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STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

October 29, 2013 - 9:45 a.m.
Concord, New Hampshire

NHPUC NOV18'13 PM 4:24

RE: **DRM 12-036**
RULEMAKING:
Puc 400 - Telephone Service.

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

Clare Howard-Pike, Clerk

APPEARANCES: (No appearances taken)

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

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P R O C E E D I N G

1
2 CHAIRMAN IGNATIUS: Good morning. I'd
3 like to open the public hearing in Docket DRM 12-036.
4 This is the Commission's rulemaking, our Chapter 400
5 Administrative Rules regarding telephone service. And, as
6 everyone here knows, we were due for evaluating the rules,
7 and then there were significant changes in the Legislature
8 in the last two years regarding our jurisdiction. So, the
9 rules have really been a timely opportunity to develop the
10 rules to implement the changes that the Legislature put in
11 place in the last two sessions.

12 So, this is a public comment hearing.
13 We don't need to take appearances. We want to hear from
14 you comments on the most recent draft of the rules that
15 were circulated. The ones that, help me please, Staff, if
16 I'm right, the ones that we have that the most recent is
17 entitled "Annotated Draft Final Proposal October 3, 2013"?

18 (Non-verbal response given.)

19 CHAIRMAN IGNATIUS: That's very good. I
20 should have checked beforehand. And, so, I don't know if
21 the best way to do this is entity by entity, going through
22 all of your comments, or section by section. If you have
23 talked about the best way to approach it this morning, the
24 most efficient, does anyone have any recommendations?

1 Mr. Wiesner?

2 MR. WIESNER: We have not discussed
3 that. I am open to proceeding in any way that the parties
4 desire. I think, as a default, I would suggest that we go
5 entity by entity.

6 CHAIRMAN IGNATIUS: Is that acceptable
7 to everyone or any recommendations to do it otherwise?

8 (Non-verbal response given.)

9 CHAIRMAN IGNATIUS: All right. Then,
10 why don't we do that. Although, if we get to a section,
11 and there are people who, while we're in the midst of
12 discussing it, if anyone has any thoughts on a section or
13 good ways to solve a problem with some language, I'm not
14 opposed to jumping in and out a little bit while we're in
15 the midst of a particular discussion. But I realize many
16 of you may have things that are part of a package, and
17 it's hard to discuss one sentence without discussing other
18 sections as well.

19 So, any preference on order to take this
20 up? Any volunteers to go first? I don't want to turn to
21 Mr. Malone. He still needs to breathe deeply. Get you a
22 glass of warm water and lemon.

23 MR. MALONE: Yes.

24 MS. GEIGER: I'm happy to go first.

1 CHAIRMAN IGNATIUS: All right.

2 MS. GEIGER: Give Mr. Malone a little
3 more reading time.

4 CHAIRMAN IGNATIUS: Thank you.

5 MR. MALONE: Thank you.

6 MS. GEIGER: Good morning. I'm Susan
7 Geiger, from the law firm of Orr & Reno, and I represent
8 the New England Cable and Telecommunications Association.
9 And, we're happy to be here this morning to provide these
10 comments to the Commission. And, would like to commend
11 Staff for their efforts in developing the draft rules.
12 NECTA's comments today will focus on some of the more
13 major issues and questions presented by the draft rules.
14 And, NECTA would expressly reserve its right to supplement
15 the oral comments with more detailed written comments, to
16 be filed on or before the deadline of November 7th
17 established in the procedural schedule for the docket.

18 The first issue NECTA would like to note
19 is the lack of a definition for "telecommunications
20 service" and the use of the term "voice service".
21 Chapter 400 is entitled "Rules for Telecommunications".
22 The term "telecommunications service" appears throughout
23 the chapter. Notably, the term is used to define
24 "excepted local exchange carrier", or "ELEC", in RSA

1 362:7, I(c)(3), and that definition is "any provider of
2 telecommunications services that is not an incumbent local
3 exchange carrier." And, it also is used to define -- to
4 define "competitive local exchange carrier", or "CLEC", at
5 402.07 [402.04?]. However, the rules do not define the
6 terms "telecommunications" or "telecommunications
7 service". This oversight, which can be a source of
8 uncertainty and confusion, may easily be remedied by
9 including the definition appearing in federal law, wherein
10 "telecommunications" is defined as "the transmission,
11 between or among points specified by the user, of
12 information of the user's choosing, without change in form
13 or content of the information as sent and received." And,
14 that definition is found at 47 USC 153, Subsection 50.
15 Also, the definition in federal law "telecommunications
16 service" is "the offering of telecommunications for a fee
17 directly to the public, or to such classes of users as to
18 be effectively available to the public, regardless of the
19 facilities used." And, that definition is found at 42 USC
20 153, Subsection 53.

21 In addition to lacking definitions for
22 the terms "telecommunications" and "telecommunications
23 service", the proposed rules introduce a new firm, "voice
24 service", which is and would be the operative criterion

1 for identifying providers who are public utilities. This
2 usage of that term is inconsistent with the aforementioned
3 statute and others, such as 374:22-g, which expressly
4 references the Commission's authority over entities
5 providing telecommunications services, not voice services.
6 The term "telecommunications" is used in various statutes,
7 for example, RSA 374:28-a defines "slamming" as "the
8 unauthorized change in a consumer's telecommunications
9 service carrier or provider." And, in the draft rules
10 themselves, for example, definitions of "CLEC" and "ILEC",
11 at 402.04 and 402.11; tariffs for wholesale service, at
12 404.05; and intercompany cooperation and interconnection,
13 at 407.01 and .02 two. These all refer to
14 "telecommunications". Thus, it's unclear why the term --
15 why that term and the term "telecommunications service"
16 remain undefined, and why the term "voice service" is used
17 to identify public utilities instead.

18 The definition of "voice service", in
19 the proposed rules at 402.24, reflects the statutory
20 definition of "public utility" in RSA 362:2, and that is
21 "the conveyance of telephone messages for the public."
22 However, the term "voice service" does not appear in the
23 statutory definition of "public utility". Therefore, the
24 use of that term is questionable, and using it to

1 determine which carriers are public utilities results in
2 an overly narrow interpretation of 362:2. It is well
3 settled that rules cannot add to, detract from, or in any
4 way modify statutory law. And, that's a holding of *Appeal*
5 *of Campaign for Ratepayers' Rights*, at 162 New Hampshire
6 245. Taking this overly narrow approach will have
7 far-reaching effects. For example, under Section 401. --
8 excuse me -- 404.01(b), entities registered as CLECs on
9 the effective date of the rule whose registered services
10 do not include voice service would be notified that the
11 ELEC registration is not required, and their CLEC
12 authorization shall expire. This could cause some
13 federally-recognized telecommunications service providers
14 to be excluded from state regulatory jurisdiction. This
15 discrepancy would occur because the definition of
16 "telecommunications" and "telecommunications service"
17 under federal law are not restricted to voice service.

18 So, in order to avoid confusion and
19 inconsistency with state and federal law, the term "voice
20 service" should not be used to designate which carriers
21 are public utilities or registered providers in New
22 Hampshire. Further, Senate Bill 48 and House Bill 542
23 promote competition in the telecommunications industry.
24 By narrowly focusing on "voice service", the rules could

1 yield a contrary result, which is inconsistent with the
2 Legislature's intent.

3 The next major issue identified by NECTA
4 this morning for comment is the elimination of CLEC --

5 CHAIRMAN IGNATIUS: Before you move on?

6 MS. GEIGER: Yes.

7 CHAIRMAN IGNATIUS: Do you have a
8 recommendation on language that would resolve your
9 concerns?

10 MS. GEIGER: I think the introduction of
11 the terms from federal law would likely do that, just so
12 that there's consistency. And, we haven't worked on -- we
13 haven't wordsmithed yet. I think, this morning, we're
14 just focusing on concepts, and trying to reference with
15 specificity the precise rules and the language that NECTA
16 is concerned about. But we would intend to supplement
17 these comments with more detailed written comments, and
18 perhaps a redline version of the rules by the deadline.

19 CHAIRMAN IGNATIUS: That's fine. I
20 appreciate that. Thank you.

21 MS. GEIGER: Okay. The other major
22 issue identified by NECTA is the elimination of CLEC and
23 CTP status. And, I alluded to that in my earlier
24 comments. Section 401.01 of the draft rules provide that

1 existing CLECs, competitive toll providers, which are
2 CTPs, and incumbent local exchange carriers, or ILECs,
3 that are exempt local exchange carriers, ELECs, under the
4 law, shall all become registered as ELECs authorized to
5 provide voice service in the same areas for which they
6 were authorized by their prior registrations or
7 franchises. The rules also provide that ELECs will be
8 provided with telephone utility identification numbers and
9 their CLEC and CTP authorization shall expire.

10 NECTA believes that it is inappropriate
11 and unnecessary for CLEC and CTP registrations to expire.
12 Nothing in either Senate Bill 48 or House Bill 542
13 eliminates CLEC and CTP status, and therefore those
14 designations should not be abandoned. CLECs are still
15 mentioned by name in certain statutes, for example, 362:8,
16 III, which provides that the PUC still has authority to
17 impose and enforce obligations of ELECs to CLECs and
18 interexchange carriers. Also, RSA 374:22-o, entitled
19 "Regulation of Competitive Telecommunications Providers",
20 specifically uses the terms "competitive local exchange
21 carrier" and "competitive toll providers", and indicates
22 that the Commission does not have authority over those
23 carriers' financings and organizational changes. A
24 carrier's status as a CLEC has some significance in some

1 other contexts as well. For example, recently filed
2 settlement documents in the docket involving FairPoint's
3 Wholesale Performance Plan, DT 11-061, are replete with
4 references to FairPoint's obligations to CLECs. The same
5 applies to FairPoint's wholesale tariffs. In addition,
6 MetroCast has a settlement agreement approved by the
7 Commission in Order Number 24,727 in Docket DT 06-169
8 indicating that MetroCast must be a CLEC.

9 In short, some carriers can be both a
10 CLEC and an ELEC, and nothing in either Senate Bill 48 or
11 House Bill 542 compels a contrary conclusion. Note that
12 401.01 of the proposed rules states that the purpose of
13 the rules is to establish procedures, rules and guidelines
14 for telephone utilities "in order to enable providers to
15 comply with relevant statutes and Commission orders."
16 Because existing statutes and orders refer to CLECs,
17 elimination of that status would likely create confusion
18 and uncertainty regarding providers' rights and
19 responsibilities under relevant statutes and orders. So,
20 to avoid that result, we think the more prudent approach
21 is to maintain CLECs' and CTPs' registrations and statuses
22 when conferring the additional ELEC status created by
23 Senate Bill 48.

24 The other area that NECTA is concerned

1 about is the rules' elimination of protections for
2 interconnecting carriers that existed under the old rules.
3 RSA 362:8, III, explicitly preserves obligations relating
4 to the provision of services to CLECs and interexchange
5 carriers. The rules recognize the duty of ILECs and ELECs
6 to interconnect directly or indirectly with the facilities
7 and equipment of telecommunications carriers. And, that
8 rule is 407.02. In addition, under Rule 410.06, ILECs who
9 are not exempt under 47 USC 251(f) must maintain tariffs
10 for interconnection services, UNEs, collocation and resold
11 services. The rule also requires that those ILECs provide
12 non-discriminatory interconnection at technically feasible
13 points, with certain minimum requirements. However, some
14 of the protections and obligations to CLECs and IXCs
15 contained in the former rules are missing from the draft
16 rules. For example, the draft rules do not require that
17 interconnections provided by an ILEC have the same level
18 of quality as the ILEC provides to itself. And, that
19 protection was set forth in former Rule 421.01(d). Also
20 missing from the draft rules is former Rule 421.02(a),
21 which requires that interconnection be provided on a
22 nondiscriminatory basis, and on terms and conditions no
23 less favorable than those that the ILEC provides to
24 itself.

1 Other missing requirements include the
2 obligation under former Rules 421.02(b) through (d) that a
3 non-exempt ILEC must provide citations to necessary
4 technical references, that it must not charge for the
5 correction of code violations not resulting from a CLEC's
6 request to access poles, ducts, conduits or rights-of-way,
7 and that it must file interconnection agreements with the
8 Commission within 30 days. Another important section from
9 the former rules that is missing from this draft is
10 Section 440.03 dealing with the process by which a CLEC
11 can seek redress from the Commission if the CLEC's
12 interconnection request is denied.

13 NECTA believes that all of the
14 above-mentioned provisions of the former rules that were
15 omitted from the draft rules should be included. While we
16 appreciate Staff's attempts to streamline the rules in
17 light of retail service deregulation, the omitted rules
18 afford wholesale protections to competitive carriers that
19 were not eliminated or otherwise disrupted by Senate Bill
20 48 or House Bill 542.

21 The last area that NECTA would note this
22 morning for comment is the process for obtaining authority
23 to operate in a rural telephone company territory. Now,
24 this rule is draft Rule 404.02(c), and it indicates that

1 as part of the process for approving a competitor's
2 request to operate in a rural telephone company's or an
3 RTC's territory, the RTC can ask the Commission to
4 adjudicate whether the applicant must meet the
5 requirements of 47 USC 253(f) relative to eligible
6 telecommunications carrier or ETC status. This is
7 contrary to the Supreme Court's holding in the *Bretton*
8 *Woods Telephone Company* case, at 164 New Hampshire 379,
9 which found that no prior notice and hearing needs to be
10 afforded to the RTC in order for the Commission to decide
11 whether to grant a competitive carrier's application to
12 operate within an RTC's territory. NECTA believes that
13 the more appropriate approach for applications to operate
14 in an RTC's territory is for the Commission to grant the
15 application unless it is denied for the reasons set forth
16 in Rule 404.02 -- excuse me -- 03. And, those reasons are
17 that the applicant has omitted -- or, committed an act
18 constituting good cause to find a rules violation; had
19 civil, criminal or regulatory penalties imposed for
20 consumer protection violations within the last ten years;
21 knowingly made a material false statement in the
22 application; or demonstrated such flagrant or repeated
23 violations of a utility or competitive carrier
24 requirements in other states that the Commission finds

1 it's not in the public good to allow registration. Once
2 authorization is granted, the RTC would then have the
3 opportunity to request that the applicant meet the ETC
4 requirements, and the Commission could consider that issue
5 in a separate adjudicative proceeding.

6 So, in conclusion, NECTA thanks the
7 Commission for its attention to these comments this
8 morning and will supplement them with more in-depth
9 written comments on these, as well as some of the other
10 provisions of the new rules by the specified deadline. We
11 also look forward to working with Staff and the other
12 parties at the technical session on November 18th to
13 resolve some of these issues being discussed today, as
14 well as others. Thank you.

15 CHAIRMAN IGNATIUS: Thank you very much.
16 And, we have your written comments as well that you
17 submitted this morning. Any questions before we move on?

18 (No verbal response)

19 CHAIRMAN IGNATIUS: All right. And,
20 Staff, I don't know if you want to respond to any of those
21 arguments now or wait until later? The ones that you're
22 ready to respond to, and I realize there may be some
23 things you need to research as well. But, while we're in
24 that subject area, do you want to take on some of those

1 issues?

2 MR. WIESNER: I don't think we're in a
3 position to respond to all of those issues. And, I'd
4 prefer to withhold comment on any of them until we've
5 heard from all parties.

6 CHAIRMAN IGNATIUS: Okay. That's fine.
7 We'll move then to another commenting party, unless
8 anybody wants to chime in specifically on these issues?

9 (No verbal response)

10 CHAIRMAN IGNATIUS: Looks like we should
11 just go to the next, whoever wants next to speak. Any
12 volunteers?

13 MR. MALONE: I think I'm ready.

14 CHAIRMAN IGNATIUS: All right.

15 Mr. Malone.

16 MR. MALONE: Thank you, madam Chairman.
17 I'd like to reiterate what Attorney Geiger says, that we
18 appreciate the additional work that the Commission and
19 Staff have gone to to work on these proposed rules. And,
20 we believe that the current proposal is much more
21 reflective of the language and intent of SB 48 and HB 542.
22 We still have, obviously, some disagreements over some of
23 the rules. But I'd also like to say that we have had some
24 fruitful exchanges with the Staff. And, we hope to

1 continue to work these out in future discussions. We're
2 going to just touch, not on all of the items of concern,
3 just the ones that we find to be the major ones.

4 CHAIRMAN IGNATIUS: All right. And,
5 Mr. Malone, are you here representing --

6 MR. MALONE: I'm sorry. I'm here
7 representing the New Hampshire Telephone Association.

8 CHAIRMAN IGNATIUS: Thank you.

9 MR. MALONE: Thank you. Regarding Rule
10 402.16, it's the definition of "accident notifications",
11 and that raises the issue of what kind of information is
12 due to the Commission from telephone carriers regarding
13 accidents. And, as we did with our comments this past
14 summer, we believe that, particularly in regard to ELECs,
15 the accident reporting requirements are overly burdensome,
16 and are ambiguous in some of the standards and go beyond
17 the scope of the Commission's purpose of providing or
18 ensuring safe and reliable utility service. And, we will
19 be providing in further detailed comments on how we would
20 revise those rules. But, as far as ELECs are concerned,
21 we believe that they should not apply at all, and that
22 they should be trimmed down as to the requirements for
23 ILECs that are not yet ELECs.

24 Along the same lines, --

1 CHAIRMAN IGNATIUS: Can I just make sure
2 I understand?

3 MR. MALONE: Yes.

4 CHAIRMAN IGNATIUS: So, your view is, if
5 you're an ELEC, there should be no required reporting of
6 any accident of any sort?

7 MR. MALONE: That's correct. That's
8 correct. We believe that that is, you know, essentially
9 reporting on the operations, the network operations of the
10 utility for providing its end-user services, which is
11 outside the Commission's scope. We believe that there are
12 other, although I can't detail them now, there are other
13 rules and laws that relate to workplace safety, and that
14 we believe can be handled without having to go through the
15 process of reporting accidents to the Commission,
16 particularly to the extent that the reporting rules
17 require.

18 CHAIRMAN IGNATIUS: So, if there's an
19 interruption, some sort of accident that causes an
20 interruption of service, that affects both retail
21 customers and wholesale customers, that you still would
22 say that there's no authority for the Commission to
23 require notification of that?

24 MR. MALONE: That would be correct,

1 madam Chairman. As it regards to end-user services, this
2 would be any, you know, any disruption, and we can talk
3 about Rule 402.19, which describes the significant
4 facility disruptions. The Commission would have the
5 authority over ILECs that are not ELECs. But, once again,
6 regarding ELECs, this is the provision of end-user
7 service. And, it is -- would not be in the Commission's
8 authority to have any role in managing the network
9 integrity as it applies to end-user services. That's for,
10 essentially, the marketplace to work out. As far as
11 wholesale services are concerned, it's been our position
12 that these services are provided pursuant to federal
13 regulations and interconnection agreements, which are
14 contractual arrangements. And, that any disputes, you
15 know, between the parties regarding the provision of
16 wholesale service can be worked out as a contract matter,
17 and does not need to be handled by the Commission as a
18 regulatory matter.

19 CHAIRMAN IGNATIUS: Well, and that --
20 sounds like that would kick in for the months that follow,
21 in people's disputes over whether who was responsible for
22 the outage and what the consequences were. But what about
23 just immediately? I mean, when something has gone wrong,
24 and people turn to the Commission, people, including the

1 Governor, turn to the Commission and say "what is
2 happening here?" Your view is that we should not be
3 notified of those things, even if it affects wholesale
4 services?

5 MR. MALONE: We're still having
6 conversations about that. That maybe that -- that,
7 perhaps as a courtesy, the Commission should be informed
8 of these types of things. And, it may be something that
9 we could discuss with Staff as to the amount of detail.
10 And, I think, as an example, and I don't want to take us
11 down too deep here, but, as an example, one of the
12 requirements is to report an accident, which is --

13 (Court reporter interruption.)

14 MR. MALONE: Okay. As an example,
15 there's one requirement to report an accident in which a
16 public road has been closed. That really is -- the
17 carrier really doesn't know, if a line has gone down and
18 the police down the road had closed the road, it would
19 require a burdensome inquiry on the part of the carrier to
20 determine. And, that's just one example. So, we believe
21 that, to the extent that a courtesy notification is
22 provided to the Commission, we could trim down these
23 requirements.

24 CHAIRMAN IGNATIUS: I appreciate your

1 thinking about that. Commissioner Harrington.

2 CMSR. HARRINGTON: Yes. Just as far as
3 that goes, I can understand there could be differences of
4 opinion on this, and I hope everyone can work together on
5 it. But that there is that nagging problem the Chairman
6 just mentioned that we have a situation, this is not
7 something we imagine, it really happens. So, if there
8 something that leads to an entire municipality or a large
9 loss of service, we are going to get phone calls from a
10 whole mess of people. And, it would just seem to me that
11 it may be more efficient if at least we know what's going
12 on, rather than to just say "we don't know anything", and
13 then have possibly, you know, maybe a selectman or a
14 police chief, a fire chief, and someone from the
15 Governor's Office all contacting you trying to figure out
16 what's going on. So, just give it some thought please.

17 MR. MALONE: No, we will. And, in fact,
18 we have had, I'll be honest with you, we have had some
19 internal discussions about that. And, we believe that
20 there's -- that there can be a balance struck between some
21 legitimate information needed to the Commission versus any
22 idea that the Commission may have jurisdiction over actual
23 network operations issues. And, I think that's mostly our
24 concern.

1 CMSR. HARRINGTON: Okay.

2 CHAIRMAN IGNATIUS: All right. Please
3 go ahead. Thank you.

4 MR. MALONE: We just had -- we wanted to
5 mention Rule 405.04 regarding cramming. And, we've had
6 some conversations with Staff at the technical session
7 over this one. The cramming statute itself, if you read
8 the plain language, it doesn't really apply to telephone
9 utilities. The statute applies to what they call "billing
10 aggregators and service providers", which are third
11 parties that are unrelated to the telephone utility, who
12 have asked a utility to put their charges on the
13 customer's bill. And, we understand the Commission's
14 concern about these kinds of practices. But, you know, I
15 think we need to be specific that this statute does not
16 apply to the utility itself, unless there is some
17 situation where the utility is acting as a billing
18 aggregator or a service provider of some sort. And, we
19 have had conversations with the Staff. And, it's been
20 suggested that maybe this particular rule should actually
21 be over in the 1200 rules regarding customer service, as
22 opposed to the 400 rules. So, we'll be having some more
23 conversations about that, but we wanted to bring that to
24 your attention.

1 Regarding Rule 405.05, the number
2 porting notice, as we've commented previously, this is a
3 rule that pertains to end users and end-user services, for
4 which we feel the Commission does not have jurisdiction as
5 it applies to ILECs who are not ELECs. And, even the
6 federal statute regarding number portability doesn't --
7 imposes no affirmative duty on a carrier to instruct its
8 customers on how the number porting rules work. Number
9 portability is actually an issue that is handled between
10 carriers, and not with customers. And, so, we believe
11 that this number porting notice should be removed from the
12 rules, even as it applies to ILECs who are not ELECs.
13 Certainly, customers have the opportunity to port their
14 number when they change services, but we don't believe
15 that any carrier should have the obligation to actually
16 instruct them on how to do this.

17 CMSR. HARRINGTON: And, excuse me, just
18 so I got that straight. So, what you're saying is that,
19 if I got the order here correct, is your contention is the
20 statute doesn't give the Commission authority to deal with
21 number portability on ILECs that are not ELECs, do I have
22 that right? Or, is it the other way?

23 MR. MALONE: Actually, we don't feel
24 that that statute gives authority to any carrier for

1 number portability. That the Commission does have the
2 authority to preserve number resources. And, so, it does
3 have some numbering authority, as far as the distribution
4 of telephone numbers and the preservation of number
5 resources. We don't feel that that authority extends so
6 far as to intrude on the number porting.

7 The next one that we wanted to -- that
8 we've had discussions with the Staff about is proposed
9 Rule 407.03 regarding network modifications. There is a
10 requirement in that rule that any network modifications by
11 a carrier be backward compatible for three years, to
12 enable other carriers to continue to interconnect. And,
13 we feel that that is anti-competitive and anti-innovation.
14 Essentially, what it says is that a carrier must continue
15 to maintain equipment in its network to allow other
16 carriers to interconnect with them, even though that
17 equipment may no longer -- or, may be obsolete as far as
18 their network architecture is concerned. We've noted that
19 the rules do require a six-month notice of any network
20 changes. And, we feel that that's sufficient to allow
21 other carriers to adapt their networks in order to
22 interconnect. We have had some discussions with Staff,
23 and there have been some suggestions that maybe there
24 could be some sort of a compromise where the notice period

1 would be extended. And, so, we're still having
2 conversations about that, but we still wanted to bring
3 that to the Commission's attention. We feel the three
4 years is a little long to have to maintain old technology
5 in your network for the benefit of a competitor.

6 CMSR. SCOTT: Can you elaborate how
7 that's "anti-competitive"? You made the statement you
8 thought the three years was "anti-competitive".

9 MR. MALONE: Well, in that it requires a
10 -- it requires a carrier to essentially maintain an
11 operating cost in its network, to incur costs, in order to
12 facilitate the business of an interconnecting carrier who
13 is a competitor. So, a carrier that wants to upgrade
14 their network, and one example that we used in the tech
15 session is a carrier that's decided that it just no longer
16 makes sense for it to interconnect with other carriers
17 with anything other than an OC3 or a TX3 level, has
18 decided that they're not going to accept interconnection
19 trunks on DS1s anymore, because they're just too expensive
20 to maintain. What this rule will require is that this
21 carrier continue to carry the cost of maintaining outdated
22 or obsolete equipment for the benefit of other carriers.
23 And, we feel that that's anti-competitive.

24 CMSR. SCOTT: Thank you.

1 MR. MALONE: One of the biggest
2 concerns, saving sort of the best for last, is in regard
3 to how basic service is regarded by the Commission. And,
4 you know, to start this part of the discussion, you know,
5 I'd like to emphasize that the statute says that the
6 Commission continues to have jurisdiction over two aspects
7 of basic service, and that is the discontinuance of basic
8 service throughout the service territory, and the second
9 one is any rate increases over the statutory cap. And,
10 taking a look at Rule 410.04, it's a rule that regards
11 ILEC discontinuance of basic service. And, what this
12 proposed rule does is it has essentially transcribed the
13 customer disconnection rules into this rule, and
14 perpetuates the current rule regarding the disconnection
15 of service to an individual customer. And, we believe
16 that this highlights a difference in opinion regarding how
17 the terms "discontinuance" and "disconnection" are
18 interpreted under the statute. And, to try to summarize
19 it, NHTA believes that the difference is -- between
20 "discontinuance" and "disconnection" is the difference
21 between the general treatment of a class of customers, in
22 this case basic service users in a territory, and special
23 treatment to certain individual customers. And, we
24 believe that there's a difference, and that these rules

1 have conflated the term "discontinuance" and
2 "disconnection", with the effect of essentially bringing
3 the Commission's current disconnection rules under the
4 ambit of the basic service discontinuance rules.

5 And, to emphasize this, we believe that
6 just because the statute requires that a carrier cannot
7 discontinue the offering of basic service in the
8 territory, does not mean that the Commission now has
9 jurisdiction over the disconnection of one individual
10 customer's service.

11 CHAIRMAN IGNATIUS: So, does that mean
12 that anything in the 1200 rules regarding individual
13 customers would no longer apply?

14 MR. MALONE: That's correct. That's
15 correct. For ELECs.

16 CMSR. HARRINGTON: So I've got this
17 straight, then what you're saying is "discontinuation
18 applies to a class of service in an area and disconnection
19 applies to an individual customer"?

20 MR. MALONE: That's correct.

21 CMSR. HARRINGTON: Okay.

22 MR. MALONE: And, we believe that, yes,
23 you know, we understand that SB 48 says that you cannot
24 discontinue basic service. And, the way we interpret that

1 is it means we cannot cease to offer basic service to a
2 class of customers. In this case, it would probably be to
3 a geographic area of customers. But it doesn't mean that,
4 if you have a basic service customer, who is not paying
5 their bills or have otherwise violated the terms of
6 service, that you cannot go in and disconnect them, in
7 accordance with whatever contract we have with them,
8 without having to go to the Commission for approval.

9 CHAIRMAN IGNATIUS: So, is there, for a
10 customer who's -- for someone who is a customer of an
11 ELEC, is it your view that there is any consumer
12 protection standards that would apply to that customer?

13 MR. MALONE: Only the -- not under the
14 Commission rules anymore, no. I mean, they would have
15 consumer protection rules that, you know, the general
16 trade practice rules and those kinds of rules. But, no.
17 The consumer -- you know, this is where we have a
18 misunderstanding, I believe. And, we believe that, you
19 know, that basic service is continued to be offered, and
20 that that offer cannot be withdrawn. But that the
21 standard customer, you know, service rules would not apply
22 even to basic service. Once again, it's designed to
23 protect a class of users. It's not designed to protect an
24 individual user from a customer service standpoint.

1 CHAIRMAN IGNATIUS: And, I had thought
2 the legislative language, but I'll be the first to confess
3 I can't wend my way through that to find language right
4 away, had said that, for customers of basic service, there
5 was -- the consumer protection function within the
6 Commission still applied. That the Consumer Protection
7 Division could still accept calls and work on any
8 complaints regarding basic service customers. Are you
9 saying that that's not the case? There is no role for
10 Consumer Protection for basic customers of ELECs?

11 MR. MALONE: The way we interpret that,
12 you know, the statute I believe says that the Commission
13 may continue to accept complaints regarding basic service.
14 And, we believe that the Commission could accept
15 complaints from a customer that says "I have been told
16 that I cannot get basic service in this area" or "I have
17 been told that my rate is increasing by 20 percent." Or,
18 we can imagine the scenario where a customer would call
19 the Commission and say "the service on my line is so bad
20 that it constitutes the constructive discontinuance of
21 basic service. It is so bad that, for all intents and
22 purposes, my service has been discontinued." But, you
23 know, we don't interpret that as being, you know, to --
24 you know, to allow the disconnection rules that the

1 Commission has built in regarding notice, regarding the --
2 essentially importing the current disconnection rules, we
3 don't believe it goes that far.

4 CHAIRMAN IGNATIUS: So, if someone had,
5 say, a medical protection on their account, that would no
6 longer be enforceable, it would be whether you chose to or
7 not?

8 MR. MALONE: That's correct.

9 CHAIRMAN IGNATIUS: And, if you -- if
10 somebody misses a payment by a day or a week, that's up to
11 you to decide whether to terminate their service?

12 MR. MALONE: As if they were any other
13 ELEC customer, yes.

14 CHAIRMAN IGNATIUS: Commissioner
15 Harrington.

16 CMSR. HARRINGTON: Yeah. I'm just
17 trying to follow the logic here. So, you say that the
18 discontinuation of basic service is still governed by the
19 Commission rules. You can't do that --

20 MR. MALONE: Right.

21 CHAIRMAN IGNATIUS: -- without coming to
22 the Commission. So, let's picture a scenario where, for
23 whatever reason, in some particular location, we'll make
24 it simple, there's ten customers that all have basic

1 service. And, in order to discontinue that class of
2 service, you have to come to the Commission.

3 MR. MALONE: That's correct.

4 CMSR. HARRINGTON: But you could
5 discontinue it, to disconnect each individual of those ten
6 ratepayers. So, in effect, there is no nobody receiving
7 the service, and they wouldn't have to come to the
8 Commission to do that. Effectively, eliminating basic
9 service from that region simply by disconnecting all the
10 customers?

11 MR. MALONE: No. We would have to
12 disconnect them for cause. I mean, they would have to be
13 violating the terms of service. And, one of the things
14 that we also need to remember, and, in fact, we touch on
15 this in some of our context -- or, our comments, is we
16 continue to have some kind of contractual relationship
17 with these customers. And, you know, which is a fact that
18 we can't overlook. And, there are -- it's going to be a
19 contractual relationship where we offer them terms of
20 service, and there will be disconnection rules. And, one
21 of the rules will be, if you don't pay your bill for
22 however many months, we can disconnect you. If you're
23 using it for fraudulent purposes, if you're putting
24 equipment on a line that damages the network, we can

1 disconnect you.

2 So, no, we would not just come in and
3 disconnect customers without any cause. But, using your
4 hypothetical, we could go into that area of ten and say
5 "one of these customers has not been paying their bills,
6 and that it violates their terms of service, and that we
7 will give them notice of disconnection." And, that would
8 be a disconnection. That would not be a discontinuance.
9 You know, when and if that customer was prepared to meet
10 the terms of service, or if a new customer came in and
11 wanted service, we would continue that offering of the
12 service.

13 CMSR. HARRINGTON: But I guess my
14 question would be, because this is kind of a major change,
15 and, you know, the law is very, very complicated, and I
16 know it can be read many different ways. I'm just trying
17 to get clear as to what you're referring to. So, if there
18 was a customer, and your rules said "anyone who is late
19 five days more than two months out of 12", I'm just making
20 something up, "will be disconnected." Then, they just get
21 disconnected, and they have no recourse. They can't come
22 to the Commission, or anybody else, for that matter. They
23 just have to find another phone company that would provide
24 basic service to them. Even if there was a medical --

1 what we now call a "medical hold" on that account, so that
2 they -- that could happen, if that's how the rules were?

3 MR. MALONE: From a practical
4 standpoint, I think we would find that unlikely to happen.
5 I think I can speak for all of my clients, we're not in
6 the business of cutting people off of their network.

7 CMSR. HARRINGTON: But you can see it is
8 a major exchange of responsibilities, because, in the
9 past, that's been -- you know, we did have that death a
10 few years ago in southern New Hampshire, where someone was
11 out, you know, needed medical equipment and their phone --
12 was it phone or electricity?

13 CHAIRMAN IGNATIUS: Electricity.

14 CMSR. HARRINGTON: I guess it was
15 electricity. But you could see something similar like
16 that happening. And, I just want to make sure that the
17 Company is willing to take on the responsibility for that.
18 Because, you know, if that does happen, the way things
19 are, you're going to get blamed. They're going to say
20 "well, they missed their bill, you know, whatever it was,
21 and they were struggling, and they were on fixed income,
22 or whatever." And, then, you know, the husband had a
23 heart attack and died, because the phone service was shut
24 off. So, the companies are prepared to take that on with

1 the responsibility of dealing with that, because that's
2 what you're talking about?

3 MR. MALONE: Yes. I think I can speak
4 for the companies when I say that they will take that on,
5 and they have taken that on for years. That, once again,
6 none of these companies are in the business of -- I don't
7 know what the word is, but the business of throwing people
8 off their network.

9 CMSR. HARRINGTON: Right. You know, and
10 please don't take any of my comments of thinking that you
11 are.

12 MR. MALONE: No. No.

13 CMSR. HARRINGTON: It's just that, for
14 good or for bad, over the years telephone service, at
15 least basic service, the ability to pick up the phone and
16 dial the police or the fire or doctors has more or less
17 become considered a right, no longer a privilege that you
18 pay for like other commodities. And, what you're
19 proposing here, I would think it sounds like is that
20 you're saying "no that's not the case." It's just another
21 contractual agreement that people have, like they do in
22 business every day. Like, they have a contractual
23 agreement with their oil man to deliver oil to their
24 house, which, you know, if he decides they're not paying

1 their bills on time, he stops delivering and the pipes
2 will freeze. But, on the basis of telephone, what you're
3 saying is that this no longer has that, you know, one
4 might even call it a "protected status" of being somewhat
5 of a right, that you could pick up the phone and call the
6 police, the fire department, or a doctor.

7 MR. MALONE: I think what we're saying
8 is that I believe that SB -- we believe that SB 48, you
9 know, continues a customer's right to purchase telephone
10 service, to have telephone service. It doesn't guarantee
11 a right to have telephone service at no cost. And, in
12 fact, that right has never been there. And, that there
13 does come a point where a utility has -- itself has the
14 right to disconnect a customer that's not meeting its
15 terms of service. And, how to meet the needs of the
16 customers that you're describing is a really important
17 issue. And, I think I can also speak for my clients, is
18 that we would love to discuss with the Commission and with
19 the Legislature ways to meet this need, that doesn't have
20 the effect of forcing that obligation, that cost directly
21 onto the utilities.

22 CMSR. HARRINGTON: I'm just trying to
23 get the feel for where you're coming from on this.

24 MR. MALONE: Yes.

1 CMSR. HARRINGTON: So, just a couple
2 more quick questions here. I'll go back to my
3 hypothetical, basic service with ten customers. And, in
4 this case, rather than disconnecting, let's just say all
5 ten universally say their service is awful. Half of the
6 time they pick up the phone, they get no dial tone, or to
7 extend it, they make phone calls and they don't go
8 anywhere.

9 MR. MALONE: Right.

10 CMSR. HARRINGTON: Would they have the
11 ability to come to the Commission individually or would
12 that only be "hey, we're offering basic service, we're not
13 disconnecting it, so, don't call the Commission"?

14 MR. MALONE: No. They would have the
15 right to come to the Commission. Because, as I discussed
16 earlier, there does come a point where the service is so
17 bad that, for all intents and purposes, we have
18 discontinued the service. And, take the case that you're
19 describing would be such a case. And, I would fully
20 expect that anyone of those customers could call the
21 Commission and say "the offering has been discontinued in
22 my territory."

23 CMSR. HARRINGTON: And, if it was only
24 one customer that had the problem, and the other nine were

1 okay, you're saying this is effectively discontinuing the
2 service to that customer, --

3 MR. MALONE: Yes.

4 CMSR. HARRINGTON: -- as compared to a
5 disconnection, which would be for cause?

6 MR. MALONE: That's right. That's
7 right.

8 CMSR. HARRINGTON: Okay. All right. I
9 think I understand what you're trying to say. Thank you.

10 CHAIRMAN IGNATIUS: Let's just keep
11 exploring a couple of other opportunities -- issues,
12 excuse me, possible situations. When we had the large
13 transfer from Verizon to FairPoint, billing went out of
14 control for certain customers, and it took months, maybe
15 even years, for those to be resolved. With mistaken
16 billing, overcharging, undercharging, back-billing,
17 crediting, it was a nightmare for certain customers,
18 including one of the Commissioners. So, I would hear it
19 firsthand when he would get another bill. With that sort
20 of the thing, if it's a basic customer, who's got just
21 sort of confusing bill that doesn't seem to be accurate,
22 is that something that would be within the jurisdiction of
23 our Consumer Division to handle?

24 MR. MALONE: Not the way we interpret

1 the statute.

2 CHAIRMAN IGNATIUS: Why not?

3 MR. MALONE: Because, once again, the
4 Commission's jurisdiction is the, you know, regarding the
5 discontinuance of basic service and any rate increases
6 above the cap. We believe that's the carefully confined
7 jurisdiction. If they're having billing problems, they
8 would have the right to take this to, you know, I guess
9 the AG's Consumer Affairs Division.

10 CHAIRMAN IGNATIUS: And, I haven't
11 looked at the latest version of the statutes, to see if
12 this was changed in the last session. It used to be that
13 the A&G's Office was not allowed to take any of our issues
14 that the Commission regulated. So, is that a viable
15 opportunity for people, even apart from the practicality
16 of somebody getting someone at the AG's Office to take it,
17 because they don't deal very often with individual
18 complaints anymore? But, even if they could get someone's
19 attention there, is that even an opportunity legally under
20 the way the statute -- the exemptions work?

21 MR. MALONE: I have not read that
22 statute recently. I believe that the terms it uses is
23 that, if it's under the jurisdiction of the Public Utility
24 Commission, then they don't have jurisdiction. I would

1 argue that those issues would no longer be under the
2 jurisdiction of the Public Utility Commission and,
3 therefore, they would be within the AG's purview.

4 CHAIRMAN IGNATIUS: Commissioner
5 Harrington.

6 CMSR. HARRINGTON: Yes. Just so I'm
7 clear on this, I'm just looking at the proposed rules
8 under 410.04(b). I'm not sure if they're going to have
9 that in front of them. It's on Page 23 of what I have.
10 But this says, "if an ILEC has received notification
11 within the past 60 days from a licensed physician or
12 mental health professional that a medical emergency exists
13 at the location, or would result from the service
14 disconnection, the ILEC shall not discontinue service to
15 the customer without Commission authorization unless the
16 customer has failed to enter into or comply with an
17 arrangement for repayment of the outstanding balances."
18 And, let's, just for the time being, let's forget about
19 the discontinuation versus the disconnection here. I
20 mean, let's use your word, "disconnection". So, you're
21 saying to remove this entire paragraph then?

22 MR. MALONE: Yes, Mr. Commissioner.

23 CMSR. HARRINGTON: And, so, it wouldn't
24 apply to any type of telephone company?

1 MR. MALONE: That's correct.

2 CMSR. HARRINGTON: Okay. Thank you.

3 CHAIRMAN IGNATIUS: Anything further?

4 MR. MALONE: For the same reasons, we
5 also believe that 410.03(b), that says "An ILEC shall not
6 impose any additional contractual requirements as a
7 condition for purchasing basic service", and (c), "An ILEC
8 shall not impose exit fees on a customer who cancels basic
9 service," once again, we believe that they would not apply
10 to any ILECs who are ELECs.

11 CMSR. HARRINGTON: Which section was
12 that again?

13 MR. MALONE: I'm sorry. 410.03(b) and
14 (c).

15 CHAIRMAN IGNATIUS: On (b), can you
16 explain what you're envisioning is an additional
17 contractual requirement that you're concerned about?

18 MR. MALONE: Our concern -- yes. Our
19 concern is that -- there's a general concern that, once
20 again, we don't believe the Commission has the authority
21 to impose contractual conditions on end-user service, even
22 as it regards basic service. But, secondly, this rule is
23 somewhat vague. You know, first of all, we have to
24 understand that every service, even basic service, is

1 going to be delivered under a contractual arrangement.
2 And, so, we have this term "any additional contractual
3 arrangements", is actually very vague and almost
4 meaningless. Well, what does that mean? Any additional
5 ones over and above what baseline? So, you know, even if
6 the Commission -- even if you thought the Commission did
7 have the authority to impose this rule, we're not even
8 sure that the rule makes any sense.

9 CHAIRMAN IGNATIUS: And, "contractual
10 requirements", and we could ask Staff this as well, but
11 does that -- you envision that means things like you have
12 to give 90 days notice before something, if it's a basic
13 service customer, as opposed to additional services to be
14 purchased?

15 MR. MALONE: Right. Yes. And, if that
16 is Staff's concern, that, you know, we'd say that "you
17 cannot have basic service unless you purchase some
18 additional service", we're happy to talk about that. We
19 don't believe that that's something that we would want to
20 do.

21 CMSR. HARRINGTON: Okay. That's a big
22 difference, because I was reading it the same way that
23 Chairman Ignatius was, that you could come in and say "if
24 you want basic service, you have to get these 20 other

1 things", I mean, --

2 MR. MALONE: No. No.

3 CMSR. HARRINGTON: -- I'm, you know,
4 making it up to make my point here.

5 MR. MALONE: No. I understand.

6 CMSR. HARRINGTON: So, you're just
7 saying you couldn't come in with some additional type of
8 requirement, and this is -- okay. So, if you wanted to
9 have a requirement that somebody will pay their bill
10 within 30 days, or they, you know, if they carry a balance
11 for more than so many months, whatever, then they could be
12 disconnected. Some requirement on that means not buying
13 additional types of service?

14 MR. MALONE: That's correct. That's
15 correct.

16 CHAIRMAN IGNATIUS: Please continue.

17 MR. MALONE: All right. Finally, we
18 would like to respond to NECTA's comment regarding Rule
19 404.02(c), regarding the authorization required to provide
20 voice service, and, specifically, the rules regarding
21 entry into a rural telephone company's territory. And,
22 first of all, we do believe that the Supreme Court ruling
23 that Attorney Geiger referenced does supply the Commission
24 with jurisdiction to impose some kind of rules. I will

1 just read the last few sentences of the order, where the
2 court said: "The PUC explained that it would commence a
3 rulemaking to address, in a competitively neutral manner,
4 whether additional or modified requirements are necessary
5 to preserve and advance universal service, protect the
6 public safety and welfare, ensure the continued quality of
7 telecommunications services, and safeguard the rights of
8 consumers in the context of competitive entry." And, it
9 went on to conclude that the PUC could do this, and that
10 that particular issue wasn't ripe for review.

11 And, they went on to say "We express no
12 opinion on whether, through rulemaking or otherwise, the
13 PUC may develop an alternative, less burdensome process,
14 that comports with both federal and state law. We see
15 this rulemaking and we see the Commission's proposed rule
16 as exerting authority that was left to it by this court.
17 So, we do believe that the Commission has the authority
18 for this rule.

19 Secondly, we have a hard time
20 understanding how NECTA's proposal would be workable. I
21 think what they're proposing is that they would -- that a
22 new entrant would be able to come into the territory,
23 would be able to solicit and obtain customers, begin
24 providing service, while, in parallel, there was some kind

1 of a proceeding where it was determined whether they would
2 be subject to additional requirements to protect universal
3 service. When we think about that, the open-ended
4 question is "well, what happens then?" What happens if
5 the Commission determines that the new entrant is not
6 qualified, based under its rules? What happens if the new
7 entrant decides that it won't accept the conditions of
8 entry that had ultimately been determined? Well, you have
9 any number of customers that have already been
10 transferred. You have -- now, you have a mass migration
11 issue, you have various public service issues. I just
12 don't see how it would be workable, once the horse had
13 left the barn, essentially. So, we believe that this
14 proceeding to determine the conditions of entry has to be
15 in parallel and it has to be in advance of any acceptance
16 of the registration.

17 Finally, noting NECTA's concern about
18 the absence of a lot of the interconnection rules that are
19 in existing rules, I think I can -- I haven't conferred
20 with my clients, but I think I can state that there is no
21 objection to those rules being put back in. We understand
22 the Commission trying to streamline the rules, and we
23 believe that the absent rules are already federal
24 requirements and already required by either

1 interconnection agreements or the tariff that we have on
2 file. But I don't believe that we would have any
3 objection to seeing those back in the rules.

4 CHAIRMAN IGNATIUS: Thank you.

5 MR. MALONE: Thank you very much.

6 CHAIRMAN IGNATIUS: We don't have a
7 sign-in sheet. I don't know how many other participants
8 there are who want to make comments, and we ought to think
9 a little bit about scheduling and when to take a break.
10 Mr. Linder, you have comments?

11 MR. LINDER: We have few. Yes.

12 CHAIRMAN IGNATIUS: All right.

13 MR. MOORE: I will, too.

14 CHAIRMAN IGNATIUS: And, your name? I'm
15 sorry, I've forgotten.

16 MR. MOORE: Alex Moore, from Verizon.

17 CHAIRMAN IGNATIUS: All right. Why
18 don't we stick with providers. So, if you want to go
19 ahead.

20 MR. MOORE: Thank you. I will keep it
21 brief. Thank you.

22 (Court reporter interruption.)

23 MR. MOORE: Thank you. Verizon also
24 appreciates the Staff's work on the rules. We believe

1 that -- I guess we agree with Mr. Malone that this draft,
2 for the most part, is, you know, commensurate with the new
3 statutes. We have two categories of comments. And, we,
4 too, will file written comments. So, I'll put this down
5 in writing for you in detail.

6 But the first category concerns the
7 scope of the rules. And, it's our understanding that the
8 rules are not intended to apply to wireless, excuse me,
9 they're not intended to apply to VoIP or IP providers,
10 consistent with the statute. However, there are some
11 individual rules and definitions that we think need to be
12 amended to align them with that intent. I'll just mention
13 them briefly. Rule 401.02, that's the application rule.
14 We think it should include an express reference that it
15 doesn't include wireless, and the statutory phrase is that
16 -- it's from RSA 362:7, and it refers to "cellular/mobile
17 communication service".

18 And, the reason being, there are a few
19 rules in here, substantive rules that are fairly broad.
20 And, so, without some clear statement of the scope of the
21 rules and some of these definitions, the rules could be,
22 we believe, misread.

23 A couple of the definitions, there's a
24 definition of "ELEC" in 402.09. That definition I think

1 was lifted directly from the statute, which we have no
2 objection to. But it was -- it's not complete, in that it
3 was lifted from the definition of "ELEC", but, in one part
4 of 362, Section 2, but, in 362, Section 7, the Legislature
5 has also clearly stated that VoIP providers and IP
6 providers are not ELECs. So, that's another one where the
7 rules can be comprehensive and give a full definition of
8 what is and what is not an ELEC.

9 CHAIRMAN IGNATIUS: But, if the opening
10 applicability sentence says straight out that "these
11 rules" -- "the chapter doesn't apply to VoIP and IP
12 providers", then do you need to say it each time that --

13 MR. MOORE: No. I don't think you need
14 to say it every time. But, at the same time, the rules
15 should be clear. So that, if you were to look -- a couple
16 years from now some issue comes up and you look at some
17 individual rule that refers to "ELEC", or refers to -- the
18 other definition I'm concerned is "telephone utility",
19 which is fairly broad. You shouldn't have to have an
20 argument a few years from now where one side says "well,
21 this rule applies, because it applies to "telephone
22 utility", and that has no exclusion for VoIP providers."
23 And, somebody else comes in and says "well, but over here
24 the applicability rule says the rules don't apply at all

1 to VoIP providers." And, I think you can do it without
2 muddling up this draft by just changing, you know,
3 amending a definition or two.

4 Another good example is one that is of
5 concern to us is the definition of "voice service". And,
6 the reason is, in 404.02, that's the substantive rule that
7 says "No person or entity shall offer voice service in New
8 Hampshire without registering with the Commission first."
9 Well, it doesn't really mean that. Because voice service
10 is defined broadly, and it would include wireless. So,
11 the condition -- you know, the current status today is
12 that there are wireless companies that provide service
13 here. They're not subject to the Commission's
14 jurisdiction. There's no reason the rule shouldn't just
15 state clearly that they are not. So, a short change or an
16 amendment to the definition of "voice service", to make it
17 clear that it excludes VoIP and IP and wireless. I think
18 it says right now that it excludes VoIP and IP in the
19 draft. And, I think that there's no reason it shouldn't
20 just be expanded to say it also excludes wireless.

21 So, those are the kind of scope issues.
22 And, it's really -- I don't think we disagree with the
23 intent of the draft. It's just that to make clear, in
24 some of the definitions, what the scope is. Then, we have

1 a few --

2 CMSR. HARRINGTON: Excuse me, just
3 before you leave that section.

4 MR. MALONE: Yes.

5 CMSR. HARRINGTON: I just want to, you
6 know, I understand your concern, but I'm just trying to
7 look at it from, if we go through and do some of the
8 changes you've suggested, then we have to go through
9 almost every place where it was possible that you would
10 want to make sure you mention "VoIP and IP and wireless"
11 where the rule wasn't applicable to them.

12 MR. MOORE: But I don't think you do,
13 because --

14 CMSR. HARRINGTON: But I think you set
15 yourself up for that, --

16 MR. MOORE: Well, that's --

17 CMSR. HARRINGTON: -- if you don't put
18 it at the beginning. And, you make it very clear at the
19 beginning that none of the rules apply to those three, to
20 me, that's clearer than going through each individual rule
21 and saying "Oops, we missed one here." They said it in
22 ten places, but they didn't say it in the eleventh. That
23 would almost imply, in that case, that the rules do apply.
24 And, that's not our intent here at all, to say any of

1 these rules apply to VoIP, IP or wireless. So, don't ask,
2 you might not -- you might get what you want, but it might
3 not be what you really like.

4 MR. MOORE: No, I see what you're
5 getting at. But I think you can avoid making that many
6 changes by changing the definitions. Because then those
7 defined terms are the ones that are used in all those
8 other rules, and there might be one or two places where
9 you have to make some adjustment. And, let me give you
10 one example, which is on a little different issue. The
11 rules on TRS and 911, this is 404.9 and 404.10. Those, by
12 their terms, apply to ELECs and ILECs. We think there
13 should be an exception there for competitive toll
14 providers, for IXCs under the federal law. So, MCI
15 Communications Services is a long distance provider in New
16 Hampshire. They don't have a relationship with end users.
17 And, they would carry a call from, you know, originated,
18 say, by a FairPoint customer to a Comcast customer. So,
19 they don't assess a 911 fee. They're not expected to.
20 The same thing with TRS. So, because of the breadth of
21 the category of ELECs, and ELECs -- they are an ELEC under
22 the current -- under the new statute. But they really
23 shouldn't be expected to have those particular
24 obligations. So, that's one place where we think there

1 should be a little -- delve down a little deeper and have
2 a little exclusion there. Just because of, again, the
3 breadth of the definition from the statute.

4 A couple other substantive rules that we
5 think require some amendment. We agree with NHTA about
6 the cramming rule, that it probably is better off in the
7 1200 rules. But, in addition to that, no matter where it
8 is, again, the statute prohibits third party service
9 providers and billing aggregators from engaging in this
10 prohibited behavior. It doesn't apply to providers of the
11 telephone service. So, for example, the way the draft
12 rule is written now, it could be read to say "every time a
13 provider sends a bill that is inaccurate, maybe they
14 overbill for some reason, that that would be cramming."
15 And, that's not what the statute intends to cover. So,
16 you don't -- I don't think you want to convert every, you
17 know, just an inaccurate bill into a cramming issue.

18 And, finally, we also agree with the
19 NHTA about the Commission's authority over the network.
20 The way we look at it, it comes up -- it's Rule 406, on
21 equipment and facilities. And, that includes the
22 reporting obligation. You know, Senate Bill 48 added RSA
23 370, Section 1-a. And, that is at the beginning of the
24 statute regarding facilities. And, it says "and the

1 Commission shall have no jurisdiction over this for
2 telephone." That one is not limited to retail. So, it
3 seems to us that the Legislature has taken away that
4 authority of the Commission for -- in the area of
5 telecommunications. And, so, we agree with NHTA that, in
6 our view, that rule should be removed from the draft.

7 But those are the ones we have. There
8 might be a few others, but I wanted to touch on the most
9 important ones. Thank you.

10 CHAIRMAN IGNATIUS: And, then, you said
11 you would be submitting written comments that get a little
12 more specific?

13 MR. MOORE: Yes. We will do that. And,
14 we may also give a redline version of the rules that we
15 think require some change.

16 CHAIRMAN IGNATIUS: All right. We
17 appreciate that. Thank you.

18 CMSR. HARRINGTON: Just before he goes,
19 one final, so I get your last point. You're suggesting
20 that Section 406, "Telephone Utility Equipment and
21 Facilities" be removed in its entirety?

22 MR. MOORE: Yes.

23 CMSR. HARRINGTON: Okay.

24 MR. MOORE: And, that's, again, you

1 know, if you just look at that the Legislature was pretty
2 clear on that one, that there's a specific statute on
3 that, 370, and they added in the new Section 1-a. It's
4 short and to the point. And, unlike many of those
5 amendments to the other statutes, that one is not limited
6 to retail.

7 CHAIRMAN IGNATIUS: All right. Thank
8 you. All right. Who else has comments? Other providers?
9 Yes, sir.

10 MR. WINSLOW: Hi. I'm Darren Winslow,
11 with BayRing Communications. We also wanted to thank the
12 Staff and the Commission for the rewrite of the rules. We
13 just have a few comments here. We do want to say that,
14 overall, the rules do appear to be consistent with the new
15 law. The rules do maintain PUC's authority over basic
16 service customers. And, the rules also separately address
17 wholesale requirements for ILECs, which is needed to
18 protect competitors that utilize these type of services.

19 One area we wanted to talk a little bit
20 about was the rules do specifically exempt VoIP providers
21 from the rules, even though it is clear that the law still
22 allows PUC's oversight regarding such items as regulatory
23 assessment, TRS fees, carrier-to-carrier requirements,
24 *etcetera*. Since we believe the law is fairly clear

1 regarding VoIP requirements for these items, we don't feel
2 it's necessary that the rule specifically address VoIP
3 providers. However, the PUC could determine if a separate
4 set of rules should apply, if future actions by VoIP
5 providers require clarification of the PUC's authority.

6 You know, with that said, NECTA's
7 comments today, regarding maintaining CLEC status, may
8 resolve some of those issues or it may require the rules
9 to specifically address VoIP providers more clearly.

10 Just another few comments on a couple
11 other sections. Section 404.04, "Assessments", section
12 part (a) on that. We consider -- we think it might make
13 sense to consider adding "VoIP services" to the definition
14 -- I'm sorry -- consider adding "voice services" to the
15 definition of "revenues" that will be assessed, since
16 these are the only revenues regulated by the PUC. You
17 know, we made this note because a lot of CLECs have "data
18 only" services. And, there are specific CLECs that only
19 provide "data only" services, and they are exempt from the
20 PUC regulations.

21 It actually may make sense to remove the
22 entire section on assessments until the new legislation is
23 approved, in order to avoid conflicts, or, at least maybe
24 consider removing part (b) and (c) that is specific to the

1 allocation of bundled revenues. Once the new legislation
2 is approved, the PUC should clarify which revenues are to
3 be included in the assessment process.

4 One other section where we'd like to see
5 some additional language is Section 404.05, which is
6 "Tariff for Wholesale Services". We believe there should
7 be some language here that should allow a carrier, who has
8 an interstate tariff, that would be identical to an
9 intrastate tariff, to just simply adopt the use of that
10 interstate tariff terms and conditions, and rates, if they
11 are the same, in the intrastate regulation. So, simply,
12 we would say, if your interstate tariff is appropriate for
13 intrastate services, that you would simply file a rate
14 sheet or some sort of letter that would indicate your
15 interstate tariff will apply to your intrastate services.

16 One other minor item is with Form T-7,
17 Exchange Eligibility Report. This report is noted as
18 being event-driven, which would be a result of a carrier
19 requesting additional numbering requirements in a new
20 exchange. We believe that the language here should be
21 revised so that the report only asks for information for
22 that particular exchange. Whereas, today's language, it
23 does appear that it is asking for every single exchange a
24 carrier already has numbers in.

1 I think, regarding some of the
2 discussion around the 407.03, the "Network Changes", I
3 really think there would be -- the industry really needs
4 to get together to talk about those provisions. I think
5 there's several different issues there. I think that
6 Mr. Malone's example, where the ILEC would no longer want
7 to provide sort of a, you know, a T1 or a DS1 level
8 interconnection service. You know, what we want to
9 definitely avoid in that area is whether a CLEC would have
10 to purchase, you know, a real high-capacity service, where
11 the costs would be higher as well. So, you know, I'm not
12 sure if there really needs to be something in the rules
13 that talks about a petition process to, you know,
14 eliminate a certain network interconnection element, or,
15 you know, essentially, so that there can be some
16 discussion on it. And, I assume maybe that would be
17 required or allowed under the rules anyway.

18 That's all we have at this time. Thank
19 you.

20 CHAIRMAN IGNATIUS: Thank you.

21 Ms. Mullholand, anything else?

22 MS. MULLHOLAND: No.

23 CHAIRMAN IGNATIUS: No? All right.

24 Thank you. And, if you do have any more specific

1 recommendations on language and want to supplement that in
2 the written comments, that would be helpful.

3 MR. WINSLOW: All right. Thank you.

4 CHAIRMAN IGNATIUS: Are there any other
5 providers that have comments?

6 (No verbal response)

7 CHAIRMAN IGNATIUS: Then, I guess,
8 Mr. Linder, do you have comments?

9 MR. LINDER: Yes. We have several
10 comments. Good morning. My name is Alan Linder. I'm
11 from New Hampshire Legal Assistance. And, with me is Dan
12 Feltes, from New Hampshire Legal Assistance.

13 The Staff has done a very good job, in
14 our opinion, in translating the complicated multiple
15 statutes that have been enacted in the past several years
16 regarding telephone service into the most current version,
17 the October 3rd version, of the Chapter 400 rules. And,
18 we are generally in support of the rules as written by the
19 Staff. It's a very complicated job translating the
20 statutes into clear rules, but I think the Staff has
21 pretty much accomplished that.

22 We had really two areas, two items that
23 we wanted to bring to the attention of the Commissioners
24 at this time. With respect to one item that is in the

1 rules, with respect to basic service, and one item that is
2 not in the current version of the rules, and that's with
3 respect to the public interest payphones.

4 And, our recommendation would be, with
5 respect to the public interest payphones, that are now
6 covered under current rules, Chapter 406, which is the
7 public interest payphone chapter, and there are one or two
8 rules in the current Chapter 405, which are the payphone
9 rules. And, there are several references in the payphone
10 rules in 405 to public interest payphones in 406. And,
11 our written comments of May 30th, 2013 specified which
12 particular public interest payphone rules we're referring
13 to. In the current version, the October 3rd version of
14 the 400 rules, there is one rule that deals with
15 payphones. But it doesn't reference at all the current
16 public interest payphone rules. And, without going into a
17 lot of detail, I would ask the Commissioners to take
18 another look at Pages 6 through 9 of our May 30th written
19 comments. And, right now, it would be our intention to
20 submit, by November the 7th, a very short supplement to
21 those Pages 6 through 9, setting forth our reasons in full
22 why we think the public interest payphone rule should be
23 included in the proposed Chapter 400 rules. So, I don't
24 think it's really necessary and productive to go into that

1 right now, unless there are questions.

2 The other item that we wanted to talk
3 about for a moment or two, we really weren't expecting to
4 talk about it today, but the New Hampshire Telephone
5 Association has brought up the issue in their oral
6 comments today with respect to the basic service rules,
7 which are the 410.03, basically, through 410.05. And,
8 there appears to be some difference of opinion with
9 respect to the scope of those rules, the basic service
10 rules, and what a basic service customer can complain
11 about, and what the process and forum would be for those
12 complaints, however expansive or however limited they
13 might be with respect to subject matter. And, it's our
14 view that, with respect to the jurisdiction of the
15 Commission, I think the Staff provided a very helpful
16 document as part of the rulemaking process, as part of the
17 notice. There's a "Table of Authority for Draft 400
18 Rules", it's an appendix to the rulemaking. And, it's
19 about four -- three or four pages. And, what the Staff
20 did was that they went through the proposed rules, almost
21 rule by rule, and cited, in the right-hand column, the
22 statutes that the Staff felt supported the proposed 400
23 rules. And, on the third and the last page, there are
24 references to proposed Rules 410.03, 410.04, 410.05, which

1 I think are the three main rules that there appears to be
2 some difference of opinion about.

3 And, we looked at each of those items of
4 statutory authority, such as RSA 362:8, IV, and RSA
5 374:22-p, and RSA 365:1-a. And, we interpret the
6 statutory changes, such as the ones I've referenced, as
7 providing the Commission with jurisdiction with respect to
8 the basic service rules that were discussed earlier this
9 morning.

10 And, I think what might be helpful is
11 if, in our written supplemental comments, which we were
12 going to submit by November 7th, if we went into a little
13 bit more detail as to why we think those statutes do
14 confer the jurisdiction that some parties question. I
15 think that the -- there was also -- and, we basically
16 interpret 365:1-a, even though it's been further modified
17 by the amendment to House Bill 542 several months ago, to
18 nevertheless provide the Commission with the authority to
19 hear complaints by basic service customers regarding
20 aspects of basic service that go beyond the two items that
21 the New Hampshire Telephone Association says the
22 Commission is limited to. And, we do feel that the
23 Commission does have authority under those statutes to
24 hear complaints about incorrect billing or a service

1 that's going to be terminated because a payment hasn't
2 been made, things like that, medical emergencies. We
3 think those are items that basic service customers can
4 complain about with those statutes.

5 To the extent that there was discussion
6 about, "well, where would a basic service customer go, if
7 it turns out that the Commission doesn't have jurisdiction
8 to address some of the examples that I just gave with
9 respect to basic service problems?" There was reference
10 to the Attorney General's Office, but they're not handling
11 those kind of complaints. And, it's not clear under the
12 statute that they really can. There is, in the contract,
13 the service agreement, at least that FairPoint has, which
14 I believe the Commission has, there's a dispute resolution
15 section in the service agreement that every retail
16 customer received after Senate Bill 48 was enacted into
17 law last year. And, that dispute resolution section has
18 several components to it. One, if there's a major dispute
19 about the validity of the contract, the contractual terms
20 itself, such a challenge needs to be raised in a court in
21 the State of North Carolina. With respect to problems
22 that individual customers might have with respect to the
23 service that they're receiving or not receiving, depending
24 on the point of view, there is an arbitration process.

1 The arbitration itself, under the terms of the service
2 agreement, take place in the State of Maine, and this is
3 the contract that was sent out to New Hampshire customers.
4 The costs need to be borne by each side. The cost of the
5 arbitrator fee will be split by the parties. And,
6 sometimes arbitration is not inexpensive. And, then, to
7 the extent that the binding arbitration doesn't resolve
8 the problem for an amount in dispute, up to \$5,000, I
9 think the parties can go to small claims court, which, you
10 know, in and of itself is not an easy task for most
11 citizens.

12 And, so, there are -- there is that
13 process that was referred to earlier as, you know, as one
14 of the terms in the contract. Whether that is a adequate
15 and really practically accessible process for many
16 customers, including elderly and low income customers, you
17 know, when there may be differences of opinion there with
18 respect to that, but it certainly doesn't compare, in our
19 view, based on our experience over the past 20 years with
20 the Consumer Affairs Department of this Commission, with
21 the efficacy and efficiency of the process here. And, so,
22 it would be a shame if basic service customers or other
23 customers were not able to access the resources here at
24 this Commission, with the Consumer Affairs Bureau, which

1 has done an admirable job over the years with customer
2 disputes with the various utilities, including the
3 telephone utilities. And, this is not to say anything
4 disparaging about the telephone utilities. They work hard
5 to try to resolve problems. But the issue is really, you
6 know, whether the Commission has the authority to address
7 those problems and attempt to resolve them. We think the
8 Commission does that.

9 So, thank you very much for the
10 opportunity to present those comments today.

11 CHAIRMAN IGNATIUS: Thank you.
12 Appreciate it. All right. And, if you have further
13 comments fleshing out any of that, don't restate what
14 you've already submitted in May, but, if you want to add
15 to that, please do. And, we have those prior comments.

16 MR. LINDER: Yes. These would just be
17 supplemental.

18 CHAIRMAN IGNATIUS: That's great.

19 MR. LINDER: Thank you.

20 CHAIRMAN IGNATIUS: Thank you.
21 Commissioner Harrington.

22 CMSR. HARRINGTON: Yes. One thing, in
23 general, that Chairman Ignatius just kind of prompted me
24 to think of. We did have all these submittals, and

1 there's like a half a foot of them anyways, that came in
2 in May. And, then, there was the law change. And,
3 subsequent to that, obviously, the rules have changed
4 quite dramatically since then. So, I guess, if you --
5 when you give us the written thing, if there's a
6 particular thing from May that you want to highlight, you
7 don't have to redo it all, but you may want to mention
8 "See Pages" -- as Mr. Linder, "Pages 6 through 9 of our
9 May 30th testimony", we can go back there and look.
10 Because, otherwise, it's going to be real difficult to go
11 back and we'll probably miss something. If we sort of --
12 I'm kind of looking at the May one, since that's already
13 happened, now let's deal with the newer ones we're getting
14 here. So, if there is something in there that you think
15 is still valid, again, you don't have to rewrite the whole
16 thing, but just, in your new submittal, say, you know,
17 "See Pages 6 to 9 of our May 30th one on this subject",
18 that makes it a little more efficient for everybody.

19 CHAIRMAN IGNATIUS: That's a great
20 suggestion. Thank you. Commissioner Scott.

21 CMSR. SCOTT: I have one more follow-up
22 for Mr. Malone, Attorney Malone. Back to the proposed
23 407.03, "Network Changes", --

24 MR. MALONE: Yes.

1 CHAIRMAN IGNATIUS: -- and the 3 years
2 that's in (a) and the 6 months in (b). I was curious what
3 the practice is right now. So, (b) right now basically
4 says -- references "6 months prior to network changes that
5 may affect interconnections, the information should be
6 made available." What's the current practice? Do you --
7 if somebody is interconnected, are they notified
8 proactively or are they just expected to know and, if
9 asked, it's provided? How does that all work?

10 MR. MALONE: They show up one day and
11 there's just some dangling ends --

12 (Court reporter interruption.)

13 MR. MALONE: I'm sorry. Sorry, Steve.
14 That's fine. That was just a joke. Mr. Taylor can
15 correct me, but, as far as the operations, but we do file
16 what we call "industry letters", where we will describe
17 any network changes. I believe we also have to make
18 filings at the FCC regarding network changes. So, the
19 notice is sent out.

20 I was also thinking, we also have
21 interconnection agreements that -- or in our tariff that
22 describe how we interconnect with other carriers. And,
23 once again, because these are per agreement or per tariff,
24 it's, you know, not like we can do something in the dark

1 of night and no one's going to know about it. We have to
2 file changes, either amendments to the interconnection
3 agreements or for tariff changes. So, there are a number
4 of avenues by which interconnected carriers are notified.

5 CMSR. SCOTT: Thank you.

6 CHAIRMAN IGNATIUS: Are there any
7 comments, other than Staff? Let's hold out just for a
8 moment. Anybody else who wants to comment, at least
9 initially?

10 (No verbal response)

11 CHAIRMAN IGNATIUS: All right. I see
12 none. Then, Mr. Wiesner, does Staff want to respond now
13 or take on some now and take on some in written comments?
14 What's your plan?

15 MR. WIESNER: I think we could offer a
16 high-level response to several of the points that were
17 raised here by the parties.

18 CHAIRMAN IGNATIUS: That would be
19 helpful.

20 MR. WIESNER: And, we look forward to
21 receiving written comments. And, I believe that those
22 written comments will include language changes that we
23 would be happy to consider. Our goal is to, you know, our
24 goal in preparing the draft final proposal and in moving

1 forward is to address the issues raised by the most recent
2 legislation, as well as to comments received from parties
3 on the initial proposal, as well as on this draft final
4 proposal, and to streamline and shorten the rules, to the
5 extent possible and appropriate, so we have a final
6 product that can be reviewed and approved by the
7 Commission later this month or early December -- I should
8 say November, early December.

9 CHAIRMAN IGNATIUS: That would be great.
10 Before you begin, Steve, do you want to take a break?

11 MR. PATNAUDE: We can keep going.

12 CHAIRMAN IGNATIUS: All right. Then,
13 why don't you go ahead.

14 MR. WIESNER: With respect to facilities
15 regulation, I think our view is that the Commission has an
16 important continuing rule to play in ensuring the adequacy
17 and safety of telephone network facilities. We believe
18 that the changes that were effected by Senate Bill 48, and
19 House Bill 542 most recently, have not affected that
20 authority. We look, in particular, to RSA 374:1, which
21 provides that utilities, telephone utilities shall provide
22 -- all utilities, I should say, are required to provide
23 safe and adequate facilities and service. Now, we note
24 that Section 1-a, in RSA 374, excludes Commission

1 jurisdiction over end-user services and the providers of
2 those services. We do not interpret that to have affected
3 the underlying authority of the Commission to regulate or
4 at least provide a reasonable level of regulatory
5 oversight of the telephone system as a network and its
6 related facilities. We believe that's important, both for
7 the provision of retail basic service, as well as
8 wholesale services. And, we've included several
9 provisions in the rules which go to that point. There are
10 also --

11 CHAIRMAN IGNATIUS: Can I just see if I
12 understand? You're saying that, although you may not be
13 able to have a role over the end-user service, your view
14 is the Commission still has a role over the network that
15 provides those services, that enables those services?

16 MR. WIESNER: The safety and adequacy of
17 those facilities is an important continuing role for the
18 Commission to play, we believe. And, we've adopted rules
19 which we believe are significantly scaled down from the
20 prior rules, but which are intended to cover -- to provide
21 that level of regulatory oversight. And, we also earlier
22 had some discussion about utility accident reporting. You
23 know, there are specific statutory provisions that require
24 the Commission to investigate fatal accidents in

1 particular. And, a major thrust of the utility accident
2 reporting requirements is so that the Commission has the
3 information necessary to do that investigation before too
4 much time has elapsed. And, the specific statutory
5 citation escapes me at the moment, but that was an
6 important consideration in our drafting these rules.

7 We are continuing to take a look at the
8 specifics of accident reporting. And, we've received
9 comments from certain parties that those accident
10 reporting requirements, particularly in terms of telephone
11 calls, may be burdensome. And, we are continuing to look
12 at that and see if it's possible to streamline those
13 procedures, both in terms of in the interest of brevity
14 and clarity.

15 The other major point I want to make is
16 on the scope of the Commission's regulation of basic
17 service. I think we disagree with Attorney Malone and
18 other parties' views expressed here today, that the scope
19 of basic service regulation is limited to the price caps
20 specified in the statute and a discontinuance on a
21 full-scale level within a service territory. I think we
22 share the concerns suggested by Commissioner Harrington's
23 questions, that it may be possible to achieve a full
24 discontinuance of service in all or a part of a service

1 territory through serial disconnections. Even if there is
2 some cause, and the cause may be narrowly defined, because
3 those are contractual terms, which perhaps the Commission
4 has no continuing jurisdiction over. So, we do believe
5 that's a legitimate concern.

6 We also, I think, agree with Attorney
7 Linder that the complaint process needs to be meaningful,
8 in order for the basic service offering, which we believe
9 is an important priority of the Legislature, to be
10 preserved. And, that customers should have the ability to
11 come to the Commission and lodge a complaint with respect
12 to the basic service that they are receiving. And, in a
13 package with that concern, I think it's also our intent to
14 address the issue of exit fees and additional contractual
15 requirements. And, I think those are areas where we're
16 perfectly willing to consider future -- further language
17 changes to clarify those points, but that that is an
18 important consideration. Basic service, if it's weighed
19 down, if you will, with unnecessary and unreasonable
20 contractual requirements, is not the level of service that
21 was contemplated by the Legislature in imposing those
22 requirements on the incumbent local exchange carriers.

23 With respect to -- I think Mr. Winslow
24 raised a point about the assessment rule. This is

1 Section 401 -- or, excuse me, 404.04. And, I think our
2 current thinking is that we might recommend to the
3 Commission that that section be removed, given the pending
4 legislation and the Commission's involvement in that
5 process. It's not exactly clear what the final language
6 will be resulting from the legislative process. And, we
7 certainly would not want to have rules that are
8 inconsistent in any way. So, I think we're taking that
9 under advisement as well.

10 Attorney Geiger raised questions about
11 definitions. I look forward to reviewing her written
12 comments. And, we will take that into consideration.
13 Unfortunately, the statutes are such that there is a use
14 of various terms in different context, which aren't always
15 defines. I don't believe "telecommunications" is a term
16 which is defined in the New Hampshire statutes, even
17 though it is used. We focused, in coming up with the
18 definition of "voice service" and how it would be applied
19 in these rules, we focused on 362.2, as noted. And, that
20 section refers to the "conveyance of telephone or
21 telegraph messages", and does not use the term
22 "telecommunications". So, our goal there was to not
23 create any regulatory gaps, and to use language which was
24 fully consistent with the state statutory scheme. And, I

1 think that's also the genesis of our treatment of CLECs.
2 I think our understanding of SB 48 is that "CLEC" is no
3 longer the critical term, nor is "CTP", under the state
4 statutory framework, and that "ELECs" is the new preferred
5 term, and that there's supposed to be a level playing
6 field for ELECs. However, we are certainly open to
7 considering whether there's a continuing need to use the
8 term "CLEC" or to register parties as CLECs, and how that
9 may have some bearing on -- how use of those terms,
10 "CLECs" and "CTPs", may have bearing in other statutory
11 regulatory contexts.

12 CHAIRMAN IGNATIUS: Is there a solution
13 to the point raised that other statutes or other contracts
14 or Commission orders may refer to "CLECs" or "CTPs" and
15 make obligations on them, that you could solve by putting
16 in the rule some provision that says "entities that were
17 previously regulated as those things continue to have the"
18 -- or, maybe that's going to get you in trouble as I try
19 to finish the sentence, because we have those obligations,
20 because it's going to be hard to make clear which
21 obligations live on and which do not. But there may be a
22 drafting way to keep those terms alive, even recognizing
23 that, as you say, they're no longer really the operative
24 terms going forward.

1 MR. WIESNER: We haven't had a full
2 opportunity to analyze that. I think that is one
3 approach, madam Chair. We have to -- I think our concern
4 would be that there would not be unintended consequences
5 to preserving sort of two regulatory frameworks and
6 definitional constructs, where the state law doesn't seem
7 to compel that result. But, again, we look forward to
8 reviewing the written comments in more detail, and that is
9 certainly something that we will give due consideration.

10 We look forward to continuing to work
11 with the parties. And, we have written comments due next
12 week, and a technical session following that. Open to any
13 language changes. And, again, there are some fundamental
14 points, which I think we've covered this morning, which
15 are important to us, on Staff. But, you know, we're here,
16 and we have a willing and open ear.

17 CHAIRMAN IGNATIUS: Can I ask about the
18 public interest payphone issues? Why those have been --
19 those provisions have been removed?

20 MR. WIESNER: Our reading of Senate Bill
21 48 was that there was an intent to limit regulation of
22 ELECs. And, my understanding is that all payphone
23 providers would be ELECs. And, that the regulatory
24 exemption under Senate Bill 48 specifically excluded the

1 statute which deals with public interest payphones. And,
2 I think our interpretation of that has been that the
3 Legislature made a determination that there was no
4 continuing need for public interest payphones, and that
5 our rules -- our current version of the rules were
6 designed to reflect that determination.

7 CMSR. HARRINGTON: Just a follow-up on
8 that. I thought the public interest payphone was
9 originally a FCC requirement, where it came from. Do we
10 have an opt-out provision by having the state law says we
11 don't need them anymore or is that requirement still in
12 effect?

13 MR. WIESNER: Yes. Our understanding is
14 that the FCC requirement is that the states consider
15 whether there's a need and make a determination. And,
16 there was a need made back in the late '90s -- there was a
17 determination, I should say, made back in the late '90s.
18 And, our interpretation of the most recent legislative
19 changes is that the Legislature implicitly or explicitly
20 made the determination that there was no longer a
21 continuing need for public interest payphones in the
22 state.

23 CHAIRMAN IGNATIUS: Do we know, and you
24 may not have this at your fingertips, but, Ms. Bailey, I'm

1 looking to you, whether we have much traffic over the few
2 public interest payphones that were required many years
3 ago or any new requests for -- any requests for new public
4 interest payphones to be installed?

5 MS. BAILEY: We have not had any
6 requests for new public interest payphones. FairPoint
7 sold all of their payphones to a company called "Jaroth",
8 I think it was about a year ago. And, Jaroth, I believe,
9 is a company in California. I have not asked them about
10 the usage on those payphones, but they attempted to
11 disconnect them about a year ago. And, before -- I think
12 it was before SB 48 was enacted. And, I told them that
13 there was a Commission order that said, if they wanted to
14 discontinue service at those public interest payphones,
15 they had to have the Commission's authority. And, he said
16 "well, is there some way that we can have these payphones
17 subsidized?" And, I said "yes", and then never heard from
18 him again. To my knowledge, they have not been
19 disconnected. And, the new payphone provider hasn't asked
20 for the Commission to figure out a way to fund those
21 payphones. But, as Mr. Wiesner has just stated, we think
22 that the requirement may have changed -- may have been
23 changed by Senate Bill 48.

24 CHAIRMAN IGNATIUS: Is there a way you

1 would be able to see if there's traffic over those phones?

2 MS. BAILEY: We could -- I could attempt
3 to contact Jaroth and ask the company.

4 CHAIRMAN IGNATIUS: But that's not
5 anything that we automatically have? It's not reported to
6 us?

7 MS. BAILEY: No.

8 CHAIRMAN IGNATIUS: And, there's a fund,
9 but I can't remember who puts into it and who can take out
10 of it, the public interest payphone fund.

11 MS. BAILEY: It was a fund that money
12 from telephone utilities that escheated to the state were
13 supposed to be put into. And, my recollection is that the
14 fund has about \$4,000 in it now. When the law was
15 written, telephone utilities were generally taking advance
16 payments from certain customers. And, sometimes those
17 customers would move away and the money would escheat to
18 the state. And, since the fund was sort of created, the
19 practice from telephone utilities has changed, and they
20 don't generally take money from customers in advance
21 anymore. So, when the fund was created, we thought the
22 fund would be around \$30,000. And, it's around \$4,000
23 over the lifetime of it. So, it didn't really work the
24 way that it was anticipated to work, just because of the

1 evolution of the industry and the practices. And, so we
2 -- and, we've also never figured out a way to get the
3 money out of the fund. But we have never really been
4 asked to do so.

5 CHAIRMAN IGNATIUS: But the purpose was
6 to help subsidize service at those phones?

7 MS. BAILEY: Yes. And, I believe that
8 all those laws are covered under 374:22-q. And, 374:1-a
9 says 374 doesn't apply to services of end users anymore,
10 or end-user services. And, so, payphone services are
11 end-user services. So, that suggests that 374:22-q, with
12 respect to end-user services, is no longer applicable.

13 CHAIRMAN IGNATIUS: Thank you. Anything
14 else, Mr. Wiesner?

15 MR. WIESNER: I believe that concludes
16 other comments. Thank you.

17 CHAIRMAN IGNATIUS: Well, thank you,
18 everyone. This is helpful. The statutes I find extremely
19 complex, and developing rules to implement them is not an
20 easy task. And, so, I want to just publicly acknowledge
21 the work of Michael Ladam, Kate Bailey, and Dave Wiesner,
22 who just have done a tremendous job trying to really
23 understand what the intent and the actual language of
24 those statutes means, and develop rules to carry it out.

1 Obviously, further written comments will
2 be helpful. I know you have a technical session scheduled
3 for November 18th. But was there a reference to another
4 one next week, in addition?

5 MR. WIESNER: Next week the written
6 comments are due.

7 CHAIRMAN IGNATIUS: Okay. All right.
8 So, I think any of those efforts, to continue to try to
9 get close to agreement on language, sound like that will
10 be helpful, and sounds like fruitful discussions already.
11 And, so, I would encourage you to keep trying to focus in
12 on how to solve the problems before we get to the final
13 submission through the JLCAR process.

14 We have, I guess, no other questions.
15 So, we'll take all of this under advisement, and await the
16 written comments, and see where we go. I don't think
17 there's another public comment period scheduled, is there?

18 (Ms. Bailey indicating in the negative.)

19 CHAIRMAN IGNATIUS: All right. Well,
20 thank you. This has been a long battle, and looks like
21 good process, and we appreciate the effort. Thank you.
22 We're adjourned.

23 **(Whereupon the hearing was adjourned at**
24 **11:33 a.m.)**