thing. The spreadsheet, the column headings  
22 "revised estimate" and "original filing", "original  
23 filing" represents the numbers that we filed on I  
24 believe it was November 15th, and the "revised

[WITNESS: O'Quinn]

1 estimate" is based on the numbers that we filed  
2 yesterday. With the top line being the estimated  
3 municipal property tax, which is what is spoken to in  
4 the memorandum. And, it's our estimate, based on the  
5 number of invoices received, including the amount that  
6 we paid year-to-date of 3.1 million. That we're  
7 estimating, and I'm going to go down the "revised  
8 estimate" basically, that we're estimating 6.6 million  
9 in invoices. From that point forward, what I've done  
10 is I've allocated those costs based on traditional  
11 longstanding FCC rules, as far as how costs get  
12 allocated.

13 The first line is listed as  
14 "non-regulated". That the governing FCC rules are  
15 commonly -- they're Part 64 of the FCC rules that  
16 allocate costs of the phone company to non-regulated  
17 services. And, based on our ARMIS filing for the year  
18 2010, approximately 5 percent of the costs, operating  
19 tax costs, will be allocated to non-regulated services.

20 The next line is "pole attachments".  
21 And, what I did there was I went back to the Commission  
22 approved FCC 2007 pole attachment order, which lays out  
23 a formula as to how one calculates pole attachment  
24 rates. And, the conclusion out of there is that

[WITNESS: O'Quinn]

1 approximately 2 percent of the -- of the operating  
2 taxes or increased operating taxes, in this case, would  
3 get allocated into the FCC formula for pole attachment  
4 rates, and therefore quantified that and then reduced  
5 it from the total 6.6 million.

6 At that point, the governing rules are  
7 Part 36, the jurisdictional separations, that separate  
8 or allocate the costs between interstate or more  
9 federally governed or commissioned costs and rates, and  
10 intrastate rates, generally meaning those that are  
11 governed by the Commission. And, approximately  
12 33 percent of these costs would get allocated to  
13 interstate, subject to any type of interstate recovery  
14 or price cap regulation, which we're under in Northern  
15 New England. With the residual, or 66 percent, being  
16 allocated to intrastate or PUC operations. That  
17 number, as I've represented here, calculates to a  
18 number of about 4.1 million, or, more specifically,  
19 \$4,067,000. That would be the costs that will be  
20 allocated to the New Hampshire intrastate operations.  
21 And, what we have proposed through this surcharge at 99  
22 cents would recover approximately 3.1 million of costs,  
23 compared to the approximately 4.1 million that would be  
24 the allocated costs to our New Hampshire operations.

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1 I'm speaking from an accountant  
2 standpoint as to what's happened here. And, I think  
3 the point that I would leave with you is that we're  
4 looking at a tax bill potentially of 6.6 million. And,  
5 we're in here looking to recover potentially 3 million,  
6 or 3.1 million. And, by no way should this be  
7 characterized as us trying to recover these costs from  
8 business and residential customers here in New  
9 Hampshire. We're, you know, we're recovering a lot  
10 less than or we're surcharging a lot -- looking to  
11 surcharge a lot less than what the costs will be based  
12 on our -- based on our estimate.

13 Q. And, Mr. O'Quinn, just to make sure I understand. To  
14 date, the Company has received approximately \$3 million  
15 in tax bills?

16 A. And it's paid.

17 Q. It has --

18 A. And it has paid.

19 Q. And, the Company has paid approximately --

20 A. It has received over 3 million and it has paid over  
21 3 million, as we sit here today.

22 MR. WILL: Right. May we have a minute  
23 please.

24 (Short pause.)

[WITNESS: O'Quinn]

1 MR. WILL: Madam Commissioner, I have  
2 nothing further. Thank you, Mr. O'Quinn.

3 CMSR. IGNATIUS: Thank you.

4 Cross-examination, Mr. Johnston?

5 MR. JOHNSTON: Thank you, Madam Chair.

6 **CROSS-EXAMINATION**

7 BY MR. JOHNSTON:

8 Q. Mr. O'Quinn, just a few questions again on this  
9 one-page.

10 MR. JOHNSTON: And, by the way, I want  
11 to make sure I understand correctly. This is stamped  
12 "confidential". This is the thing that I'm not allowed to  
13 disclose to anyone else, is that right?

14 MR. MALONE: No. That one, you can  
15 cross that out.

16 MS. COLE: We have it.

17 MR. JOHNSTON: Oh. Okay.

18 MR. MALONE: But thank you for asking.

19 CMSR. IGNATIUS: And, just so that  
20 there's no question, the thing that remains confidential  
21 is in the -- both the November 15th and the updated  
22 December 12th statement of FairPoint, the bottom paragraph  
23 that describes access lines, and runs over into the top of  
24 the second page.

[WITNESS: O'Quinn]

1 MR. JOHNSTON: Oh. Okay.

2 CMSR. IGNATIUS: I think that is the  
3 only -- and, then, in the calculations below that on that  
4 page --

5 MR. JOHNSTON: Okay.

6 CMSR. IGNATIUS: -- are the only things  
7 that are protected.

8 MR. JOHNSTON: Okay. Thank you.

9 BY MR. JOHNSTON:

10 Q. And, just to make sure I understand. So, on this page,  
11 the 6,626,000, that is -- that is purely an estimate  
12 based on extrapolating from what you have received, is  
13 that right? The invoices you have received?

14 A. Yes. That's correct.

15 Q. Okay. Now, under -- and I guess maybe this is a legal  
16 question, rather than a factual question, but I  
17 suppose, as a factual matter, you would understand it.  
18 Under ordinary ratemaking principles, would you  
19 ordinarily recover for expenses that have not yet been  
20 paid or accrued?

21 MR. WILL: I guess I would object to  
22 that, Madam Commissioner. I'm not sure that there's any  
23 foundation for this witness to be able to answer that.  
24 And, I think it is -- it does delve over into the legal

[WITNESS: O'Quinn]

1 realm, as opposed to a factual question.

2 CMSR. IGNATIUS: Well, Mr. O'Quinn is a  
3 part of a regulated business. If you have information on  
4 that, feel free to answer it. If not, you can make that  
5 known.

6 **BY THE WITNESS:**

7 A. Well, as I mentioned before, we've paid 3 million.

8 BY MR. JOHNSTON:

9 Q. Right.

10 A. I think that's a matter of fact.

11 Q. Right.

12 A. When we get to the end of the year, there will be  
13 accrual decisions that are made, as any good -- as any  
14 good firm will do, and we'll make an assessment as to  
15 what the appropriate accrual level will be for the  
16 given calendar period.

17 Q. Okay. But, at this point, you don't know what that is?

18 A. By what's in front of me now, I would estimate that  
19 would be 6.6 million.

20 Q. Okay. Thank you. And, can you, and I may be the only  
21 person in the room who doesn't understand this, so  
22 forgive me, but on that same page, under the  
23 allocations, can you explain to me, you're subtracting  
24 out 331,000 and 132,000, can you explain to me what

[WITNESS: O'Quinn]

1 that represents and why those are subtracted out?

2 A. Sure. In the Commission's order, they specifically  
3 requested a breakdown of the costs that would be  
4 assigned to pole attachments into non-regulated and  
5 interstate operations. As a regulated entity, we --  
6 and, actually, as a former monopoly, there are FCC  
7 rules that govern the allocation of costs to  
8 non-regulated operations, as well as to inter and  
9 intrastate. The line, the first line being  
10 "Non-Regulated (Part 64)", Part 64 is the governing FCC  
11 rules as to how you determine the amount of your costs  
12 that are assigned to non-regulated services. And,  
13 that's, based on our filing a year ago, 5 percent of  
14 our costs were assigned -- or, operating taxes were  
15 assigned to non-regulated operations. And, that  
16 represents the 331,000.

17 The next line being "Pole Attachments",  
18 as I mentioned before, based on an FCC formula, our  
19 estimate of the amount of costs that would be assigned  
20 to pole attachment rates. The purpose of that is to  
21 exclude those costs, to then derive the amount that  
22 would be subject to interstate -- interstate  
23 operations, and, more pertinent and important in the  
24 case, what would be allocated to intrastate operations,

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1 being those that are regulated by the Commission here.  
2 And, that's what the 4,067,000 represents. So, it was  
3 -- we're backing out or subtracting the costs that  
4 would be assigned to pole attachments and to  
5 non-regulated, before allocating the amount to our  
6 "regulated" -- I'm sorry, to regulated operations.

7 MR. JOHNSTON: Okay. Thank you. I have  
8 no further questions.

9 CMSR. IGNATIUS: Thank you. Ms. Cole.

10 MS. COLE: Thank you, Commissioner.

11 BY MS. COLE:

12 Q. I have two questions, Mr. O'Quinn. One is a point of  
13 clarification. Initially, you said that "114 of the --  
14 "the 114 municipalities has rendered bills is  
15 50 percent." Is that 50 percent of the municipalities  
16 that are in the entire state or is that just where  
17 FairPoint has a presence?

18 A. Where FairPoint has a presence.

19 Q. Thank you. My second question is, from this, I'm  
20 looking at, you know, two separate columns here, do you  
21 anticipate receiving separate rights-of-way bills from  
22 the municipalities that have not rendered them?

23 A. Yes. And, that the difficulty right now in the  
24 invoices we're receiving is that it's not always clear

[WITNESS: O'Quinn]

1           what we're being assessed on. Whether it's land --  
2           whether it's poles or conduit or poles and conduit, or  
3           poles, conduit, and right-of-way, there are instances  
4           where it's all aggregated in one amount we're being  
5           assessed on. So, you know, as far as the presentation  
6           here, it was hard to differentiate additional  
7           right-of-way estimated billing from pole and conduit  
8           billing.

9   Q.   And, then, as a follow-up to that, if there are bills  
10       in which it is not clear what you're being taxed on,  
11       have you or do you intend to dispute those bills?

12   A.   Yes, we do.

13   Q.   And, have you so far?

14   A.   No, we have not.

15   Q.   Have you disputed any bills?

16   A.   No, we have not.

17                   MS. COLE: Okay. Thank you very much.

18                   CMSR. IGNATIUS: Mr. Winslow.

19                   MR. WINSLOW: Just a quick follow-up.

20   BY MR. WINSLOW:

21   Q.   Do you have an estimation of what percent of those  
22       bills that you will dispute?

23   A.   No.

24   Q.   So, no guesstimate, just take a number of towns or --

[WITNESS: O'Quinn]

1 A. Not an estimate. We don't believe we've been fairly  
2 billed. And, I'm saying that from a very general  
3 standpoint. As far as the number of towns and the  
4 number of bills, I have no quantification of that.

5 MR. WINSLOW: Okay. No further  
6 questions.

7 CMSR. IGNATIUS: Ms. Hatfield.

8 MS. HATFIELD: Thank you. Good  
9 afternoon.

10 WITNESS O'QUINN: Good afternoon.

11 BY MS. HATFIELD:

12 Q. I think that when you described your duties you  
13 included making certain reports in New Hampshire, is  
14 that correct?

15 A. That's correct.

16 Q. So, under those duties, you make certain filings that  
17 are required in New Hampshire?

18 A. Yes.

19 Q. Did you prepare what has been marked as "Exhibit 1"  
20 today, which is the Company's filing on November 15th?

21 A. I would more describe that as a "collaborative effort".  
22 I contributed to part of the -- part of the filing.

23 Q. Are you familiar with the Commission's Part 1600 rules?

24 A. I may need a clarification as to specifically what 1600

[WITNESS: O'Quinn]

1 is before I can answer that for sure.

2 Q. So, is your answer "no", that you're not familiar with  
3 them?

4 A. Yes.

5 Q. Are you familiar with the settlement that FairPoint  
6 entered into with certain parties in Docket DT 07-011?

7 A. I don't know what that docket is.

8 Q. So, you wouldn't be familiar with the fact that there  
9 is a Settlement Agreement in that case, which is the  
10 Verizon/FairPoint transfer, that was approved by the  
11 Commission?

12 A. I'm familiar that there was a settlement reached, yes.

13 Q. But you're not familiar with the settlement language?

14 A. You might have to be more -- I've read the Settlement  
15 Agreements that we've settled with each of the three  
16 commissions in northern New England. But, you know,  
17 specifically what you're referring to, I can't say.

18 Q. Do you recall that in one section of the settlement,  
19 that's Section 8, entitled "Retail Service and Rates",  
20 that FairPoint agreed that it would not increase  
21 certain rates for a five-year period?

22 A. I don't specifically recall that, but I'm not going to  
23 dispute. You know, I'm not sure of that.

24 Q. And, would you accept subject to check that that

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[WITNESS: O'Quinn]

1 language is in the Settlement Agreement?

2 MR. MALONE: I guess I would object,  
3 your Honor. He's testified he's not familiar with that.  
4 So, how could he admit subject to check? I mean, the  
5 language is in there or it isn't. But, trying to elicit  
6 an admission from him, where he's testified that he's not  
7 familiar with that provision, I think it's an  
8 objectionable question.

9 CMSR. IGNATIUS: Ms. Hatfield, do you  
10 have a response to that?

11 MS. HATFIELD: No thank you. I'll move  
12 on.

13 CMSR. IGNATIUS: All right.

14 BY MS. HATFIELD:

15 Q. You have established that you're not an attorney, is  
16 that correct?

17 A. I don't know if I established it before, but I'll  
18 confirm that I'm not.

19 Q. But you --

20 A. And proud of it.

21 (Laughter.)

22 BY THE WITNESS:

23 A. I don't mean to offend anybody.

24 MR. MALONE: You're on your own.

[WITNESS: O'Quinn]

1 (Laughter.)

2 BY MS. HATFIELD:

3 Q. But were you present earlier when there was some  
4 discussion about the Commission's order of notice  
5 referencing RSA 378, Section 6, I?

6 A. Yes, I was present.

7 Q. And, I think you have already said that you are not  
8 familiar with the Puc 1600 rules?

9 A. That is correct.

10 Q. So, you aren't familiar with the sections that refer to  
11 the requirements of a filing of a rate case?

12 A. That's correct.

13 Q. And, you also then wouldn't be familiar with the  
14 sections related to certain notice requirements of  
15 intent to file rate schedules?

16 A. That is correct.

17 Q. Do you know if the Commission Staff has audited or  
18 reviewed any of the costs or allocations that you  
19 proposed in your filings?

20 A. I had the same responsibilities at Verizon for over 20  
21 years. And, as far as the current period, no, we have  
22 not. But, in my responsibilities at Verizon, yes, we  
23 were audited our financial -- there was a Commission  
24 audit of our financial statements.

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[WITNESS: O'Quinn]

1 Q. But there hasn't been an audit, I think you said, of  
2 the current filing?

3 A. That's correct.

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

6 CMSR. IGNATIUS: Thank you. Mr. Fossum.

7 MR. FOSSUM: Thank you.

8 BY MR. FOSSUM:

9 Q. Mr. O'Quinn, I'd like, just for some clarity purposes,  
10 I'd like you to walk through what you have prepared,  
11 which has now been marked as "Exhibit 3". And,  
12 initially, I'd just like to know, kind of going down  
13 the list of the allocations that you have, when it  
14 refers to, for example, "non-regulated" revenues, what  
15 does that encompass?

16 A. It wasn't intended to represent revenues, *per se*, but  
17 costs. And, the non -- the allocation of costs to  
18 non-regulated services is based on the rules that I've  
19 mentioned here, Part 64. And, the purpose of this was  
20 to follow existing FCC rules, which will assign  
21 approximately 5 percent of these costs to non-regulated  
22 services.

23 Q. I understand that. I guess my question was more along  
24 the lines of, when it says "non-regulated services",

[WITNESS: O'Quinn]

1 what services are those?

2 A. Public telephone, inside wire, voice mail, are the  
3 primary ones that I think about that are non-regulated  
4 services.

5 BY CMSR. BELOW:

6 Q. Would DSL be a non-regulated service?

7 A. No. DSL, the service -- the service provided by the  
8 New Hampshire telephone company is accounted for as an  
9 interstate special access service.

10 Q. So, you're saying, for purposes of Exhibit 3, that's  
11 not included in "non-regulated", it's included under  
12 intrastate?

13 A. Inter.

14 Q. Interstate?

15 A. Interstate.

16 Q. Okay.

17 A. Yes.

18 BY MR. FOSSUM:

19 Q. And, picking up on that, are there other services,  
20 other than DSL, that are included in the interstate  
21 services?

22 A. Switched and special access, interstate switched and  
23 special access services.

24 Q. And, as regards the interstate, your spreadsheet

[WITNESS: O'Quinn]

1 indicates that your estimate of the cost allocation, if  
2 I use the correct language, is approximately  
3 \$2 million?

4 A. Yes.

5 Q. Is it, to the best of your knowledge, is it FairPoint's  
6 intent to seek recovery of that \$2 million from the  
7 interstate, its interstate customers?

8 A. It is something we're contemplating and looking at.  
9 It's -- recovery, interstate-wise, would come under  
10 something called an "exogenous cost". And, we're  
11 looking and contemplating whether we can -- whether  
12 this qualifies and whether we could include it for  
13 recovery in our price cap filings.

14 Q. About how long would you expect to take to determine  
15 whether that could be recovered? You said you're  
16 "contemplating it". I just was curious how long that  
17 contemplation may last?

18 A. There's kind of a legal regulatory decision that goes  
19 to it. It's my understanding that the filing is done  
20 effectively July 1st of the subsequent year. So, in  
21 our case, it would be July 1st of 2012.

22 Q. So, that would be the earliest that you would be able  
23 to recover on that 2 million?

24 A. That's my understanding.

[WITNESS: O'Quinn]

1 Q. Be following that July filing?

2 A. Yes.

3 MR. FOSSUM: Thank you. I have nothing  
4 further at this time.

5 CMSR. IGNATIUS: Thank you.  
6 Commissioner Below.

7 BY CMSR. BELOW:

8 Q. Would it be your opinion that, based on reports that  
9 are on file here at the Commission about the Company's  
10 operations, that they would indicate whether the  
11 Company is generally over-earning or under-earning?

12 A. Yes.

13 Q. And, what would they indicate?

14 A. Our last filed statement was as of --

15 (Court reporter interruption.)

16 **BY THE WITNESS:**

17 A. Our last filed statement reflected a negative earnings  
18 of approximately \$60 million.

19 BY CMSR. BELOW:

20 Q. Okay. So, this temporary rate would not be likely to  
21 move you into an over-earning position, is that fair to  
22 say?

23 A. That's very fair to say.

24 CMSR. BELOW: Okay.

[WITNESS: O'Quinn]

1 BY CMSR. IGNATIUS:

2 Q. What was the date, you said the "last filed statement",  
3 when was that made?

4 A. The reporting period was September 30th, 2011, which we  
5 would have filed in and around November 15th.

6 Q. If you did not receive any more invoices from  
7 municipalities, you would have a liability of what, by  
8 -- over a 12 month period, for these property tax bills  
9 you've already received?

10 A. My apologies, but "liability" is an accounting term.

11 Q. I know.

12 A. I reference it, I'm going to stay away from it. The  
13 invoices that we have in hand are approximately  
14 \$3.3 million, are covering a fiscal period for the  
15 municipalities beginning in 2011, April 1st of 2011, to  
16 March 30th of 2012. Logically, if I hold to the  
17 hypothetical, which I don't think is likely, but that  
18 there would be another 3.2 million of billing that  
19 would be coming in beginning April 1st of 2012. And,  
20 the proposal that we have here, this surcharge that we  
21 need, would be recovering \$250,000 a month,  
22 approximately 3 million on a monthly basis equates to  
23 \$250,000. It would take us -- it's going to take us  
24 months to recover what we've already spent -- or, what

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[WITNESS: O'Quinn]

1 we've already paid. And, again, invoicing, the area is  
2 going to begin for the fiscal year 2012 period in and  
3 around April. Even at the existing level, it would  
4 take us -- it's going to take us months to recover what  
5 we've spent already.

6 Q. And, the numbers you've just given us on what you've  
7 already spent, those are already -- those are  
8 exclusively New Hampshire municipal figures, correct?

9 A. That's correct.

10 Q. Is the negative earnings you referred to a moment ago  
11 also a New Hampshire specific number?

12 A. That's correct.

13 BY CMSR. BELOW:

14 Q. Well, a couple more questions occur to me. Of the 114  
15 towns or cities that you've received property tax  
16 invoices for that you're referencing, those are new  
17 assessments for either right-of-way, which may have  
18 also been assessed perhaps in the previous year, or the  
19 poles and conduits, or both, is that correct?

20 A. My understanding, right-of-waywise, is these are all  
21 new bills that we hadn't received in the past. And,  
22 the pole and conduit is unquestionably new bills that  
23 we've received.

24 Q. Have some of the municipalities only assessed a tax for

[WITNESS: O'Quinn]

1 one or the other? Or is that not always clear on the  
2 bills?

3 A. It's not always clear on the bills.

4 Q. Okay. I'm just looking at what's I think part of  
5 Exhibit 4. I think this was originally part of the  
6 original filing on November 15th. It was a list of  
7 towns with some highlighted in yellow, which are towns  
8 that have sent letters of intent to assess, but  
9 invoices weren't received yet. And, this is what I  
10 take is, I think Mr. Malone has indicated that this  
11 would be refiled as a non-confidential. Will it also  
12 be updated, because, presumably, this was only  
13 up-to-date as of November 15th, and there have been  
14 more tax bills received since that date?

15 MR. MALONE: Mr. Commissioner, we do  
16 have a spreadsheet that is updated as of, I guess,  
17 December 9th, and we will be filing that one.

18 CMSR. BELOW: Okay.

19 BY CMSR. BELOW:

20 Q. And, do you have a copy of that December 9th one?

21 A. Yes, I do.

22 Q. Does that try to break out what's for poles and  
23 conduits and what's for right-of-way, like the previous  
24 version, or --

[WITNESS: O'Quinn]

1 A. Yes, it does. And, again, it's based on our best  
2 understanding of the billing. And, it is difficult  
3 when things are all being condensed together,  
4 right-of-way, poles, conduit, and, in certain cases, I  
5 think it also includes the property tax in there. So,  
6 it's difficult on some of the bills to actually break  
7 them out.

8 Q. Right. If you have a CO or other land that you own in  
9 a municipality, --

10 A. Right.

11 Q. -- that might also be in the same bill?

12 A. Right. But, we have, to the extent there is something  
13 like that, that the real estate cost has been excluded  
14 from the spreadsheets we've compiled here.

15 Q. Okay. I guess I have a couple of questions. To the  
16 extent -- to the extent that the list of towns that  
17 have already assessed or indicated they're going to  
18 assess, to the extent that there are -- that they're  
19 larger towns where you may have more poles and conduit,  
20 is it possible that the remaining towns could end up  
21 assessing a lower value than the average you've been  
22 assessed from municipalities so far?

23 A. Yes, I believe it is possible.

24 Q. And, on the other hand, is it possible that some of



[WITNESS: O'Quinn]

1 And, not only the value of the property, but what we're  
2 being assessed in total. And, I'm not here now to  
3 estimate, you know, whether, you know, any dollar  
4 amount that's associated with that, except that it's  
5 going to cost us money to do it.

6 Q. What date has FairPoint asked that any temporary rate  
7 that might be imposed be set effective, the date?

8 A. As soon as possible.

9 Q. Is there an actual date that you've proposed?

10 A. I'm sorry, but I'm going to look to my attorneys to  
11 help with that.

12 Q. If you don't know, that's a fair answer.

13 A. I don't know the answer.

14 MR. WILL: December 1, Madam

15 Commissioner.

16 BY CMSR. IGNATIUS:

17 Q. And, the proposal of FairPoint is that any temporary  
18 rate be fully reconcilable pending the final outcome of  
19 the full case, correct?

20 A. Absolutely. Yes.

21 CMSR. IGNATIUS: Is there any redirect  
22 from the Company?

23 MR. WILL: No, Madam Commissioner.

24 Thank you.

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[WITNESS: O'Quinn]

1 CMSR. IGNATIUS: All right. Thank you.

2 Then, Mr. O'Quinn, you're excused. Thank you.

3 Does FairPoint have any other witnesses  
4 it intends to call?

5 MR. MALONE: No, Madam Commissioner.

6 CMSR. IGNATIUS: Thank you. Are there  
7 any other parties that have expressed an intention to call  
8 witnesses?

9 (No verbal response)

10 CMSR. IGNATIUS: Seeing none. Then, I  
11 think we -- we're mindful of the time, I think some brief  
12 closing statements are appropriate. I know the intention  
13 in the original order was for a technical session to  
14 follow on the full case, but we may not be able to do  
15 that, other than a very brief conversation about whatever  
16 can be accomplished this afternoon. Obviously, one of the  
17 early orders of business in any technical session would be  
18 a schedule, a proposed schedule for the duration of the  
19 case. And, if that were possible to be worked out today,  
20 even though it's getting late, that would certainly be  
21 welcome to us.

22 So, with that, are there -- I guess I'll  
23 give everybody an opportunity for a brief oral closing.

24 And, we'll leave to FairPoint last as the moving party.

1 Mr. Johnston.

2 MR. JOHNSTON: Thank you, Madam Chair.

3 Just a few points. The Municipal Association does not  
4 object to FairPoint's recovering the expense in an  
5 appropriate manner, recovering the net expense in an  
6 appropriate manner. As I've stated before, we do not  
7 think that doing it as a surcharge as a separate line on  
8 the phone bill is the appropriate way to do it. If it is  
9 something that ought to be recovered, it seems like it  
10 should be done through a rate case.

11 Beyond that, just a couple of technical  
12 points. I believe that the amount that they're seeking to  
13 recover at this point is inflated, because it is starting  
14 with an estimated property tax of 6.6 million. The amount  
15 actually paid is 3.1 million. And, if you -- I think it's  
16 appropriate to start from the 3.1 million and subtract the  
17 allocations from there, which would get you down to  
18 somewhere in the range of 1.8, 1.9 million.

19 My only other point is, in looking at  
20 the numbers, I think I heard Mr. O'Quinn say that, if they  
21 have received tax bills for what -- I think \$3.2 million  
22 in December, they would expect to receive another  
23 3.2 million in June, I don't believe that's correct. The  
24 tax bills received in December should be for the entire

1 year. And, I think, if you look at the amounts indicated  
2 per municipality, you can figure out, in looking at the  
3 tax rate, that's the tax rate for the entire year, you  
4 apply that to the appraised value and see that what they  
5 have been billed is for the entire year. So, the next tax  
6 bill in June, it should be half of what it was in  
7 December.

8 I guess that's all I have. And, just  
9 again, we have no objection to their recovering the  
10 appropriate net expense, but it should not be done as a  
11 surcharge as proposed.

12 CMSR. IGNATIUS: Thank you. Ms. Cole.

13 MS. COLE: No further questions. Thank  
14 you.

15 CMSR. IGNATIUS: And, no closing  
16 statement you wish to make?

17 MS. COLE: No, I think we've made our  
18 statements.

19 CMSR. IGNATIUS: Mr. Winslow?

20 MR. WINSLOW: I have no comment.  
21 Thanks.

22 CMSR. IGNATIUS: Ms. Hatfield.

23 MS. HATFIELD: Thank you. The OCA views  
24 this filing as single issue ratemaking. We think that, in

1 light of the Commission's order of notice, under 378,  
2 Section 6, I, which the Commission describes in its own  
3 footnote, relates to "a general increase in rates",  
4 requires that the Company make a filing that complies with  
5 the requirements in the Commission's 1600 rules, and the  
6 Company has not done that.

7 The parties also have not had the time  
8 for discovery of the Company's filing. And, the parties  
9 certainly won't benefit from any analysis or opinion that  
10 the Commission Staff has on the filing. And, FairPoint's  
11 witness, if I heard him correctly, stated that he "is not  
12 estimating whether the dollar amounts are accurate, it's  
13 just that it's going to cost them money, so they need to  
14 recover that from ratepayers." And, I just, frankly,  
15 don't think that meets the burden under the statute for a  
16 rate increase.

17 So, I would respectfully request that  
18 the Commission not approve a rate increase at this time  
19 with respect to the merits. I agree with what  
20 Mr. Johnston said, that we don't necessarily object to a  
21 utility recovering an appropriate amount in an appropriate  
22 manner, but seems to me that more process is required  
23 before the Commission can make the findings that are  
24 necessary. Thank you.

1 CMSR. IGNATIUS: Mr. Fossum.

2 MR. FOSSUM: Thank you. Staff's initial  
3 position -- well, position on the temporary rates, is  
4 that, although this is a somewhat unique circumstance,  
5 where the Company wasn't specifically seeking a general  
6 increase in rates, but it has essentially been told that  
7 that's what they're doing, Staff would agree that  
8 temporary rates are proper in this instance.

9 As to the method of recovery of those  
10 temporary rates, while it is unique to do so, Staff  
11 believes that recovering temporary rates through a  
12 surcharge in this instance is appropriate, because it will  
13 make those revenues easier to track, which will make it  
14 easier to reconcile them later.

15 In agreeing with that surcharge,  
16 however, Staff wants to make it abundantly clear that it  
17 does not agree that the surcharge is, in fact, the proper  
18 recovery method for permanent rates. And, that there will  
19 be certainly discovery on that issue and the proper way of  
20 recovering this in the long term.

21 And, as to the amount, quite obviously,  
22 questions have already been raised about the ultimate  
23 amount that should be recovered by FairPoint. Based on  
24 the information that Staff has seen to this point, it

1 believes that the 99 cents per line is appropriate. Thank  
2 you.

3 CMSR. IGNATIUS: Thank you. Mr. Malone  
4 or Mr. Will, closing statement?

5 MR. MALONE: Let me ask my client one  
6 question.

7 (Atty. Malone conferring with Mr.  
8 O'Quinn.)

9 MR. MALONE: Thank you, Madam  
10 Commissioner. I'll be brief. I just want to quickly  
11 respond to Attorney Johnston of NHMA, in regarding his  
12 comment about how, on April 1st, we could expect only  
13 perhaps half the billing. And, I've checked with  
14 Mr. O'Quinn, that's not what he meant. He was referring  
15 to what would be a cash flow issue for FairPoint. He  
16 fully expects that, since the taxable year runs from April  
17 1st to March 31st, now that the municipalities are geared  
18 up to bill FairPoint, that we should be expecting the  
19 bills for tax year 2012 on April 1st. So, we've already  
20 received bills for 2011 during the last month or so. We  
21 can expect that, come April 1st, they will issue another  
22 set of bills. And, I just wanted to clarify that that's  
23 what he was referring to.

24 As far as the subject of temporary

1 rates, I hope to be very brief. I think FairPoint has  
2 established that they are out-of-pocket \$3.1, \$3.2 million  
3 already. That, at the proposed rate, it will take them at  
4 least a year to recover that money. And, that we should  
5 remind the Commission that these are temporary rates only,  
6 subject to some kind of recollection after the end of when  
7 the permanent rate is decided. Thank you very much.

8 CMSR. IGNATIUS: Thank you. I see a  
9 hand. Ms. Hatfield?

10 MS. HATFIELD: Thank you very much. I  
11 had one administrative request of the Commission. That  
12 the Commission take administrative notice of the  
13 Settlement Agreement and order in Docket DT 07-011.

14 CMSR. IGNATIUS: Well, I don't know if  
15 we need to take administrative notice of it. It exists in  
16 the documents. It doesn't need to be made a part of this  
17 record in order to exist, to be an element of arguments  
18 that you or anyone else may make. So, we'll, I think,  
19 encourage everybody to look at the Settlement Agreement in  
20 that docket and think about how it may relate to this  
21 case.

22 If there are no other matters for this  
23 afternoon, I would urge the parties and Staff to work  
24 briefly this afternoon, see if there can be a development

1 of a procedural schedule for the duration of the case and  
2 submit it to us. And, on the matters of temporary rates,  
3 we will take those under advisement.

4 If nothing else, I appreciate your time  
5 today and we stand adjourned.

6 (Short pause.)

7 CMSR. IGNATIUS: Oh. And, I didn't say  
8 to "strike the identification of the documents of the  
9 exhibits", but --

10 MR. MALONE: Thank you.

11 CMSR. IGNATIUS: But, unless there is  
12 any objections to do so, we will strike the  
13 identifications.

14 MR. WILL: Thank you, Madam Chair.

15 (Whereupon the hearing ended at 4:06  
16 p.m.)

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