

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION



May 16, 2012 - 10:15 a.m.
Concord, New Hampshire

REDACTED
FOR PUBLIC USE

RE: DT 11-248
FAIRPOINT COMMUNICATIONS, INC.:
Municipal Property Tax Surcharge.

PRESENT: Commissioner Amy L. Ignatius, Presiding
Commissioner Robert R. Scott
Commissioner Michael D. Harrington

Sandy Deno, Clerk

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

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

Reptg. Residential Ratepayers:
Rorie E. P. Hollenberg, Esq.
Office of Consumer Advocate

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

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

ORIGINAL

I N D E X

PAGE NO.

WITNESS: KEVIN O'QUINN

Direct examination by Mr. Malone	11
Cross-examination by Mr. Johnston	21
Cross-examination by Ms. Hollenberg	27
Cross-examination by Mr. Fossum	31
Interrogatories by Cmsr. Harrington	45
Interrogatories by Cmsr. Scott	52
Interrogatories by Chairman Ignatius	55
Redirect examination by Mr. Malone	60

STATEMENTS REGARDING SENATE BILL 48 BY:

PAGE NO.

Mr. Malone	63
Mr. Fossum	68

GENERAL QUESTIONS TO PARTIES/STAFF BY:

PAGE NO.

Chrmn. Ignatius	65, 69, 77, 83, 86
Cmsr. Harrington	70
Cmsr. Scott	82, 85

CLOSING STATEMENTS BY:

PAGE NO.

Mr. Johnston	73
Ms. Hollenberg	75
Mr. Fossum	79, 86
Mr. Malone	83

E X H I B I T S

EXHIBIT NO.	D E S C R I P T I O N	PAGE NO.
6	FairPoint First Revised Exhibit 4 NH Poles & Conduit Property Tax Appraised Value and Estimated Tax 2011 - as of 5/01/12	13
7	FairPoint First Supplement to Exhibit 5 - Updated Tax Invoices	14
8	FairPoint First Revised Exhibit 3 NNE Telephone Operations LLC, N.H. Municipal Property Tax Surcharge Allocation of Estimated Tax (Redacted for Public Use), and also a <u>confidential version</u> contained under separate cover so designated	16

1 P R O C E E D I N G

2 CHAIRMAN IGNATIUS: I'd like to reopen
3 the hearing in Docket DT 11-248, Northern New England
4 Telephone Operations, LLC, regarding the Municipal
5 Property Tax Surcharge. We have previously had a
6 proceeding that resulted in determining interventions and
7 ruling on temporary rates. Order Number 25,308, issued
8 December 28, 2011, granted temporary rates in the amount
9 of 99 cents per access line, up to 25 lines, on a
10 temporary basis, and then called for further proceedings
11 to address, as we put it, "the balance of this
12 proceeding", and setting up a schedule to complete the
13 proceeding.

14 So, let's take appearances please.

15 MR. MALONE: Madam Chairman, Harry
16 Malone, with the law firm of Devine, Millimet & Branch,
17 representing FairPoint Communications, specifically
18 Northern New England Telephone Operations, LLC. Joining
19 me today are Ryan Taylor, the Director of Regulatory
20 Affairs for FairPoint New Hampshire, and Kevin O'Quinn,
21 who is the Director of Regulatory Financial Reporting for
22 Northern New England Telephone Operations.

23 CHAIRMAN IGNATIUS: Good morning.

24 MR. MALONE: Good morning.

{DT 11-248} {05-16-12}

1 MR. TAYLOR: Good morning.

2 CHAIRMAN IGNATIUS: Mr. Johnston.

3 MR. JOHNSTON: Cordell Johnston,
4 Government Affairs Counsel for the New Hampshire Municipal
5 Association.

6 CHAIRMAN IGNATIUS: Good morning.

7 MS. HOLLENBERG: Good morning. Rorie
8 Hollenberg, here for the Office of Consumer Advocate.

9 MR. FOSSUM: And, good morning. Matthew
10 Fossum, for the Staff of the Public Utilities Commission.
11 And, with me today are Kate Bailey, Michael Ladam, Les
12 Stachow, and David Goyette, from Commission Staff.

13 CHAIRMAN IGNATIUS: Good morning.
14 Welcome. Has there been discussion about the order of
15 business and how -- an agreement among the participants on
16 how this should go this morning?

17 MR. FOSSUM: No, there have not. No,
18 there hasn't.

19 MR. MALONE: What we would propose is
20 that we would put Mr. O'Quinn back on the stand to update
21 his testimony from December 14, and then open it up to any
22 cross-examination that the other parties may wish to
23 conduct or that the Commission may wish to conduct.

24 CHAIRMAN IGNATIUS: We have no record of

1 Mr. O'Quinn filing prefiled testimony with any new
2 information. Is there anything in the record that I'm not
3 aware of -- in the file that I'm not aware of?

4 MR. MALONE: No, madam Chair.

5 CHAIRMAN IGNATIUS: Is there any
6 opposition -- that's not the norm, to have someone take
7 the stand without having prefiled testimony. Is there any
8 opposition from the parties or Staff to that plan, to have
9 Mr. O'Quinn testify?

10 MS. HOLLENBERG: I'm not going to oppose
11 it. I have not really been overly actively involved in
12 this case due to a number of circumstances at the Office
13 of Consumer Advocate these days. But I do note that it is
14 not the norm, and it doesn't give me an opportunity, on
15 behalf of the individuals that I represent, to prepare to
16 cross-examine.

17 CHAIRMAN IGNATIUS: Was there discovery?
18 Any technical sessions that occurred? I know there was
19 some rescheduling issues. But was there any discovery
20 between when we last were here in the hearing room to
21 today?

22 MR. FOSSUM: Yes. There was some
23 discovery. And, FairPoint has also submitted to the
24 parties various pieces of information that update exhibits

1 that were presented during the temporary rates portion of
2 this proceeding, that it's my understanding were going to
3 be presented today as updates to -- so, I guess, in that
4 regard, there is testimony and exhibit in the record that
5 will be updated today. But, yes, there's no new filed
6 testimony, but there has been some discovery that has been
7 conducted.

8 MS. HOLLENBERG: And, madam Chair, if I
9 may just note. I mean, one question I did have in
10 preparing for today's hearing was whether or not the
11 Explanatory Memorandum would be something that would be
12 sworn to by a witness offered by FairPoint, as, you know,
13 a statement of position, so at least there was some
14 statement in the Commission's record that was under oath
15 about the circumstances underlying the tariff filing.

16 CHAIRMAN IGNATIUS: And, when you say
17 "Explanatory Memorandum", what's that?

18 MS. HOLLENBERG: It's the memorandum
19 that was filed, and then updated. There was, with the
20 initial tariff filing, there was an Explanatory Memorandum
21 filed, dated November 15th, 2011, which included the facts
22 underlying the filing. And, then, it was updated on the
23 12th of December. And, my question was that -- was
24 whether or not this would be sworn to by a witness, and

1 then could be somewhat in the form of a prefiled
2 statement.

3 CHAIRMAN IGNATIUS: Well, I think those
4 two documents were made Exhibits 1 or 2 in the filing.

5 MS. HOLLENBERG: Okay.

6 CHAIRMAN IGNATIUS: In the docket,
7 excuse me. And, Mr. O'Quinn testified under oath to
8 those.

9 MS. HOLLENBERG: Okay.

10 CHAIRMAN IGNATIUS: So, I think we're
11 okay on that. It's to any further information. So, I
12 take it, is there no objection to Mr. O'Quinn testifying
13 and updating the information and being available for
14 cross-examination?

15 MS. HOLLENBERG: No.

16 CHAIRMAN IGNATIUS: All right. All
17 right, why don't we proceed then, Mr. Malone.

18 MR. MALONE: Would you care to take the
19 stand.

20 CHAIRMAN IGNATIUS: And, while he's
21 heading up there, let me ask everyone to be mindful that
22 there are some confidential documents or numbers within
23 documents, and there's a bit of -- I want to be sure we're
24 all on the same track on what's confidential and what

1 isn't. From going through the files this morning,
2 Exhibit 1 contains confidential documents -- confidential
3 information. Exhibit 2 does as well. Although, did you
4 pare back the level of confidentiality in them? That's
5 one question to think about. Another is, Exhibit 3 was
6 stamped "confidential", but it was made "not confidential"
7 during the course of the hearing?

8 MR. MALONE: That's correct.

9 CHAIRMAN IGNATIUS: And, Exhibit 4 is
10 not stamped "confidential", and my handwriting shows "not
11 confidential". So, I assume that's correct?

12 MR. MALONE: That is correct.

13 CHAIRMAN IGNATIUS: All right. So, the
14 only question is, on 1 and 2, did we, and I apologize, we
15 have files, we sort of had a changing of the guards, and
16 some of our files are not as full as they should be. Are
17 there -- did we scale back the things that were called for
18 as "confidential" in 1 or 2, or did they remain as
19 requested? I know there was a specific finding that
20 access lines would remain confidential.

21 MR. MALONE: That was the only piece of
22 information that remained confidential.

23 CHAIRMAN IGNATIUS: So, the confidential
24 version, people should turn to, and everything, except on

1 Page -- I'm looking at the December 12th document, which
2 is Exhibit 2, is it the only thing that is now
3 confidential is on Page 2, that identifies the number of
4 access lines times 99 cents, equals a dollar figure?

5 MR. MALONE: That is correct.

6 CHAIRMAN IGNATIUS: So, that entire line
7 would be confidential?

8 MR. MALONE: Yes.

9 CHAIRMAN IGNATIUS: Is anything else in
10 those next two lines considered "confidential"?

11 MR. MALONE: No, madam Chairman.

12 CHAIRMAN IGNATIUS: And, nothing in the
13 text, the page and a half of text remains confidential?

14 MR. MALONE: No.

15 CHAIRMAN IGNATIUS: Thank you.

16 CMSR. HARRINGTON: So, what's here,
17 where it says "begin confidential", "end confidential" is
18 no longer correct? The "end confidential" should be moved
19 up, below the first line? It's just that phrase.

20 CHAIRMAN IGNATIUS: And, on Exhibit 1,
21 which was the November 15th filing, again, we have text
22 that's marked as "confidential", but that no longer is
23 considered "confidential"?

24 MR. MALONE: That is correct.

[WITNESS: O'Quinn]

1 CHAIRMAN IGNATIUS: And, again, on the
2 second page, I'm afraid I only have the redacted one, but
3 is it the same structure, there's a line that has access
4 lines? All right. Same thing. So, that one line would
5 be confidential, and otherwise not?

6 MR. MALONE: That's right.

7 CHAIRMAN IGNATIUS: Okay. Thank you. I
8 think we're set.

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

11 **KEVIN O'QUINN, SWORN**

12 **DIRECT EXAMINATION**

13 BY MR. MALONE:

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

15 A. Kevin O'Quinn.

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

17 A. I'm employed by FairPoint Communications, in the
18 position of Director of Financial Reporting to the
19 regulatory commissions in Maine, New Hampshire, and
20 Vermont, as well as to the FCC.

21 Q. And, are you the same Mr. O'Quinn who testified in this
22 proceeding on December 14th, 2011?

23 A. Yes, I am.

24 Q. Mr. O'Quinn, is there anything you would like to add to

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 that testimony or revise?

2 A. Yes. Since I was here testifying in the middle of
3 December, we have received bills from the
4 municipalities, a total of an additional 53 bills from
5 the municipalities, that, in total, as of May 1st, we
6 had received 167 bills representing the fiscal year
7 2011.

8 Q. All right. And, I'm going to show you an exhibit
9 that's marked "First Revised Exhibit 4". Are you
10 familiar with this exhibit?

11 A. Yes, I am.

12 (Atty. Malone distributing documents.)

13 CMSR. HARRINGTON: Does this replace the
14 original Exhibit 4?

15 MR. MALONE: Yes, it does.

16 CHAIRMAN IGNATIUS: And, have you
17 provided magnifying glasses for all the parties?

18 (Laughter.)

19 BY MR. MALONE:

20 Q. I'm sorry. Could you repeat your answer again.

21 A. Yes. I'm familiar with this exhibit.

22 Q. Okay. And, this is an update to the Exhibit 4 that has
23 previously been filed in this proceeding?

24 A. Yes.

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 Q. Okay.

2 CHAIRMAN IGNATIUS: Before we go on,
3 they're rather different in their format. Maybe it's just
4 more boxes have been put around the numbers, and,
5 obviously, more locations added. But, because it's
6 different enough, why don't we make this just "Exhibit 5".
7 Any opposition to that from anyone?

8 MR. MALONE: We already have an Exhibit
9 5.

10 CHAIRMAN IGNATIUS: Oh. Oh, we reserved
11 5 for additional municipal tax bills?

12 MR. MALONE: That's correct.

13 CHAIRMAN IGNATIUS: And, have those been
14 received? All right. We don't have those in our files,
15 so we need to locate those at a break. But, okay. So,
16 let's make this "Exhibit 6" then. Thank you. And, so, at
17 the top it says "Revised 4", let's just make that "Exhibit
18 6" for identification.

19 MR. MALONE: All right.

20 CHAIRMAN IGNATIUS: Thank you.

21 (The document, as described, was
22 herewith marked as **Exhibit 6** for
23 identification.)

24 BY MR. MALONE:

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 Q. All right. And, Mr. O'Quinn, I'd like to now show you
2 a document that we've labeled "First Supplement to
3 Exhibit 5". Are you familiar with this exhibit?

4 A. Yes, I am. This revised exhibit is the additional
5 invoices that we have received from the New Hampshire
6 municipalities. "Additional" meaning the ones we have
7 received since I was here testifying back in the middle
8 of December.

9 CHAIRMAN IGNATIUS: Can we just -- I
10 think it would be clearer if we just give this a separate
11 number. So, this would be "Exhibit 7" for identification.

12 MR. MALONE: Okay.

13 (The document, as described, was
14 herewith marked as **Exhibit 7** for
15 identification.)

16 CMSR. HARRINGTON: But it updates
17 previous Exhibit 5, is that correct?

18 CHAIRMAN IGNATIUS: It adds to. I don't
19 know if it updates, but there's additional municipalities,
20 correct?

21 MR. MALONE: Correct.

22 WITNESS O'QUINN: Yes, that's correct.

23 BY MR. MALONE:

24 Q. So, including the additional tax bills that are in

[WITNESS: O'Quinn]

1 Exhibit 7, with those that are in Exhibit 5, how much
2 has FairPoint been billed by the municipalities to
3 date?

4 A. For -- as I've summarized in the -- excuse me -- the
5 First Revised Exhibit 4, the total amount that we have
6 been billed, including refunds, is approximately
7 \$5.5 million for fiscal year 2011.

8 CMSR. HARRINGTON: Could you give us
9 that number again please?

10 WITNESS O'QUINN: Approximately
11 5.5 million. The specific number is \$5,547,938.

12 BY MR. MALONE:

13 Q. And, how much of that have you paid?

14 A. Approximately the entire amount, 5.5 million.

15 Q. All right. In your opinion, do you feel that this
16 figure is a good representation of what FairPoint's
17 municipal tax obligation will be going forward?

18 A. No. As detailed in the exhibit, we have been billed by
19 167 municipalities, of a total of 230 municipalities
20 that were subject to taxation in the state. Going
21 forward, I think it's very possible that we'll be taxed
22 by more than 167 municipalities that have billed us,
23 again, for fiscal year 2011.

24 In addition, we have begun challenging

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 the bills. We've issued abatements to a majority of
2 the bills that we've received to date, with the hope
3 that -- that the level of billing that we've received
4 from the municipalities in some way will end up being
5 less than the bill that we've received.

6 Q. All right. Mr. O'Quinn, on the December 14th hearing,
7 you also presented an exhibit that was eventually
8 marked as "Exhibit 3", which was used to explain how
9 FairPoint allocated the cost of the property tax across
10 its operations, is that correct?

11 A. Yes.

12 Q. I'd like to show you an exhibit that we've marked
13 "First Revised Exhibit 3", which we're happy to call
14 "Exhibit 8".

15 CHAIRMAN IGNATIUS: Thank you.

16 (Atty. Malone distributing documents.)

17 CHAIRMAN IGNATIUS: That will be marked
18 for identification as "Exhibit 8".

19 (The document, as described, was
20 herewith marked as **Exhibit 8** for
21 identification.)

22 BY MR. MALONE:

23 Q. Mr. O'Quinn, could you describe this exhibit.

24 A. Yes.

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 MR. FOSSUM: Excuse me. May I -- I
2 apologize for interrupting. But, in light of the
3 discussion about "confidential" material, I wanted to
4 point out that, on Exhibit 8, there is a listing for line
5 numbers, including "surcharge lines" and "resale lines".
6 It's my understanding that the line counts were supposed
7 to remain confidential.

8 MR. MALONE: That is a good catch,
9 Mr. Fossum. We'll have to revise this exhibit to make
10 confidential that section there.

11 CHAIRMAN IGNATIUS: So, before -- has an
12 exhibit been distributed to everyone?

13 MR. MALONE: Everyone here in the room
14 is privy to the confidential information, so --

15 CHAIRMAN IGNATIUS: All right. So, if
16 everyone can hand-mark right now, just so we're certain
17 which lines. Is it the "E911 Surcharge lines", that line,
18 and the number next to it, is what you're seeking
19 confidentiality for?

20 MR. MALONE: That's correct. The
21 "<CONFIDENTIAL>" and the "<CONFIDENTIAL>".

22 CHAIRMAN IGNATIUS: I was trying to
23 avoid saying it on the record. So, those two numbers is
24 what --

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 MR. MALONE: That's correct.

2 CHAIRMAN IGNATIUS: -- is what you're
3 seeking confidentiality for. And, we had agreed
4 previously that those would remain confidential. So,
5 that's fine.

6 And, Mr. Patnaude, if you can make a
7 confidentiality note --

8 MR. MALONE: Thank you, Mr. Patnaude.

9 CHAIRMAN IGNATIUS: -- in the
10 transcript.

11 BY MR. MALONE:

12 Q. Sorry if I asked you this question already,
13 Mr. O'Quinn. Can you describe what this exhibit is?

14 A. Yes. I prepared this exhibit to update the Exhibit 3
15 from the -- when I testified, with the same allocation
16 process, using the most current numbers. The first
17 column of numbers represents the "Updated Fiscal Year
18 2011" municipal billings, and it's supported by the
19 revised exhibit previously filed. The second column of
20 numbers represents an estimate of what we would expect
21 to be billed in 2012, with the assumption that we're
22 taxed by the entire 230 municipalities. In the third
23 column of numbers, with the column heading
24 "Cumulative", is adding up what we have been billed for

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 fiscal year 2011, the estimate for 2012, and it totals
2 those two columns.

3 By way of an explanation, going down the
4 left side, in the regulatory financial world, dollars
5 are allocated to various product services or regulatory
6 entities. And, when I had originally prepared this, in
7 response to questions that we had received from the
8 Staff, what I've done here is I've tried to present the
9 fact that, on the assumption that we're billed by the
10 -- using the first column of numbers, 5.5 million,
11 under federal rules, specifically Part 64, we would
12 allocate approximately 5 percent of those costs to
13 non-regulated operations. Using the FCC formula for
14 pole attachments, which was another area questioned, we
15 would allocate approximately 110,000 of the costs to
16 pole attachments, which then leaves the amount subject
17 to regulation. "Regulation" defined as "FCC-regulated"
18 or "interstate", and "state-regulated" referred here to
19 "intrastate". The regulatory rules are defined as "FCC
20 Part 36" rules. And, we would -- those rules dictate
21 that we're to assign approximately 34 percent of the
22 costs to FCC-regulated or interstate operations, with
23 the residual 66 percent allocated to intrastate or
24 PUC-regulated operations.

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 With that all as background, of the
2 5.5 million, approximately 3.4 million would be
3 assigned to New Hampshire intrastate operations, and
4 would be the basis amount that we'd be carrying forward
5 as our intrastate cost.

6 Q. All right. Mr. O'Quinn, you testified at the last
7 hearing that "the 99 cent surcharge would result in
8 approximately \$3.1 million in additional revenue." Has
9 that estimate changed?

10 A. Yes, it has. Based on the access line numbers that are
11 in play, that were in place as of March 31st, 2012,
12 based on the 99 cents surcharge, we'd expect an annual
13 revenue surcharge number of approximately 2.9 million.

14 Q. Okay. You also testified at the last hearing that
15 "FairPoint had negative earnings in New Hampshire of
16 approximately \$60 million." Is that true?

17 A. Yes.

18 Q. Has that status changed since that time?

19 A. Yes, it has. Based on our last reported earnings
20 statement to the Commission, our earnings are
21 approximately -- a negative approximately 72.4 million.

22 MR. MALONE: Thank you, Mr. O'Quinn. I
23 have no further questions, madam Chairman.

24 CHAIRMAN IGNATIUS: Thank you.

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 Mr. Johnston.

2 MR. JOHNSTON: Thank you. Mr. O'Quinn,
3 just a few questions.

4 **CROSS-EXAMINATION**

5 BY MR. JOHNSTON:

6 Q. Does FairPoint, I hope you're the appropriate person to
7 ask these questions, does FairPoint own property in New
8 Hampshire, apart from poles and conduits, on which it
9 pays municipal property taxes?

10 CMSR. HARRINGTON: Excuse me. Could you
11 speak a little closer to the microphone please.

12 MR. JOHNSTON: Okay.

13 CHAIRMAN IGNATIUS: Make sure the red
14 light is showing.

15 MR. JOHNSTON: It's on.

16 BY MR. JOHNSTON:

17 Q. Does FairPoint own other property in New Hampshire,
18 apart from poles and conduits, and forgetting about the
19 use of right-of-way, other property on which it pays
20 property taxes in New Hampshire?

21 A. Yes.

22 Q. Okay. Does FairPoint impose a surcharge on its billing
23 statements to recover those other property tax
24 expenses?

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 A. Specifically, no. But I will add that those types of
2 taxes were included in the last time rates were set in
3 the State of New Hampshire.

4 Q. So, those -- so, those, the expenses for those taxes
5 are recovered through the rates?

6 A. I struggle with the word "recovery" when we have
7 negative earnings. "Recovery" is a fair term when one
8 is a monopoly, and they have rates that are
9 specifically designed to recover costs. FairPoint's in
10 a competitive environment right now. And, to literally
11 say that "we're recovering our costs today" or that
12 "we've recovered those costs", I just struggle with the
13 theory of it, that those costs are recovered.

14 Q. Okay.

15 A. They were part of the rate-setting process the last
16 time rates were set.

17 Q. Okay. Understood that they may not be fully recovered,
18 but they are included in the rate-setting process?

19 A. Yes.

20 Q. Okay. Thank you. Does FairPoint pay property taxes on
21 its poles and conduits in other states? Or, let's
22 limit that to Maine and Vermont?

23 A. I believe we do. But I would prefer to take a record
24 request on that, to be 100 percent sure on it.

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 Q. Okay. Can you -- well, let me ask you this. Can you
2 identify any other state in which FairPoint includes a
3 property tax surcharge on its billing statements?

4 A. I don't believe there is another state where we have a
5 surcharge. There's a lot of taxes that get billed and
6 collected on behalf of the state, E911 is an example.
7 But, as far as a specific surcharge, I don't believe
8 there is a state where we -- where we do that.

9 Q. Okay. Thank you. Does FairPoint pay the New Hampshire
10 Business Enterprise Tax?

11 A. Yes.

12 Q. Okay. And, I assume that that is not recovered
13 separately as a surcharge on the billing statements?

14 A. I believe it was a form of taxation that was in place
15 the last time rates were set.

16 Q. Okay. Thank you. Can you tell me, apart from the new
17 Municipal Property Tax Surcharge, what other surcharges
18 are included on FairPoint's billing statements?

19 A. I'm going to go back to what I had mentioned before.
20 There's a lot of surcharges thrown on the telephone
21 bill. There's a federal Universal Service Fund,
22 there's, in certain cases, state Universal Service
23 Funds, and each state has its own tax structure, as
24 well as what it surcharges on a bill. So, Maine, as an

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 example, has several surcharges on a customer bill.

2 The FCC, as I had mentioned, puts a Universal Service
3 Fund. We surcharge what our costs are for the federal
4 Universal Service Fund on the bill. Maine, and I
5 believe Vermont, or Maine and Vermont, I believe, also
6 have Universal Service Fund surcharges or billings that
7 we put on customer bills. So, it's not unique. The
8 State of Massachusetts, in a similar situation,
9 surcharging for similar type transactions, Verizon puts
10 a surcharge on the customer bill very similar to what
11 we're proposing here.

12 Q. Okay. The E911 Surcharge, that is a -- that is a
13 surcharge that is specifically required by state
14 statute, is that correct?

15 A. That's my understanding, yes.

16 Q. Okay. Now, with this Municipal Property Tax Surcharge,
17 am I correct that there is -- there's not necessarily
18 any connection between the location of the property,
19 the poles and conduits, on which FairPoint is paying
20 the tax, and the location of any given customer on whom
21 the surcharge is being imposed? So, for example, a
22 customer in Town A might be paying the surcharge, even
23 though FairPoint may not own any poles and conduits in
24 Town A, is that correct?

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 A. That possibility exists, yes.

2 Q. And, alternatively, in Town B, FairPoint might own
3 poles and conduits, and, therefore, paid property
4 taxes, but might not have any customers in Town B that
5 the surcharge is being imposed on, is that correct?

6 A. I'm sorry. Could you repeat that please.

7 Q. Okay. In Town B, FairPoint might own poles and
8 conduits, and, therefore, be paying property taxes to
9 the Town, but might not have any customers in that town
10 that are paying the surcharge, is that correct?

11 A. That's possible, yes.

12 Q. Okay. Now, the property tax that FairPoint pays on its
13 poles and conduits is being referred to as a "Municipal
14 Property Tax Surcharge". And, yet, am I correct that a
15 share of the property tax also goes to the school
16 districts, and a share to the county and a share to the
17 state?

18 A. I'm sorry, is that a question?

19 Q. Yes, that's a question. Is that -- am I correct in
20 that understanding?

21 A. My understanding is that the property tax bills are, in
22 some way, divvied up for schools and other services
23 provided by the town.

24 Q. Okay.

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 A. Did I answer your question?

2 Q. Yes, I think -- Yes. Thank you. I think you indicated
3 that FairPoint -- FairPoint has filed for abatements or
4 otherwise contested the assessments of property taxes
5 on the poles and conduits in some of the municipalities
6 that have sent bills. Do you know, I think you said
7 you "received bills from 167 municipalities". Do you
8 know in how many of those you have filed for abatements
9 or otherwise challenged the assessments?

10 A. I don't have specific numbers. We have filed
11 abatements for virtually every invoice. And, I say
12 "virtually", as in most of the invoices. There were a
13 few municipalities that, based on the advice of the
14 consulting group that we have hired to help us work
15 through this issue, said there were -- there were some
16 municipalities who we felt billed us fairly and, as
17 such, did not file abatements.

18 Q. Okay. Now, you said that the total amount billed to
19 date is approximately \$5.5 million, is that correct?

20 A. That's correct. Yes.

21 Q. Okay. Do you know if, in the event that all of the
22 abatements that you have filed for were granted exactly
23 as requested, do you have any idea what the total
24 reduction in tax liability would be?

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 A. I don't have that number with me, no.

2 MR. JOHNSTON: Okay. Thank you. That's
3 all I have. Thank you.

4 CHAIRMAN IGNATIUS: Thank you.
5 Ms. Hollenberg.

6 MS. HOLLENBERG: Thank you. Good
7 morning.

8 WITNESS O'QUINN: Good morning.

9 MS. HOLLENBERG: I see you're a Holy
10 Cross graduate. I am one as well. So, I will be kind and
11 gentle.

12 WITNESS O'QUINN: I appreciate that.
13 Thank you.

14 BY MS. HOLLENBERG:

15 Q. I notice on Exhibit 8 that there's a line that -- for
16 "Consultants Cost". Can you describe the costs that
17 would be included? It looks as though that those are
18 amounts that are "to be determined". But what types of
19 costs would be included in that line?

20 A. As I just mentioned to Mr. Johnston, we have hired a
21 consulting company to assist us with the whole
22 abatement and assessment process. And, the costs that
23 we incur to pay that firm is what I would propose to
24 include. And, once we know what that amount is, that I

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 would include that as part of the cost of the municipal
2 tax. And, that's what it would be.

3 Q. So, it's fair to say then that the surcharge, which the
4 Company has filed, the Municipal Property Tax
5 Surcharge, will include costs other than just a
6 pass-through of the tax charged by the municipalities?

7 A. That's the proposal I'm making, yes.

8 Q. And, would FairPoint have any opposition to including
9 some language in the name of the surcharge to reflect
10 that it also includes the costs of legal challenge, the
11 legal challenges that FairPoint is undergoing?

12 A. I'm not in a position to commit "yes" or "no" to that.

13 Q. Would you agree, though, that revising the name to
14 reflect that there are other fees or costs included
15 would more accurately describe the surcharge?

16 A. I'm not sure. I'm a financial person. I'm not sure
17 it's material --

18 Q. Okay.

19 A. -- and worthy of complicating a customer bill with
20 something like that.

21 Q. Mr. O'Quinn, are you generally familiar with the
22 Settlement Agreement that the Company reached with the
23 Commission Staff in DT 07-011?

24 A. I'm somewhat familiar with it, yes.

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 Q. And, in that Settlement Agreement, there was a
2 provision that required FairPoint or prohibited any
3 kind of change in base rates during a particular period
4 of time. Do you recall something like that?

5 A. Yes.

6 Q. And, there was a provision in that term of the
7 Settlement that enables FairPoint to request rate
8 changes in the event of exigent circumstances. Is that
9 familiar to you?

10 A. Yes.

11 Q. And, would you agree that FairPoint considers the
12 municipal property taxes as an "exigent circumstance"
13 under that agreement?

14 A. Yes.

15 Q. Thank you. In terms of the requests for abatement of
16 the property tax bills, what does the Company plan, if
17 and when there are any abatements received, in terms of
18 attributing those reductions in tax bills to customers?

19 A. My thought on that is that we would -- we'd come forth
20 to the Commission and Staff, after we have the full
21 benefit of an abatement process, such that we could
22 quantify factually what the cost of this is, what the
23 allocation to intrastate operations, and then what
24 we're receiving for revenues from the surcharge. And,

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 recognizing that we've already incurred, on an
2 intrastate basis, over 3.4 million, and, as we go
3 forward, what we're billing out, you know, somewhere
4 over 200,000, and incurring more costs, that we'd
5 capture that information altogether and look at what
6 the revenue received is versus the costs that we've
7 incurred, including the abatements and refunds, and see
8 whether the rate is appropriate going forward.

9 Q. So, would that be a reconciliation process of sorts?

10 A. Yes.

11 Q. Okay. So, is it fair to say that FairPoint is not
12 seeking to recover or is just seeking to recover the
13 actual amounts of their property taxes through this
14 surcharge?

15 A. Yes.

16 Q. And, would FairPoint be -- or, I guess the first
17 question I have is, have the amounts that FairPoint has
18 incurred to date been audited by the Commission?

19 A. Every piece of evidence is in this case.

20 Q. Every piece of evidence, your documents have been filed
21 with the Commission. Are you aware that the Commission
22 has an Audit Staff that audits filings by the
23 Commission -- by companies?

24 A. Yes. I am aware.

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 Q. And, do you know if there has been an audit of the
2 filing yet?

3 A. To my knowledge, there has not been one.

4 Q. And, if the Company were to seek some kind of
5 reconciliation of the amounts that it recovers through
6 the surcharge, would it agree to have its costs and
7 revenues audited by the Commission?

8 A. Absolutely, yes.

9 MS. HOLLENBERG: Okay. Thank you.

10 Thank you. I have no other questions.

11 CHAIRMAN IGNATIUS: Thank you.

12 Mr. Fossum.

13 MR. FOSSUM: Thank you.

14 BY MR. FOSSUM:

15 Q. I guess I'll start by just following up on the
16 questions you were just asked about, a reconciliation.
17 Mr. O'Quinn, are you familiar with Senate Bill 48?
18 Does that mean anything to you?

19 A. I have been informed a little bit about it. But I
20 don't have a lot of knowledge about it, no.

21 Q. Do you -- so, to the best of your knowledge then, do
22 you know if Senate Bill 48 would have any effect on a
23 future reconciliation of these costs?

24 A. No, I'm not. No, I'm not.

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 Q. I'd also like to follow up with some of the questions
2 that Mr. Johnston asked you regarding other property
3 taxes. Is there some reason that this tax could not be
4 included in FairPoint's rates?

5 A. I believe it could be included in rates. I believe the
6 timing is such right now that it would be inappropriate
7 to put an amount in rates, until we've had the benefit
8 of historical billing, the impact of what -- of going
9 through an abatement process. Once those numbers are
10 firmed up and have been through a process, then at that
11 point I believe that it's more appropriate to look at
12 it from a rate standpoint.

13 Q. So, is it your position then that FairPoint would come
14 in in a year, or thereabouts, when it has a better
15 understanding of the tax burden, to move these costs
16 into its rates?

17 A. I'm not in a position to answer that.

18 Q. Does FairPoint currently have any proposals for
19 addressing this tax cost through its rates?

20 A. Just as has been presented here, and from my
21 standpoint, that the reconciliation process I think is
22 a necessary step to take prior to formal or finalizing
23 the rate aspect to it.

24 Q. So, essentially, your position then, if I understand,

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 is that you're proposing only the surcharge right now,
2 and that you have no proposal for putting this cost
3 into FairPoint's rates? Is that accurate?

4 A. I have no proposal toward that.

5 Q. I'd like to ask you a few questions about what has now
6 been labeled as "Exhibit 6".

7 A. The difficult-to-read exhibit?

8 Q. Yes. Now, you said that the amounts that are billed on
9 here are for fiscal year 2011, is that correct?

10 A. That's correct.

11 Q. So, given that it's the middle of May 2012, do you
12 anticipate there being many more municipalities that
13 will, in fact, be doing any billing for fiscal year
14 2011?

15 A. I don't anticipate that there will be many more,
16 although there was a bill that came in this past week
17 and since I filed this. What I do anticipate and hope
18 is that -- that the municipal -- that certain
19 municipalities will respond to our abatement filing and
20 be issuing or proposing and issuing some level of
21 refund, again, in response to our abatement filing.

22 Q. And, I guess, on the issue of abatements then, do you
23 have any feeling for about how long that abatement
24 process might last?

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 A. I know that there's -- well, we've filed our
2 abatements. The municipalities have until I believe
3 it's July 1st to respond to our abatement. If they do
4 not respond, then it's an indication or it's basically
5 stating that they denied our abatement. And, then, we
6 have until September 1st to decide whether to go to the
7 next level, which is either a -- going to superior
8 court or to an agency, an arbitrating-type agency to
9 bring our abatement to that process.

10 Q. So, potentially many months from now then?

11 A. Correct.

12 Q. Looking back again at Exhibit 6, if I'm reading it
13 correctly, it seems to include pole and conduit
14 valuation and tax amounts for essentially what I
15 believe are the largest municipalities in New
16 Hampshire. I mean, on here is Concord, Manchester,
17 Nashua, Derry, Hudson. Is there any larger
18 municipality left that hasn't yet issued a bill?

19 A. I'm sorry, I haven't studied it that way. This is a
20 factual sheet, meaning this is what we've been billed
21 by the 167. I haven't gone through there. I know --
22 yes, as you had said, the larger municipalities have,
23 in fact, billed us, and that's all here. So, I guess,
24 by default, there are no other large municipalities to

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 be billing us.

2 Q. And, you know, I'm not -- you said that "this doesn't
3 necessarily reflect a fair valuation of FairPoint's
4 property to this point." Is that an accurate
5 description of your testimony from earlier?

6 A. Yes.

7 Q. So, I'm trying to understand what would be an accurate
8 valuation. And, so, I'm trying to understand what
9 municipalities might be left that would be billing
10 FairPoint. And, you're saying, essentially, what's on
11 the sheet is what's on the sheet?

12 A. Yes. Fair enough. What's here is what we have been
13 billed by the municipalities. The point I'm making is
14 that we've gone out and hired a firm to assist us with
15 what the proper assessed value is. What's on here is
16 the municipalities' assessed value. We've filed an
17 abatement, which is a reflection of the fact that we
18 don't agree with the assessment. And, when I made the
19 statement of what a fair value is, that's what's going
20 to work its way through the abatement process. And,
21 again, what's here is the assessed value from the
22 municipalities; we don't believe to be a fair value in
23 most cases.

24 Q. So, looking at the numbers you've provided at the

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 bottom of the second page, it appears that you've
2 calculated an average per the invoice, and then used
3 that to calculate a presumed upper end of the range.
4 Is that accurate?

5 A. I'm going to say a "conservative estimate". I'm not --
6 I don't know that I'd say the "upper end of the range",
7 but maybe that's semantic.

8 Q. Well, given that you said that you believe that
9 municipalities have over-valued FairPoint's property
10 and that you've already sought abatements in virtually
11 every one of those cases, why wouldn't that represent
12 the upper end of the range?

13 A. I mean, the potential is there that the municipalities
14 that haven't billed us will bill us at a higher
15 assessed value than the average. You know, the
16 possibility is there that we won't be successful in the
17 abatement process, and that this is ultimately what our
18 tax value is. And, you know, if I add onto that, that
19 the average I have here ends up being less than what is
20 billed out by the remaining municipalities, potentially
21 could be higher than this.

22 Q. Do you think that's a realistic potential?

23 A. I certainly hope it's not, not the case. But, as an
24 accountant, you follow conservative principles, and

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 this is a conservative and practical way to estimate
2 what 2012 costs are.

3 Q. Looking at the exhibit, there appears to be, for
4 "Conway", the better part of a dozen entries. Could
5 you explain why there are so many entries for "Conway"?

6 A. These were the bills that Conway sent to us. My
7 understanding is they bill by district within the
8 Conway municipality. And, this is the number of bills
9 that we've received.

10 Q. Is that a -- is that counted in your system as a single
11 property tax bill or is that, as you've listed, is a
12 multiple billing?

13 A. That's part of the 167 municipalities. So, we -- if
14 there's -- if there's ten here, and I'm just doing a
15 real rough estimate, that's not -- I didn't count those
16 as ten in my 167; I counted it as one.

17 Q. Okay. Looking back up and just picking the first one
18 on the list that appears to do -- I'm going to ask
19 about, looking at the entries for "Brookline". There's
20 a positive entry, an appraised value for about 980,000,
21 and then what looks like a negative entry, for about
22 134,000 below that. Could you explain what those two
23 entries represent?

24 A. Yes. That's an example of a municipal that responded

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 to our abatement and issued a refund check. So, in
2 that case, Brookline's original bill and assessment,
3 that their bill was for "\$23,570". And, after we filed
4 the abatement, they responded to our abatement with a
5 check -- or, a refund check in the amount of "\$3,314".
6 And, we did kind of the reverse arithmetic to come up
7 with what that represented on the assessed value, to
8 the extent it wasn't on the refund check from the Town
9 of Brookline.

10 Q. And, reading down this first page, I see other similar
11 entries for Croydon, for Dummer, for East Kingston, and
12 a few others. Does the -- does having received
13 abatements from a number of municipalities already give
14 you any indication of the possible success of your
15 abatement actions in the other municipalities?

16 A. It's certainly positive. We've received refunds from
17 about 14 municipalities, totaling about \$87,000. We
18 certainly think that's a positive, that there are some
19 municipalities that, when presented with information,
20 are revising what their bills are. How that plays out
21 across all the municipalities I think is something
22 we'll find out over the next number of months.

23 Q. I think this is my last question on this sheet. Going
24 down to the entry for "Groton". And, moving over to

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 the right column for the "Right-of-Way" listing, there
2 appears to be a negative entry for the Right-of-Way
3 listing. Was that -- that, as well as a negative entry
4 for "Poles and Conduits". Was that a combined
5 abatement for both Right-of-Way and Poles and Conduits?

6 A. Yes. My understanding is yes.

7 Q. And, so, was it rebated to FairPoint on that individual
8 basis, Right-of-Way and Poles and Conduits, or did you
9 have to do some sort of allocation?

10 A. No. I believe that's specific to Right-of-Way and
11 specific to Pole and Conduit.

12 Q. And, I don't -- in other of your abatement actions, did
13 they also include challenges to the "Right-of-Way"
14 assessment, as well as the "Pole and Conduit"
15 assessments?

16 A. Yes, it is still being challenged.

17 Q. Do you know how many of those challenges, at least even
18 a percentage of them, include the right-of-way with
19 poles and conduits?

20 A. No, I do not.

21 Q. Looking at your -- what is now "Exhibit 8". My first
22 question is, the line noted as "Non-Regulated (FCC Part
23 64)", if I recall your testimony correctly, you said
24 that that entry gets about -- gets "5 percent" of these

{DT 11-248} {05-16-12}

1 costs?

2 A. That's correct.

3 Q. Why "5 percent"?

4 A. In this case, 5 percent represented approximately the
5 level of operating taxes that were allocated to
6 non-regulated operations, and that's where the
7 5 percent came from.

8 Q. Yes, I'm not sure that I followed that was, I mean,
9 "5 percent was allocated because it was 5 percent." I
10 mean, is it -- is that a FairPoint allocation or is
11 that an allocation required by the FCC?

12 A. It's FairPoint's allocation, based on the FCC rules.

13 Q. And, what's included in the "non-regulated" portion?
14 What services would be included there?

15 A. Inside wire, payphone, voice messaging, are examples.
16 And, there's more than that, but those are kind of the
17 big headline services that are non-regulated.

18 Q. Would DSL be there?

19 A. No. I answered that to one of the Commissioners when I
20 was here last time. DSL is a -- the service provided
21 by the telephone company to offer DSL is an interstate
22 service, interstate special access service. So, the
23 DSL-related service in the telephone company is part of
24 interstate.

[WITNESS: O'Quinn]

1 Q. Staying with the same exhibit, and you had answered
2 Mr. Malone's question earlier that the amount of the
3 recovery from the 99 cent surcharge is less now than
4 you had estimated previously, is that accurate?

5 A. Yes.

6 Q. Do you have any intent to alter the amount of that
7 charge?

8 A. At this point, no.

9 Q. And, why not?

10 A. Because we're in a competitive environment, and there's
11 more to a decision on pricing than cost.

12 Q. So, if I'm following your exhibits, it appears that, by
13 your estimates, your tax liability for fiscal year 2011
14 is nearly \$2 million higher than for fiscal year -- or,
15 I'm sorry, fiscal year 2012 is approximately \$2 million
16 higher than fiscal year 2011. And, the revenue that
17 you'd be recovering through this surcharge is less than
18 it was previously estimated. And, in light of those
19 facts, FairPoint even still would -- does not intend to
20 change that charge?

21 A. At this point, no.

22 Q. Has there been -- to the best of your knowledge, is
23 there any proposal or determination on what to do about
24 the unrecovered amount?

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 A. No, there is not.

2 Q. Does the Company intend to recover the total amounts
3 that are allocated to the other portions --

4 (Court reporter interruption.)

5 BY MR. FOSSUM:

6 Q. To the other items shown on the sheet, the
7 "Interstate", "Pole Attachments", and "Non-Regulated"?

8 A. No final decisions have been made on that.

9 Q. So, essentially, there's no decisions made whether to
10 recover all of the costs for any of these allocated
11 portions?

12 A. Could you repeat that question?

13 Q. Well, you have essentially four categories,
14 "Non-Regulated", "Pole Attachments", "Interstate", and
15 "Intrastate". And, if I understand -- do I understand
16 you correctly that at the moment there's no final
17 decision on whether to recover all of the amounts that
18 you estimate will be allocated to those categories?

19 A. That's correct.

20 Q. Now, you've already said that you're at least somewhat
21 familiar with Senate Bill 48 in the New Hampshire
22 Legislature?

23 A. Yes.

24 Q. Do you understand what Senate Bill 48 would mean for

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 FairPoint's retail rates?

2 A. My understanding is that FairPoint New Hampshire would
3 have flexibility in setting its retail rates, if --
4 yeah, I'll just leave it at that.

5 Q. Would that flexibility include the possible -- include
6 the ability to apply this tax?

7 MR. MALONE: Excuse me, madam Chairman.
8 I think that we're going a little afield here, to
9 speculation on a bill that Mr. O'Quinn has indicated he
10 really doesn't know a lot about.

11 CHAIRMAN IGNATIUS: Well, he -- let's
12 determine at what point he doesn't know, because there are
13 going to be a number of questions I know from the Bench as
14 well about the import of 48. And, they may be better
15 directed to you, as your understanding of the legislation.
16 But I think any factual issues regarding the Company's
17 intention with these bills would be helpful while he's
18 still on the stand, anything else he's aware of.

19 BY MR. FOSSUM:

20 Q. Then, to the best of your understanding, with the
21 flexibility that you say FairPoint would have in
22 setting its retail rates, would that flexibility allow
23 it to include these taxes in its retail rates?

24 A. That's my understanding, yes.

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 Q. Would it be able to allocate these taxes to its
2 different customer classes in essentially any manner it
3 sees fit, to the best of your understanding?

4 A. That's my understanding.

5 Q. Do you understand, to the extent that you know, under
6 Senate Bill 48, do you know of any limitations on
7 FairPoint's ability to allocate these taxes or other
8 costs to its different customer classes?

9 A. I'm not familiar with limitations, no, in the bill.

10 Q. I think I have just one more question -- well, maybe
11 just one more question. If I recall, I don't know if
12 you said it today, but at the temporary rates portion,
13 you also do regulatory reporting to the FCC on behalf
14 of FairPoint, is that correct?

15 A. That's correct.

16 Q. So, are you then familiar with the recent requirements
17 of the FCC to do various changes to revenues and rate
18 design?

19 A. I'm not an expert, but I'm familiar with the change in
20 the Intercarrier Compensation rules.

21 Q. And, so, do you under -- to the best that you know, is
22 FairPoint in the process of redesigning its intrastate
23 rates to conform with the requirements of the FCC?

24 A. Yes.

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 Q. Were there any conversations within FairPoint about
2 including or accounting for these taxes as part of that
3 redesign?

4 A. I'm not familiar with there being any conversations.

5 MR. FOSSUM: Thank you. I believe
6 that's all I have.

7 CHAIRMAN IGNATIUS: Thank you.
8 Commissioner Harrington.

9 CMSR. HARRINGTON: Yes. Good morning.

10 WITNESS O'QUINN: Good morning.

11 BY CMSR. HARRINGTON:

12 Q. Just to start out, I guess, a few times you've
13 mentioned that FairPoint is now "in a competitive
14 environment". And, kind of a follow-up question on
15 that. In a competitive environment, you don't -- you
16 are not allowed to or you're not guaranteed the ability
17 to pass through automatically new taxes onto the
18 customers. So, would it be fair to say that this type
19 of pass-through would only -- this automatic
20 pass-through would only be valid as long as FairPoint
21 remains a regulated utility?

22 A. Yes.

23 Q. Okay. There was a lot of discussion with Mr. Johnston
24 on how the charge was being identified on the bills,

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 specifically as a "municipal tax surcharge". And, you
2 know, there was some questions by the Office of the OCA
3 on the fact that there was consultant's charges in
4 there and so forth. Is there any other way that you
5 could collect the amount of the property taxes on the
6 poles, *etcetera*, from customers other than listing it
7 as a "property tax surcharge" on the bill?

8 A. Yes.

9 Q. And, what would that be, for example?

10 A. Different language, different description.

11 Q. Could you simply incorporate it into the existing rates
12 or would it have to be a separate line item?

13 A. Well, I think, at this point, that it's important that
14 the customer know what it's being billed for. I think
15 it's also important that we're able to track it going
16 forward, both the revenue and the costs. And, that the
17 existing methodology and process that we have in place
18 will allow us to do that.

19 Q. Okay. Let's say then, for example, let's say, in a
20 town that FairPoint had a substantial presence, not
21 including the pole tax, but just the regular property
22 tax that's been in existence for a long time. And,
23 that town decided to spend an incredible amount of
24 money in a given year and caused the property tax to go

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 up a substantial amount. You wouldn't list that out as
2 a separate thing somewhere, you would simply just roll
3 that into your existing rates as expenses?

4 A. It would be an operating expense of the Company.

5 Q. Okay. So, why wouldn't the tax on the poles be
6 considered the same? Or, why couldn't they, I guess?

7 A. Because there was a couple of factors, I think. One
8 is, there was a legislative change. The other is that
9 -- that the history on this is that the predecessor to
10 FairPoint was, in fact, taxed for poles. And, there
11 was a legislative -- I believe there was a legislative
12 change at the time that exempted the predecessor to
13 FairPoint from a pole tax, and rates were reduced for
14 the amount that had been built into rates for the pole
15 tax, and it was substituted with a "Communication
16 Service Tax". And, now, this legislative change has
17 financially burdened the Company, a company recently
18 emerging from bankruptcy, with a significant cost, that
19 it felt it needed, in some way, to obtain relief or
20 offset what that cost was.

21 Q. Okay. Thank you. The 99 cent per line charge that you
22 said brings in about \$2.9 million a year, is that what
23 you're proposing? It sounds like what you're saying is
24 that going forward that would be -- that you would keep

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 that charge?

2 A. Yes.

3 Q. Okay. And, there was some discussion on reconciliation
4 and the differences. It sounds like what you're saying
5 is that, what your bills are going to be is probably
6 going to be larger than the -- what you'll collect from
7 the 99 cent per line charge?

8 A. I think there's a bit of uncertainty there. And, the
9 uncertainty being the number of municipalities that
10 ultimately do bill us. You know, we've been billed 167
11 for fiscal year '11. I'm estimating that it could be
12 as many as 230. And, the other aspect to it is that we
13 are going through the abatement process. And, we're
14 hoping that what we've estimated here, that we'll
15 receive substantial benefit on that or a substantial
16 reduction. It's nothing I can bank on today. But
17 that's why we've gone out and hired a firm to assist
18 us, that will hopefully result in a lower tax amount.

19 Q. And, you say that there's some towns that haven't
20 submitted a bill that you are aware that you have poles
21 and rights-of-way in that you assume that eventually
22 they will see the ability to raise more revenue and
23 send you a bill?

24 A. Yes.

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 Q. Okay. So, you're aware that some of these towns
2 actually -- that have not sent a tax bill, do have
3 FairPoint poles and conduits and right-of-ways in it?

4 A. Yes, that's correct.

5 Q. Okay. So, there will be additional bills coming in,
6 and your hope is that there will also be additional
7 abatements coming in as well?

8 A. Yes.

9 Q. Okay. So, it's more than likely going to end up that,
10 unless it was incredibly lucky, that you're going to
11 have a mismatch between revenues and tax charges. So,
12 it could be you pay more in taxes than you collect in
13 revenues, or, it's possible, if your abatements go
14 successfully enough, you'll collect more in revenues
15 than you pay out in taxes. But I thought I heard you
16 say there would be -- there's no plans on
17 reconciliation of those differences, is that correct?

18 A. No. And, if I could just clarify a little bit there.
19 One is that, I've worked with the Staff for many years.
20 Prior to FairPoint, I was at Verizon. And, I'd like to
21 say, you know, and, you know, they will be the judge to
22 this, that I've been straight up with any financial
23 number with them. And, I'd be -- I'd be up front with
24 reconciling the bills that we've received, the revenues

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 we've collected. And, you know, that's the way I've
2 always operated and would continue to operate.

3 Now, back to your -- somewhat back to
4 one of the points of your question. FairPoint has
5 already paid \$5.5 million, and that's as of the first
6 quarter of 2012. We had not received one, you know,
7 one dollar from the 99 cent surcharge, and we were --
8 already had paid out to the municipalities over
9 5.5 million. So, you know, without putting together a
10 Gantt chart of, you know, when it's coming in and when
11 it's going out, it's a long time before FairPoint will
12 have recovered its costs, and, more specifically, its
13 intrastate costs.

14 Q. Okay. So, you're collecting nothing now, but you're
15 paying bills now, is what you're saying?

16 A. Just to be clear. We started billing as of April 1st
17 of 2012. We had paid out approximately or just over
18 5.5 million prior to our billing on April 1st.

19 Q. And, did that 5.5 million, did that include or was that
20 prior to receiving rebates or is that net of rebates or
21 --

22 A. It's net of rebates.

23 Q. Okay.

24 A. It's specifically the total from the Exhibit 6, I

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 believe it is.

2 Q. So, right now, again getting back to this
3 reconciliation thing, is you seem to be inferring that
4 it will be a long time in the future before the
5 revenues approach the costs that you've paid?

6 A. That's correct.

7 Q. So, maybe it would help, or at least it would help me,
8 if you could walk us through the process as FairPoint
9 would like to see it play out on this. What do you
10 want to see happen on this?

11 A. At this point, we'd like to take the "temporary" tag
12 off of the 99 cent surcharge.

13 Q. So, there's no -- again, there's no permanent rates
14 that would be different, you just want to make the 99
15 cents a permanent rate, rather than a temporary rate?

16 A. Yes.

17 CMSR. HARRINGTON: Okay. That's all I
18 have at this time. Thank you.

19 CHAIRMAN IGNATIUS: Thank you.
20 Commissioner Scott.

21 CMSR. SCOTT: Yes. Thank you. Good
22 morning.

23 WITNESS O'QUINN: Good morning.

24 BY CMSR. SCOTT:

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 Q. So, the reconciliation issue, I guess I'd like to stay
2 on that a little bit. So, I think, if I understood
3 you, is in the short-term you don't really see
4 necessarily that you would be, if this were to happen
5 as you requested, that you'd be receiving more revenue
6 than you expend due to this issue, is that correct?

7 A. That's correct.

8 Q. Well, for discussion sake, longer term, can you walk
9 through, it would make sense and it's logical, as you
10 say, right now you're being billed by 167
11 municipalities, there's a potential for 230. So, I
12 would assume at least some of those 230 will say "me,
13 too" and send you bills. That's a logical assumption,
14 I would think?

15 A. Yes. That's correct.

16 Q. But there's not a surety that all 230 will actually do
17 that. So, there's a gray area here of exactly what the
18 numbers are going to be?

19 A. That's correct.

20 Q. Okay. So, in the chance that you do actually receive
21 more than you have for costs, how do you -- what's the
22 mechanism? How do you propose that reconciliation
23 would happen?

24 A. What I envision is, is somewhat like I've displayed in

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 Exhibit 8. That we'd bring forth to the Staff the
2 cumulative costs, and specifically intrastate costs,
3 that FairPoint has incurred, and compare that to the
4 amount of revenues. And, to the extent that it got to
5 a point where revenues were exceeding the costs, that
6 we'd make a proposal to reduce what the -- to reduce
7 what the surcharge is.

8 Q. And, since you've pointed out Exhibit 8, on the same
9 tone, you've already discussed the consultant costs a
10 little bit. Right now it's "to be determined". It
11 seems very open-ended. Is there a standard rate for
12 consultants?

13 A. There's a specific contract in this case for the
14 consultant, that I don't think I'm really at liberty to
15 discuss the particulars are -- of. But that contract
16 has a period of time. And, there's some contingencies
17 involved with it that doesn't allow me to put that --
18 that doesn't allow me to put a precise estimate in
19 there as to what the contract would be worth.

20 Q. But, with that, and given the question that I just
21 earlier asked, presuming there is a reconciliation
22 needed at some point in the future, it would appear to
23 me that there would need to be some kind of bounds
24 around the consultant costs in order to make that

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 calculation?

2 A. Yes. It would be factual at a point in time. Right
3 now, it's, you know, it's not a factual number. That
4 going forward, the property tax amount would become
5 factual. The 5.5 million that's here in the first
6 column, that's a factual number. It's factual as I
7 found it. Hopefully, through the abatement process,
8 that will be less. And, the consultant costs, I
9 believe, at a point in time will be a factual number
10 and not an estimate.

11 Q. Do you have an estimate of what you spent so far on
12 consultants?

13 A. No, I don't. No.

14 Q. And, you may have, and to say you've "already answered
15 the question" is fine with me, too. I just want to
16 confirm again regarding the pending legislation under
17 Senate Bill 48. In the context of what we've been
18 discussing today, does the Company expect that law will
19 have any impact on what we're talking about today?

20 A. I'm not the best person to answer that. I'm sorry.

21 CMSR. SCOTT: All right. That's all I
22 have. Thank you.

23 CHAIRMAN IGNATIUS: All right. Thank
24 you. Mr. O'Quinn, a few more questions.

{DT 11-248} {05-16-12}

1 BY CHAIRMAN IGNATIUS:

2 Q. Let's start with the consultant issue on Exhibit 8 and
3 reserving that line. What's the theory behind
4 including a "Consultant Cost" in a pass-through
5 surcharge?

6 A. I believe it's part of the costs that we have incurred
7 that's related to the legislation.

8 Q. So, too, would be Mr. Malone's time, but that's not
9 included, I take it? Or, is it?

10 A. No. No, it is not.

11 Q. So, what's the difference?

12 A. That it's direct. That it's potentially -- I'm sorry.
13 That it's directly, specifically, solely for this tax.

14 Q. And, if the abatements go to the arbitration process,
15 would the legal costs of the arbitration also be in
16 that category of "Consultant Cost"?

17 A. That's not my proposal. It's just whatever we pay the
18 consultant is what we'd include here.

19 Q. And, would the consultant be involved in the months of
20 arbitrations that might take place?

21 A. Yes.

22 Q. Are you aware of that sort of consultant fee being
23 included in any other surcharge in any -- in New
24 Hampshire or any other jurisdiction you're involved in?

[WITNESS: O'Quinn]

1 A. No.

2 Q. In looking at the updated Municipal Tax Summary,
3 Exhibit 6, I take it that the most pertinent column is
4 the third over that says "Estimated/Actual Tax"?

5 A. Yes.

6 Q. And, why "estimated and actual"? What still remains
7 estimated on this chart?

8 A. That probably could be better described. At this
9 point, it is "actual tax". This exhibit is used
10 internally and has a lot of history to it. When we
11 first filed -- when we first filed, initially filed,
12 there were -- there were approximately 44
13 municipalities that had billed us. There were
14 municipalities that indicated they were going to bill
15 us. And, you know, right or wrong, we've just used
16 this same tracking spreadsheet. And, at this point,
17 it's more actual billing.

18 Q. All right. There is one note at the very top that says
19 "Highlighted in yellow" means "have sent us letter of
20 intent to assess, no invoice received yet", and the
21 "total" of only "1". What is the municipality that's
22 in that category, since our copy doesn't have any
23 highlighting?

24 A. I believe it's the Town of Hinsdale, I believe.

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 Q. The Town of what?

2 A. Hinsdale, I believe.

3 Q. Hinsdale?

4 MR. FOSSUM: Commissioners, on my -- I
5 have another version of the exhibit that I printed out,
6 that it's not in color, but there is a highlighted band on
7 the Town of "Henniker", on the version that I have. Which
8 would also explain the blanks that follow "Henniker".

9 WITNESS O'QUINN: Thank you.

10 CHAIRMAN IGNATIUS: All right. One of
11 those "H" towns.

12 BY CHAIRMAN IGNATIUS:

13 Q. And, then, there's another oddity on the second page,
14 "Merrimack Poles". The number looks like it's in
15 italics, though that may just be the way the copier
16 waved it. Is there anything funny going on there?

17 A. No. The purpose there is that Merrimack did specify
18 how much was poles and how much was conduit.

19 Q. Are there any municipalities in the state in which you
20 do not have any pole or conduit property?

21 A. I believe so.

22 Q. Do you know how many?

23 A. Not many. But I don't know the specific number.

24 Q. And, you had said you received one additional

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 municipality that wasn't on this list. What did you
2 just receive?

3 A. I don't recall. It was an "L" town, but I don't
4 remember specifically the town. They -- we received a
5 bill since I filed this that, based on counsel, we are
6 obligated to pay it. It's under \$10,000. But I
7 brought it up inasmuch as that we do still receive
8 correspondence, both refundwise and, in this case, an
9 additional bill.

10 Q. All right. That will be a trivia question to figure
11 out what "L" town isn't on this list. You had said
12 that the most recent earnings statement filed with the
13 Commission showed a "negative \$72 million in earnings"?

14 A. That's correct.

15 Q. Who is the entity that that's reporting on?

16 A. The New Hampshire, FairPoint NNE New Hampshire
17 operation.

18 Q. You had introduced yourself as "Director of Regulatory
19 Affairs for the region", is that right?

20 A. "Regulatory Financial Reporting", yes, "for the
21 region".

22 Q. "Regulatory Financial Reporting", but not all
23 regulatory affairs?

24 A. Correct.

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 Q. I ask that, because I'm just struck with the -- how
2 much you're aware or not aware of Senate Bill 48 and
3 how it might impact on -- the impact it might have on
4 this proposal. Has there been discussion you've been
5 involved with on, if that bill is passed, where we go
6 next with this surcharge?

7 A. I have been in a meeting room, I want to say a five or
8 ten minute conversation. And, the thinking was that
9 the -- that we wouldn't need Commission approval for
10 this surcharge if that legislation was in effect.

11 Q. Because you'd have the ability to set rates as you
12 choose?

13 A. That's my understanding, yes.

14 Q. Do you understand, under Senate Bill 48, there is also
15 a cap established on basic service, certain parameters
16 for basic service?

17 A. Yes.

18 Q. Do you consider this property tax surcharge to be an
19 element of basic service or something in addition to
20 basic service?

21 A. I'm not in a position to answer that.

22 CHAIRMAN IGNATIUS: All right. I think
23 we're done with you. Mr. Malone, any redirect?

24 MR. MALONE: One -- Madam Commissioner,

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 could we have about a five-minute break or a ten-minute
2 break?

3 CHAIRMAN IGNATIUS: That's a good idea
4 for multiple reasons. Let's go off the record.

5 (Brief off-the-record discussion
6 ensued.)

7 CHAIRMAN IGNATIUS: Then, back on the
8 record. All right. We'll take a break until 12:00 and
9 resume. And, Mr. O'Quinn, we'll finish with you when we
10 come back. Thank you.

11 (Whereupon a recess was taken at 11:47
12 a.m. and the hearing resumed at 12:03
13 p.m.)

14 CHAIRMAN IGNATIUS: Mr. Malone, are you
15 ready for redirect of Mr. O'Quinn?

16 MR. MALONE: I am. Thank you, madam
17 Chairman.

18 **REDIRECT EXAMINATION**

19 BY MR. MALONE:

20 Q. Mr. O'Quinn, a number of people have asked you some
21 questions about the Exhibit -- I thought I was ready,
22 excuse me -- what we've now marked as "Exhibit 8".
23 And, this is -- the subject of this question is going
24 to be on the possibility of recovery. I'd like you to

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 take a look at the second column regarding "Estimate FY
2 2012". And, your -- what you've described as your
3 "conservative" estimate is that the total tax
4 obligation for FY '12 would be \$7.6 million. And, of
5 that, the intrastate allocation would be 4.7 million,
6 is that correct?

7 A. That's correct.

8 Q. And, you are estimating that, for FY '12, FairPoint,
9 with the surcharge, would recover 2.9 million?

10 A. That's correct.

11 Q. So, essentially, that's about 30 percent less than
12 4.7 million. So, would it be correct to say that,
13 essentially, the Company would have to have a
14 combination of no tax bills and abatements that would
15 amount to 30 percent of what you've estimated before it
16 came close to a dollar-for-dollar recovery of those
17 costs?

18 A. That's correct.

19 Q. Thank you. My other question is in regard to the
20 consultants' fees for the abatement, as -- help me with
21 the math here. As I understand it, FairPoint would
22 receive a tax bill. They would hire the consultant to
23 help them reduce that bill. If they were successful,
24 the bill would be reduced to a certain amount, and

{DT 11-248} {05-16-12}

[WITNESS: O'Quinn]

1 FairPoint would pay a net amount that was less than
2 what the original tax bill would be. Wouldn't that be
3 correct?

4 A. That's correct. There would be a consultant cost
5 that's associated with it.

6 Q. All right. But the costs that they avoided would not
7 be related to that net, because there still would have
8 been the cost of the consultant that would have to be
9 added back in to what FairPoint's obligation would have
10 been, is that correct?

11 A. Yes. That's correct.

12 MR. MALONE: All right. Thank you.
13 Those are all the questions I had, madam Chairman.

14 CHAIRMAN IGNATIUS: All right. All
15 right. Thank you, Mr. O'Quinn. You're excused. Thank
16 you for your testimony.

17 WITNESS O'QUINN: Thank you.

18 CHAIRMAN IGNATIUS: Are there any other
19 witnesses?

20 (No verbal response)

21 CHAIRMAN IGNATIUS: All right. Then,
22 there is the issue of the legal posture we're in with
23 Senate Bill 48 that everyone has alluded to. And, it may
24 be the best thing to do is simply if we were to ask our

{DT 11-248} {05-16-12}

1 questions of -- well, maybe, let me back up. To the
2 extent people have a position on the impact of Senate
3 Bill 48 on this Municipal Property Tax Surcharge, we would
4 very much like to hear it. And, rather than starting with
5 questions, we'll start with people in an organized way
6 saying what they -- where they see it, how it plays out,
7 what the impacts are. And, I'd open that to everyone, all
8 of the participants. But, Mr. Malone, what is the
9 Company's position on the impact of Senate Bill 48,
10 assuming it passes as currently written?

11 MR. MALONE: Well, let me -- let me see
12 if I am anticipating some of the questions here. We
13 believe that SB, you know, in general, SB 48 would permit
14 FairPoint to increase its rates for basic service without
15 Commission approval, as long as that increase was not more
16 than 10 percent a year for basic service customers and 5
17 percent a year for Lifeline customers. As to the impact
18 of this particular surcharge, you know, anticipating the
19 question as to "what's going to happen to this surcharge,
20 assuming that SB 48 passes in its current form?" First of
21 all, we have to remember that, in its December 28th order,
22 the Commission determined that the surcharge constituted
23 an increase in the basic exchange rates for FairPoint.
24 So, that's been established. FairPoint did not seek

1 rehearing of that order. So, it's established on the
2 record that this 99 percent -- this 99 cent surcharge is
3 an increase in its basic rates.

4 CHAIRMAN IGNATIUS: Do you have the cite
5 to that?

6 MR. MALONE: Yes. It's on Page 19 of
7 the order. In the paragraph right before the ordering
8 paragraphs.

9 CHAIRMAN IGNATIUS: All right. And, the
10 sentence, "Accordingly, because the tariff as proposed by
11 FairPoint in this case would result in an increase to
12 basic exchange retail rates"?

13 MR. MALONE: Yes. It would not go into
14 effect until after March 31st, per the terms of the
15 Settlement Agreement. And, you know, that order has not
16 been reheard. So, and because the temporary rate was set
17 as of April 1st, that sort of anchors the effective date
18 of whatever rate that the Commission approves on a
19 permanent basis. So, assuming that SB 48 passed this
20 week, and was signed by the Governor shortly thereafter,
21 it would be approximately 60 days before it became
22 effective. On the effective date, the basic rate for
23 FairPoint's service would be its current basic -- or, its
24 rates, plus the 99 cent surcharge, or whatever, you know,

1 assuming that the Commission grants the 99 cents, it would
2 be -- the basic rate, for purposes of SB 48, would include
3 that 99 cents.

4 CHAIRMAN IGNATIUS: All right.
5 Continue. Anything, I mean, the whole issue of
6 reconciliation and ongoing review of the amounts collected
7 and level of abatements received, is that something that
8 you would anticipate taking place if Senate Bill 48 is
9 passed or would no longer be something to undertake with
10 the Commission?

11 MR. MALONE: We certainly would not
12 bring that to the Commission, no. In that case, then it
13 would just be a question for, and Mr. O'Quinn can correct
14 me if I'm wrong, but it would be a question for the
15 FairPoint's marketing people, as to how to meet the
16 competitive market.

17 CHAIRMAN IGNATIUS: And, is it your
18 expectation that the thing that's now identified as a
19 separate line item would remain stated as such on bills?

20 MR. MALONE: Yes, at this time. As
21 Mr. O'Quinn testified, we're not -- FairPoint has not made
22 definite plans as to whether to bake it into its basic
23 rate going forward. The reason it's been proposed as a
24 surcharge, and will continue to propose it as a surcharge,

1 is because, frankly, the dust hasn't settled on exactly
2 how much the money the Company is trying to recover. We
3 haven't gotten all the bills that we're expecting, we
4 haven't gotten all the abatements that we're expecting.
5 And, until such time as it's more definite as to what the
6 yearly exposure is for this tax, the Company feels that
7 it's just easier to go it as a surcharge in order to track
8 it and account for it.

9 CHAIRMAN IGNATIUS: Well, you can track
10 it without it being identified on a bill, can't you?

11 MR. O'QUINN: It would be difficult if
12 it was embedded in a local rate. If the local rate was
13 \$20, and then there's a one dollar surcharge on there,
14 logically, it would run through our billing system as \$21
15 for local service, just using a hypothetical there. And,
16 to differentiate the one dollar from the remainder, you
17 could estimate it, I guess, as opposed to having a
18 specific tracking that says the one dollar is the
19 surcharge and the \$20 is the residual part of local rates.

20 CHAIRMAN IGNATIUS: Well, you're -- I
21 guess I don't follow. You know what you're billing
22 people. Is it that some municipalities might get the
23 surcharge added and some might not or some customers
24 within a municipality might get the surcharge and some

1 might not? Or, everyone would get the surcharge?

2 MR. O'QUINN: We're talking specifically
3 to the billing of the revenue side of it.

4 CHAIRMAN IGNATIUS: Okay.

5 MR. O'QUINN: As we had articulated with
6 the access lines, that there's -- that it would be retail
7 customers, it would be resale customers, and business
8 customers, up to 25 lines. So, to specifically track that
9 in the accounting records would be difficult to track the
10 99 cent component of, in the hypothetical I gave, the \$21
11 local billing rate.

12 CHAIRMAN IGNATIUS: I don't understand
13 why, but you've answered it twice. And, so, I mean, we
14 may not make any more progress on that. Mr. Malone,
15 anything further on your expectations if Senate Bill 48
16 were passed?

17 MR. MALONE: No, madam Chairman.

18 CHAIRMAN IGNATIUS: Why don't we ask
19 other participants if they have any comments on the Senate
20 Bill 48 question, and then there may be other questions
21 from the Bench as well. Mr. Johnston, do you have a
22 position on that?

23 MR. JOHNSTON: No, I don't.

24 CHAIRMAN IGNATIUS: Ms. Hollenberg?

1 MS. HOLLENBERG: No thank you.

2 CHAIRMAN IGNATIUS: Does Mr. Fossum?

3 MR. FOSSUM: Well, I guess, working
4 under the same presumption that Senate Bill 48 would be
5 passed in the form it currently exists, there is --
6 retained under that is Commission oversight for rates for
7 basic service and for Lifeline customers. And, so, the
8 Commission, by extension the Staff, would see its
9 responsibility as ensuring that those rates, to the extent
10 they would be changed, conform with the caps that are set
11 out in the statute. And, also, the statute does permit
12 FairPoint, or companies like it, to make changes beyond
13 the cap, subject to Commission review and approval, to,
14 I'll read here, "to reflect changes in federal, state, or
15 local government taxes, mandates, rules, regulations, or
16 statutes."

17 So, potentially, there is -- there's the
18 possibility that there could be changes beyond the cap.
19 And, in both the instances where the changes would go
20 beyond the cap, and even in instances where they wouldn't,
21 we would want to make sure that the cost allocations to
22 the basic service customers and to the Lifeline customers
23 were appropriate and proper, and that they were, in fact,
24 paying the costs that they were expected to would be

1 expected to pay legitimately, and that this doesn't become
2 an area for redirecting expenses.

3 I mean, the customers on basic service
4 and Lifeline service, I mean, the Commission knows what
5 kinds of customers those are. Tend to be lower income,
6 tend to be elderly. Those are the kinds of people that we
7 would want to make sure to -- that they don't end up
8 paying excessive amounts.

9 So, Staff would, as relates to this
10 particular tax, if -- I don't know that there would be
11 room for a full reconciliation, as had been talked about
12 before. But, to the extent that there would be a need to
13 investigate whether any proposed change to basic service
14 or Lifeline service conformed with the statute, there
15 would be a Staff review of that certainly.

16 CHAIRMAN IGNATIUS: And, when you say
17 "there may not be room for a full reconciliation", you
18 mean legally?

19 MR. FOSSUM: Correct.

20 CHAIRMAN IGNATIUS: So, the Lifeline and
21 other basic exchange customers' review would be to be
22 certain that the cap is not being exceeded or is it
23 something further than that?

24 MR. FOSSUM: Well, I think it would

1 certainly be -- I mean, it wouldn't just be a matter of
2 they paid, you know, \$10 on year one, and this is making
3 sure that it doesn't go up by more than another dollar in
4 year two, because there's the 10 percent cap. But it's a
5 matter of also determining whether that \$10 itself is the
6 right amount. You know, it's 10 percent "of something".
7 And, so, there would be -- I believe that there would be
8 room for review of that. And, what that review would look
9 like, I'm not certain. But this SB 48, I mean, there are
10 protections in there that are in there for a reason, and
11 Staff would take that very seriously.

12 CMSR. HARRINGTON: Just a follow-up to
13 what you just said. I'm trying to get -- understand what
14 you're trying to say here. What constituted a -- are you
15 saying what constituted the basic rate or what constituted
16 10 percent of that? I'm not -- just can you clarify it
17 just a little bit more?

18 MR. FOSSUM: Well, I think, I mean, this
19 is all, of course, you know, we're all, to some manner,
20 trying to guess at what the ultimate impact of this would
21 be. But the statute does retain Commission oversight
22 over, to a certain level, basic service and Lifeline
23 service, and increases to the cost in those services. So,
24 it would be, I think, important to know, not only what the

1 costs are or what the cost increases are, as regards to
2 these percentages, but what the costs are that these
3 percentages are based on.

4 CMSR. HARRINGTON: Okay. So, the total
5 then, 10 percent not to exceed 10 percent of what?

6 MR. FOSSUM: Exactly.

7 CMSR. HARRINGTON: Okay. All right.
8 Thank you. That helps.

9 CHAIRMAN IGNATIUS: All right. If
10 there's nothing further on the 48 question, are we at the
11 issue of striking identification of exhibits or is there
12 anything prior to that?

13 (No verbal response)

14 CHAIRMAN IGNATIUS: Seeing nothing, then
15 is there any objection to all of the documents marked for
16 identification becoming full exhibits?

17 MR. MALONE: Madam Chairman, we'll be
18 revising Exhibit 8 to indicate the confidential nature of
19 certain lines.

20 CHAIRMAN IGNATIUS: All right. Thank
21 you. I don't think we need a separate one for that. It
22 will just come in as a cleaner version to that. Thank
23 you.

24 MR. MALONE: Right.

1 MR. FOSSUM: If I may, there was -- at
2 one point there was a question from Mr. Johnston about
3 "whether FairPoint paid any property taxes on poles and
4 conduits in other states, specifically Maine and Vermont?"
5 And, Mr. O'Quinn, in part of his response, said that he
6 would "take a record request on that." I don't know if
7 there's an intention to actually have him respond to that
8 as a record request?

9 CHAIRMAN IGNATIUS: Well, what I took
10 from that was Mr. Johnston rephrased the question and
11 asked about other, any surcharges for poles and conduit.
12 I thought it was essentially answered that he "wasn't
13 aware of any others." And, that he didn't remember
14 anything.

15 MR. FOSSUM: I guess I would give that
16 to Mr. Johnston, since that was his question, I just
17 wanted to make sure that we are all on the same page.

18 MR. JOHNSTON: I take it as having been
19 answered.

20 CHAIRMAN IGNATIUS: All right. So,
21 then, I guess it's time really just for closings and
22 positions of the participants on this, all of the issues.
23 And, if, in your statements, if you have an issue, any
24 position on the "consultant costs" question that was

1 addressed, that would be interesting to hear as well, as
2 whatever other things you would like to bring to our
3 attention.

4 So, let's begin with Mr. Johnston. Any
5 closing remarks?

6 MR. JOHNSTON: Yes. Thank you, madam
7 Chair. Really, the only issue that we are focused on in
8 this proceeding is whether it is appropriate to allow
9 recovery of the property tax expense as a surcharge in the
10 manner that has been proposed. That is an issue that was
11 left open at the -- in the December 28 order. And, our
12 position -- we have no objection at all to FairPoint's
13 being able to recover the expense. But we do think it is
14 not appropriate to recover it as a "Municipal Property Tax
15 Surcharge". Our view is, this is an operating expense,
16 like anything else. The fact that it's a new operating
17 expense I don't think really changes anything.
18 Presumably, the Company incurs new operating expenses all
19 the time. It may hire new employees or buy new equipment
20 or incur increased legal expenses, and none of those go on
21 the billing statement as a separate surcharge.

22 As I understand it, the Company recovers
23 or to the extent it does recover its other property tax
24 expense, it does it through rates. And, to the extent

1 that it pays property taxes on poles and conduit in other
2 states, as far as has been indicated, it does not impose a
3 separate -- a separate property tax surcharge in those
4 states.

5 FairPoint's position, as I understand
6 it, is that Mr. O'Quinn said that "it's important for
7 customers to know what they're being billed for", and
8 that's a reason to have this. But I don't think that I,
9 as a customer, I have no idea what goes into a phone
10 company's rates generally. When I pay a bill, all I know
11 is I'm paying a phone bill. I don't know what they're
12 paying for legal expenses or property taxes or labor or
13 anything else. So, in that respect, this doesn't seem to
14 be any different from anything else.

15 It's been stated that "FairPoint needs
16 to let the dust settle so that it knows exactly how much
17 it's being billed for and how much it is going to need to
18 recover." Again, I don't think that that makes this
19 unique. I'm sure there are plenty of other situations
20 where the Company has expenses that may go up, go up and
21 down from year to year, and you don't know -- you don't
22 have a definite amount that you need to recover. So, I
23 don't think that that is really relevant.

24 And, finally, the statement that "it's

1 easier to track this way", is -- doesn't strike me as
2 persuasive. It's just, I don't see that any compelling
3 reason has been proposed, has been advanced to recover
4 this in what seems to be a very unique manner.

5 So, for those reasons, I submit that
6 it's inappropriate for the Commission to allow FairPoint
7 to recover the expense in the form of a separate
8 surcharge. And, would ask that, if the expense is
9 allowed, it should be allowed as part of the Company's
10 rates.

11 CHAIRMAN IGNATIUS: Thank you.

12 MR. JOHNSTON: Thank you.

13 CHAIRMAN IGNATIUS: Ms. Hollenberg.

14 MS. HOLLENBERG: Thank you. The OCA's
15 position on the "consultant cost" question is that these
16 are not properly recovered through the surcharge.
17 Firstly, the Company did not request recovery of these
18 costs in its filings with the Commission in this case. No
19 such request is reflected in the Commission's order of
20 notice for this docket. And, I think, and I'm very
21 concerned about the fact that there is no amount
22 indicated, and that, to the extent that these amounts are
23 "to be determined", and that the Commission were to
24 approve that as proposed by FairPoint today, could lead to

1 recovery of amounts that are not within the zone of
2 reasonableness. These are more consistent also with
3 one-time charges that utilities would not ordinarily
4 recover through rates.

5 So, we would request that the Commission
6 not allow recovery of the consultant charges through the
7 surcharge. Perhaps these are costs that could be
8 recovered at some point if they continue for an extended
9 period of time through a base rate recovery mechanism,
10 after a base rate case, but not in the form of a
11 surcharge.

12 With regard to the recovery of the tax
13 amounts, I think, setting aside the concern that this is
14 being done outside of a base rate case, which is
15 ordinarily the context within which utilities' costs are
16 considered, I do have -- the OCA does have a preference
17 for filings to be audited. To the extent that there is
18 recovery from customers, that the amounts be audited by
19 the Audit Staff. And, just to give an example, I think
20 often, when the municipal property taxes are audited in
21 rate cases, there can be instances where there is
22 identified double recovery or inappropriate recovery
23 related to the school, state school tax. So, that's just
24 one example of something that could occur, through no

1 malfeasance, but just would be something that the
2 utilities might not be mindful of, in terms of recovery of
3 those costs.

4 CHAIRMAN IGNATIUS: I'm sorry, I didn't
5 follow what you said about a "state school tax"?

6 MS. HOLLENBERG: On occasion, there are,
7 my recollection is vague, but, on occasion, there are
8 instances, and it happens frequently in the water cases
9 that I work in, where the municipality passes along a tax
10 to the utility that shouldn't be passed along to the
11 utility. That's the extent that I know. And, I do
12 believe it's related to the school, schools tax, because
13 they're otherwise taxed, so they aren't subject to the
14 schools tax. I wish I had more information about it. But
15 it's just something that's coming to my mind, and I know
16 that the Water Staff has -- Mr. Laflamme has often
17 recognized that when he does his review of the municipal
18 property taxes in water cases.

19 And, I do realize that the Commission
20 has, in its temporary rate order, permitted FairPoint to
21 -- or, permitted the review of FairPoint's request for the
22 surcharge to be reviewed in less than a full base rate
23 case. And, I do have some concern, given my experience in
24 other utility rate cases, that issues, such as pension and

1 OPEB costs are going to come in through a surcharge
2 mechanism or other costs.

3 And, I guess, to the extent that the
4 Commission can really identify this as a unique
5 circumstance, perhaps as an exigent circumstance under
6 their approval of the merger, I think that that would be
7 helpful to dissuade any attempts by other utilities to
8 view this as a vehicle to get single-issue ratemaking more
9 frequently at the Commission.

10 And, those are my comments. Thank you.

11 CHAIRMAN IGNATIUS: Do you have a
12 position on whether the ongoing charge, if it's approved,
13 is identified as a surcharge or as just a total amount?

14 MS. HOLLENBERG: I guess, to the -- the
15 only position I would have is that, if the Commission were
16 inclined or did allow the Company to recover the
17 consultant costs, I do believe that the charge should be
18 labeled more correct or more consistent with what it's
19 actually recovering. I think that, if it is -- if the
20 Company is allowed to recover separately certain expenses,
21 those expenses should be specifically identified, so that
22 customers are aware of what costs they are paying
23 separately. And, I think, to the extent, though, that it
24 is -- the Commission approves the rate without a full rate

1 case, it seems inconsistent to include it in the base
2 rate, because it has been viewed outside the context of
3 other costs and revenues.

4 CHAIRMAN IGNATIUS: All right. Thank
5 you. Mr. Fossum.

6 MR. FOSSUM: Thank you. As an initial
7 matter, Staff is of the opinion that the total -- the
8 estimate of the total tax that FairPoint would be
9 subjected to is too high. As we noted in looking at
10 Exhibit 8, nearly all of the larger municipalities have
11 already billed FairPoint, and it's begun seeking
12 abatements in I believe Mr. O'Quinn said "virtually every
13 municipality". Yet, the numbers that we have so far,
14 getting to the 5.5 million, reflect abatements from only
15 about 14 municipalities. So, it's certainly possible that
16 number would decrease significantly.

17 I'd also note that, in their original
18 filing, FairPoint had noted that this tax would cost
19 approximately \$6.1 million. That was later revised to
20 6.6 million, was later revised again, and at this point
21 we're now down to 5.5 million. And, all of those
22 estimates were based on the average of the bills that had
23 been received to date. And, so, I would also say that the
24 averaging method that they have used to produce this

1 estimate of 7.6 million is somewhat misleading. And,
2 that's all to say that, following the allocations down to
3 intrastate level, the costs to be recovered by a 99 cent
4 -- or, the amount recovered through a 99 cent charge,
5 versus the overall cost to FairPoint, is not all that
6 disparate.

7 As to how that particular cost should be
8 recovered, Staff agrees with the position of the Municipal
9 Association, that this -- the proposal to have a surcharge
10 that lasts essentially indefinitely is inappropriate.
11 Property taxes are and have been treated as expenses of
12 the utility and are used in setting rates. They have a
13 place in the rate-setting formula. And, there's no
14 particular reason that we've been given in this case for
15 treating these taxes differently, other than their age.
16 Staff is not aware of any instance where property taxes
17 have been recovered by a line item surcharge.

18 As to the issue of the surcharge itself,
19 just quickly on the consultant costs, whether those should
20 be included, and Staff believes they should not be. As
21 noted by the OCA, FairPoint did not ask originally to
22 include those costs. There is currently no amount stated
23 for those costs, we don't know what they are. In
24 addition, recovery of those costs are not consistent with

1 either in the intent of the charge or the charge as
2 FairPoint currently describes it on its bills.

3 Staff would recommend that the
4 Commission reject the proposal to continue the surcharge
5 indefinitely and require that these taxes be included in
6 temporary rates -- or, I'm sorry, in permanent rates.
7 FairPoint, though, as was made clear, has not produced any
8 proposals for including this in rates. So, there is no
9 proposal pending before the Commission. And, the Staff,
10 in normal circumstances, would request an order that
11 FairPoint produce a rate proposal. But -- and, clearly,
12 there's been discussion today about the impact of Senate
13 Bill 48, and whether -- and the degree to which that would
14 change the rate-setting that FairPoint does.

15 In light of the deregulation -- the
16 degree of deregulation that would result from Senate
17 Bill 48 and, should it be passed, Staff would propose
18 essentially the following: That the Commission withhold
19 an order pending some final legislative action on Senate
20 Bill 48. It's my understanding that the bill is before
21 the House today, possibly today. If the House votes on it
22 and passes it, the only thing remaining would be the
23 Governor's action on it, which presumably would be soon.
24 So, withholding an order pending final legislative action

1 would not derail the proceeding.

2 If this bill is passed, Staff would then
3 request that the Commission order FairPoint to make a rate
4 proposal covering basic local service and Lifeline service
5 incorporating these taxes. And, that the order would
6 require FairPoint to provide a justification for including
7 the amounts they would propose, and to require FairPoint
8 to show how it does not unfairly burden basic local
9 service or Lifeline customers, and how the allocations to
10 them are fair and appropriate. And, then, Staff and the
11 Commission could then review that proposal and approve or
12 reject it as may be necessary.

13 If, instead, the bill, Senate Bill 48,
14 is vetoed or not passed by the House or otherwise not put
15 into effect, then the Commission could order -- could or
16 should order FairPoint to submit a rate proposal for
17 review and approval demonstrating how the taxes would be
18 incorporated into its existing overall rate structure.

19 CHAIRMAN IGNATIUS: Thank you. Yes,
20 please. Commissioner Scott.

21 CMSR. SCOTT: Thanks for that summary.
22 And, what would your suggestion be regarding the temporary
23 rate that's currently in place?

24 MR. FOSSUM: Is that, essentially, it be

1 continued as "temporary" for the time being. If Senate
2 Bill 48 is passed, then whether this Commission calls it a
3 "temporary rate" or something else would, I believe, be in
4 large measure sort of irrelevant. If the bill is not
5 passed, then the temporary rate -- the "temporary"
6 designation could be removed. It would be a "permanent"
7 rate of some level, and it would be part of FairPoint's
8 overall rates.

9 CMSR. SCOTT: Thank you.

10 CHAIRMAN IGNATIUS: And, when you say
11 "part of FairPoint's overall rates", do you mean no longer
12 identified as a "line item surcharge"?

13 MR. FOSSUM: Correct. For the reasons I
14 said, Staff does not believe that this should be called
15 out as a "line item surcharge". Property taxes are an
16 operating expense. They are included in rates. And, this
17 is no different from any other property tax that FairPoint
18 already pays.

19 CHAIRMAN IGNATIUS: All right. Thank
20 you. Mr. Malone.

21 MR. MALONE: Thank you, madam Chairman.
22 Start off by reiterating our request that the Commission
23 make permanent the 99 cent surcharge that we've requested
24 and that they granted as a temporary rate. I think we've

1 established that there is a concrete cost that this rate
2 has not recovered so far and is not anticipated to recover
3 fully for quite some time, if at all. And, therefore, it
4 certainly meets the criteria of being "just and
5 reasonable".

6 We believe that it should continue to be
7 listed as a "surcharge". We understand that SB 48 hovers
8 over these proceedings and is complicating things. But,
9 at the moment, the PUC still has its existing authority
10 over FairPoint's rates. And, by keeping it as a
11 surcharge, it makes it easier to administer for FairPoint,
12 it makes it easier for all the parties to track, and it
13 lends itself much better to discussions within the context
14 of reconciliation down the line, once again, assuming that
15 the Commission retains the authority that it has now.

16 As to the consultant charges, our
17 position is that, but for the tax, the consultant charges
18 would not exist. They're not a standard operating cost of
19 the Company. They had popped up merely as a response to
20 this tax. And, the consultant serves and provides value
21 by reducing the overall tax burden. But that reduction is
22 net of the consultant's fee. So, therefore, that
23 additional obligation to FairPoint still exists and,
24 therefore, the consultant's costs should be included in

1 the allocations. And, that's all I have. Thank you.

2 CHAIRMAN IGNATIUS: Thank you.

3 Commissioner Scott.

4 CMSR. SCOTT: Thank you. Attorney
5 Malone, obviously, you heard the Staff's request, which
6 was to effectively put this in abeyance, keep the
7 temporary rate as it is. Do you see that would in any way
8 harm FairPoint?

9 MR. MALONE: It would be nice to have
10 some closure before SB 48 becomes, yes, is enacted,
11 because we believe that it would be better to have a
12 baseline on the date, on the effective date of the bill,
13 as to what FairPoint's basic rates are that we can work
14 from.

15 It's not 100 percent clear to me what
16 Mr. Fossum was suggesting, but it sounded like, as part of
17 his abeyance proposal, he was suggesting that there would
18 be a review of not only the surcharge, but FairPoint's
19 basic rates as they exist now, which is something -- is an
20 interpretation of the bill that we certainly do not agree
21 with. We believe that we would like some definiteness as
22 to what the basic rates are, and, therefore, would ask the
23 Commission to act on this as soon as possible.

24 CHAIRMAN IGNATIUS: All right.

1 Mr. Fossum, you have a response? You look like you have
2 something to say.

3 MR. FOSSUM: Well, I just wanted to
4 clarify that, in asking that there be the withholding of
5 an order, it was not my intent to say that the order be
6 withheld until after the effective date of the bill. My
7 understanding is that the bill, as it's drafted, has an
8 effective date 60 days after its passage. So, I believe I
9 was asking that, whatever order be issued, be issued
10 following its either passage or defeat. I don't know that
11 there would be anything that would stop the bill from
12 going into effect following its passage, barring something
13 that I've never seen or heard in a legislative proceeding.
14 So, there would be that 60-day period between the bill's
15 passage and its effective date in which the Commission
16 could issue an order on these rates. With the
17 understanding that, if the bill has been passed, and all
18 it's waiting is for its effective date, it essentially is
19 law, and there would be no real reason to delay issuing an
20 order any longer than that.

21 CHAIRMAN IGNATIUS: Well, let me ask you
22 a little bit further though on that, because I think we do
23 have confusion on what you were recommending. What I
24 wrote down was that, "if 48 is passed, then you would ask

1 FairPoint to make a rate proposal for basic and Lifeline
2 customers, to see that this rate doesn't unfairly burden
3 those customers." And, there was some discussion with
4 Commissioner Harrington on whether that meant "does the
5 ability to go up by 10 percent is what you're talking
6 about or the rate itself?" And, it sounded like, when you
7 said "10 percent of what is the question" means the rate
8 itself would be evaluated, as if it's a rate case, a
9 mini-rate case on that one basic rate?

10 MR. FOSSUM: No, I hadn't looked at it
11 quite that way. And, my understanding is, Senate Bill 48
12 allows for changes to basic and Lifeline service beyond
13 the 10 percent for changes in federal, state, or local
14 government taxes. And, so, the -- but Staff, however, is
15 of the opinion that this tax change shouldn't be something
16 outside the rate itself. And, so, I guess it would be a
17 matter of clarifying, if the Commission agrees with the
18 Staff position, that this tax should be included in the
19 rates, then it would be a rate proposal, to the extent
20 that the rates would incorporate the tax. If the
21 Commission believes that a surcharge, a separate charge,
22 apart from the rate itself, is the appropriate way of
23 handling that, then that might be viewed differently under
24 the law. That was what I meant by a "rate proposal".

1 CHAIRMAN IGNATIUS: All right. That's
2 helpful. Thank you. And, would you agree with
3 Mr. Malone's statement that, whether it's called a
4 "surcharge" or it's called -- or it's sort of physically
5 rolled into a basic rate, the basic rate going forward --
6 the current basic rate is the rate on the tariff, plus the
7 99 cent surcharge?

8 MR. FOSSUM: I don't know that I'd
9 necessarily agree with that. I don't think I had heard a
10 formulation of that until today. You know, the rate, as I
11 understand it, is the rate that's in the tariff, not the
12 rate, plus a surcharge. I don't see how that would be
13 meaningfully different from saying that "the basic rate is
14 the same as the rate plus the E911 surcharge that
15 otherwise exists", and I don't know that that's what they
16 would be arguing. So, I don't know that I would agree
17 with that formulation.

18 CHAIRMAN IGNATIUS: So, the sentence
19 from the December 2011 Commission order in this case that
20 referred to the property tax tariff that was proposed
21 "would result in an increase to basic exchange retail
22 rates as contemplated under the settlement agreement", you
23 interpret differently than Mr. Malone?

24 MR. FOSSUM: I think so. And, I don't

1 have the order in front of me. But, if I recall
2 correctly, there was a footnote in that order indicating
3 where the Commission would handle this issue under RSA
4 378:6, I(a), rather than under 378:6, IV. And, the basis
5 for that was that it was the equivalent to or represented
6 a increase in rates. And, so that was -- and I guess
7 that's how I had looked at it, as a -- whether it was
8 called a "surcharge" or not, the rates for everyone went
9 up. Whether that meant that it was, in fact, included in
10 "the rate", as stated on the tariff, no, I did not
11 interpret it necessarily as in that fashion.

12 CHAIRMAN IGNATIUS: So, in your view,
13 it's an open question or perhaps not even an open
14 question. In your view, is the basic exchange rate that's
15 subject to the cap the tariffed rate for basic exchange
16 service and does not include the municipal surcharge?

17 MR. FOSSUM: I think, at this point,
18 that charge is a separate charge for taxes. That said,
19 it's I believe Staff's position that it should be in the
20 rates and not as a separate charge. At which point, it
21 would be part of the basic local service rate.

22 CHAIRMAN IGNATIUS: So, I think we've
23 gone in a circle here and I think I'm confused. It's
24 Staff's position that, let's assume the basic charge is

1 \$10. That the amount that would be subject to the cap
2 limitations should be \$11, that's the capped amount, or
3 that's the amount that is subject to the cap provisions?
4 Or, is it \$10 that should be subject to the cap
5 provisions?

6 MR. FOSSUM: I believe it should be the
7 \$10, but that's because -- well, I'm trying to guess at
8 the implementation of this. And, I apologize, I don't --
9 I mean, it's a law that is not in effect yet, and that
10 Staff has spent some time trying to understand. And, how
11 ultimately it would be, in fact, implemented, I think is
12 indeed an open question. At the moment, my understanding
13 is that the Staff's position is that the rate is the rate
14 as stated on the tariff, and that, at the moment, that
15 surcharge is something separate from it. Subject to --

16 CHAIRMAN IGNATIUS: I understand the
17 mechanics are that way. I'm just trying to get at the
18 ultimate "what's the fair charge to be assessed to
19 customers, whether it's in two pieces, a rate and a
20 surcharge or all rolled into one?" That, in Staff's view,
21 and I put everybody on the spot on this. So, I realize,
22 if people haven't thought this all through is perfectly
23 fair. But it sounds like the mechanics of having two
24 pieces, the rate should be the rate, not the rate plus

1 surcharge. But, then, when you look at "what's the fair
2 rate going forward?" It sounds like the rate, plus the
3 property tax amount, should be -- would make more sense to
4 be rolled into the full \$11, if you will, as the rate in
5 the future. Is that fair?

6 MR. FOSSUM: I think that's accurate,
7 yes.

8 CHAIRMAN IGNATIUS: Okay. We should
9 stop now. All right. Anything further from anyone?
10 First, before FairPoint, anyone else, since we've kind of
11 continued to go here, anything else you want to add to
12 your closings?

13 (No verbal response)

14 CHAIRMAN IGNATIUS: Mr. Malone, anything
15 else you want to add?

16 MR. MALONE: No. Just following your
17 example, madam Chairman, we believe that the cap would be
18 based on \$10.99, the \$10 tariffed rate, the 99 cent
19 surcharge. And, then, any cap calculations would go from
20 there. Just to clarify.

21 CHAIRMAN IGNATIUS: Thank you. All
22 right. Thank you very much for the information this
23 morning. We will take all of this under advisement and
24 await an order, and we'll all watch what happens at the

1 Legislature. Thank you. We stand adjourned.

2 (Whereupon the hearing ended at 12:51
3 p.m.)