

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

November 6, 2012 - 10:06 a.m.
Concord, New Hampshire

NHPUC NOV26'12 PM 3:06

RE: DRM 12-189
RULEMAKING:
*Procedural Rules - Puc 202.01(f-m),
Puc 204, Puc 205.06, Puc 206.*

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

Sandy Deno, Clerk

APPEARANCES: Reptg. FairPoint Communications:
Patrick C. McHugh, Esq.

Harry N. Malone, Esq. (Devine Millimet)

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

Reptg. the PUC Staff:
Alexander F. Speidel, Esq.

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

ORIGINAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

I N D E X

PAGE NO.

STATEMENTS BY:

Mr. McHugh	4, 29
Ms. Hollenberg	9, 17, 25
Mr. Speidel	11, 26

P R O C E E D I N G

1
2 CHAIRMAN IGNATIUS: I'd like to open the
3 hearing in DRM 12-189, which is a rulemaking addressing
4 the New Hampshire Code of Administrative Rules Chapter
5 200, they're our rules of practice and procedure. This
6 has been noticed. And, we're at the tail-end of the
7 proceeding, after working through the prescribed Joint
8 Legislative Committee on Administrative Rules process.

9 Today, we're considering approval of the
10 final proposal for readoption, without amendment, of
11 various procedural rules in Chapter 200. And, so, let's
12 first take appearances please.

13 MR. MALONE: I'm Harry Malone, with
14 Devine, Millimet. And, I'm here as an interested
15 practitioner today.

16 CHAIRMAN IGNATIUS: All right.

17 MR. McHUGH: Good morning, Chair
18 Ignatius, Commissioners Scott and Harrington. Patrick
19 McHugh, with FairPoint Communications. With me today is
20 Ryan Taylor and Ellen Scarponi, also from FairPoint. And,
21 I will be sort of representing FairPoint.

22 CHAIRMAN IGNATIUS: Good morning. Thank
23 you.

24 MS. HOLLENBERG: Good morning. Rorie

1 Hollenberg, here on behalf of the Office of Consumer
2 Advocate.

3 CHAIRMAN IGNATIUS: Good morning.

4 MR. SPEIDEL: And, Alexander Speidel,
5 for the Staff of the Commission.

6 CHAIRMAN IGNATIUS: Good morning and
7 welcome, everyone. Because this is a rulemaking, we don't
8 need to be quite as formal as we often do. I think we are
9 coming towards the end. The rules have been proposed,
10 published, submitted to JLCAR for their review, and
11 published in the Rulemaking Register, as well as
12 Commission notice of it as well. At this point, we have
13 not received public comments but we are open to any
14 further comments we may receive today. Mr. McHugh, does
15 FairPoint have any sections of the rules that it wants to
16 raise with us?

17 MR. McHUGH: Yes. And, we'll be filing
18 probably fairly brief written comments by the 15th,
19 consistent with the order of notice. I'm sorry, if you
20 can't hear me, let me know.

21 But I guess one thing of concern in the
22 rules, adopting them as is, and I have not been able to at
23 least develop a final position on how exactly it would
24 look, but excepted local exchange carriers are exempt for

1 quite a bit of the statutes that fall under 365. And, I
2 think some of the rules need to reflect those exemptions
3 or exceptions, however you want to call them.

4 So, for example, under Senate Bill 48,
5 RSA 365:1-a says "Except for complaints about", and then
6 there's a certain number of statutes there. "The
7 provisions of this chapter shall not apply to any end-user
8 of an excepted local exchange carrier, nor to any service
9 provided [by] such end-user." So, I think there needs to
10 be some exemption in the rules to reflect, you know,
11 again, I keep saying "exception" or "exemption", but to
12 reflect that, to reflect that new language.

13 And, just for example, Puc 202.01,
14 Subsection (f), makes reference to "a person seeking to
15 make a complaint against a utility shall do so by
16 complaining with", and then there's other rules. Section
17 Puc 204.01, Subsection (a), makes reference to just
18 anybody who wants to make a complaint can do so.

19 So, I think there needs to be roughly
20 some recognition in the rules that certain complaints --
21 or, certain statutes, I mean, let's put it that way, don't
22 apply to ELECs. And, I haven't decided, you know, sort of
23 in terms of what to present to the Commission, either
24 today or in writing, if it's best to say, in certain

1 sections, almost quote the language from Senate Bill 48.
2 To say, for example, under 202.01(f), just almost have the
3 same reference, "except for complaints related about" --
4 or, "about or related to", and then list those statutes,
5 and put some language in there. Or, to simply add a new
6 subsection somewhere in there that says "these rules do
7 not apply to excepted local exchange carriers" or "the
8 Commission cannot take complaints", I mean, again, it's
9 got to be more formal, I realize that, "except with
10 respect to these statutes". I mean, that's kind of what
11 I'm trying to work on here. But, I was hoping to get it
12 done today, there's a couple things going on in the last
13 couple of weeks that have been a little time-consuming to
14 get to the administrative rules, I apologize. But I will
15 have something in writing. And, certainly, if there's
16 ideas on that, that you consider them as well. I'm not
17 here to try and jam anything up. But I think there needs
18 to be some recognition. That's all.

19 CHAIRMAN IGNATIUS: It's an interesting
20 dilemma of how to state it. I would be worried if it were
21 to go through the recitation of what the law currently
22 reads, if next session another area gets carved out or
23 added to, and then your administrative rules are no longer
24 accurate. Then, again, saying, "except where stated

1 otherwise by law" doesn't help anyone really. So, it's a
2 challenge. If there were -- I don't know. I guess I will
3 look forward to have you further solve the problem.

4 MR. McHUGH: Yes. Well, I guess I'll
5 give it a shot. But I think the rules, as they are
6 currently, right, which is they're looking to be readopted
7 as is, don't reflect that Senate Bill 48 altered the
8 Commission's jurisdiction. And, so, the complaints -- I'm
9 sorry, "complaints", the rules just read as though, you
10 know, it's "business as usual", so to speak. And, I don't
11 mean that in a flip way, it's just, you know, that the
12 past practice just still applies. And, I don't think, in
13 light of Senate Bill 48, it's fair to say that "past
14 practice applies", in all circumstances. Certainly, for
15 example, cramming, slamming, some of the other safety
16 things, that's certainly the case. So, that's why I'm
17 struggling with it. And, I think, you know, but for
18 Hurricane Sandy, I might have had a better -- some better
19 thoughts to come before you today.

20 CMSR. HARRINGTON: Well, I think it's
21 important that we get the rules so that they are accurate
22 and reflect, because, of course, especially for the
23 general public, to look at the rules and have to say, you
24 know, "will I also have to go look at 32 different RSAs to

1 figure out what is", you know, that makes the rules
2 meaningless. And, you know, I think I'd rather see the
3 rules accurately reflect the law, even if that means every
4 year or two we have to come back and change the rules
5 because of the -- the applicable laws got changed to
6 reflect that.

7 But I guess I'd ask if maybe the three
8 groups represented here could work together on this.
9 Because this isn't a question of "I think this should be
10 in" or "I think it shouldn't be in", this is a question of
11 taking what's been implemented as law and putting it in
12 the rules where it belongs. This isn't an opinion
13 session. This should be something that I hope, if the
14 three groups work together collectively, can come up with
15 a good solution to get these in there. Because, you know,
16 obviously, the jurisdiction has changed, and the rules
17 should reflect that.

18 MR. MCHUGH: Right. And, that's one of
19 the concerns I wanted to come and express today. So, I
20 was actually thinking that one of our customers says "oh,
21 you know, they might get guidance from the Commission",
22 you know, certainly, if there's complaints, the process
23 still is in place with the Consumer Affairs Group, and we
24 have an Escalations Group. Nothing has changed in that

1 regard due to the Senate Bill 48. And, I don't expect
2 anything to change. Other than, if there's, in the end,
3 there might some complaint that's not resolved to
4 everybody's satisfaction. And, you know, the consumer --
5 the customer is going to say "well, what do the rules
6 say?" And, the rules just say "just go file a complaint."
7 Well, it might be for something that, at least, you know,
8 in my humble opinion, the Commission has no jurisdiction.
9 And, I think -- and, so, all my goal is essentially what
10 you said, Commissioner Harrington, is to have the rules
11 reflect, you know, what the law is.

12 CMSR. HARRINGTON: Well, I think that's
13 everybody's goal, or at least I hope so.

14 MR. MCHUGH: Yes. And, I'm happy to
15 work with the parties, and perhaps our friend, Mr. Malone,
16 as well, since he's such an interested practitioner, would
17 be happy to weigh in.

18 CHAIRMAN IGNATIUS: I haven't seen his
19 hand go up yet.

20 (Laughter.)

21 MR. MCHUGH: Anyway, thank you.

22 CHAIRMAN IGNATIUS: Any other thoughts
23 on that?

24 MS. HOLLENBERG: Yes. If I might just

1 respond. I appreciate that there have been significant
2 changes in the past year with regard to the regulation of
3 telecom services in New Hampshire. However, this is the
4 procedural rule. And, I also wanted to just make clear
5 that I'm not opposed to working on something to resolve
6 the issue. But it is a procedural rule. And, I mean, if
7 you really -- it doesn't specify anything that's covered
8 by complaints.

9 And, certainly, the Commission must get
10 complaints all the time about things it doesn't have
11 jurisdiction over. We get calls about things all the time
12 because of the name of our agency, about things that we
13 don't have jurisdiction over. And, it doesn't necessarily
14 invest in that person who's complaining the right to
15 actually have that complaint adjudicated by the Commission
16 because it's filed with the Commission. And, I just worry
17 about, I mean, it doesn't say in the rules right now that
18 complaints about service and rates or something else that
19 would be more substantive and reflected in a statute about
20 the Commission's -- the ambit of the Commission's
21 jurisdiction. It's not more specific in the rules with
22 regard to what that includes and what it otherwise does
23 not include. I just wonder if it's appropriate -- if
24 that's an appropriate place for us to note that these

1 certain services or the scope of complaints against
2 telecommunications services may be somewhat limited as a
3 result of SB 48.

4 I don't know, and I'm thinking off the
5 top of my head, I don't know if that's the best place for
6 it. I think the Commission still is authorized by law to
7 say to a person who's complaining about something that the
8 Commission does not view it has jurisdiction over it, to
9 say "SB 48 did blahbity-blah," and that's a technical
10 phrase. So, that's just my initial thought off the top of
11 my head. Thank you.

12 CHAIRMAN IGNATIUS: Mr. Speidel, any
13 thoughts on that?

14 MR. SPEIDEL: Yes. I think
15 Ms. Hollenberg was alluding to something and describing
16 something that Staff would agree with, namely, it wouldn't
17 be wise to introduce a definitive interpretation of SB 48
18 within these rules at this time. And, I understand that
19 FairPoint might have an expectation that SB 48, when
20 applied, might exempt it from all complaints by members of
21 the public. But I thought I heard something referring to
22 "slamming" and "cramming". That's the type of complaint
23 that could come before this Commission. And, there are
24 certain areas where Commission jurisdiction would not

1 necessarily be automatic, but it might somehow be
2 implicated. And, we don't know all the different
3 permutations yet.

4 So, I'll give a little bit of
5 background, in terms of why this rulemaking is taking
6 place and what's going on elsewhere within the Commission.
7 And, that might be helpful, in terms of addressing
8 FairPoint's concerns.

9 First thing is that these rules are
10 going to expire in the spring of next year. Right now,
11 we're talking about mid November. It's uncertain as to
12 whether JLCAR will sit during the lame duck session after
13 the election, before next January. It's uncertain. So,
14 in an abundance of caution, Staff has requested the
15 readoption without amendment of these procedural rules,
16 and expects that they would be in place before expiration
17 next year.

18 Now, as you can see, within 202.01,
19 there are two references to the current version of the
20 telecommunications rules. Under subpart (i), there's a
21 reference to "A person seeking to register as a
22 competitive local exchange carrier shall do so by
23 complying with Puc 431." And, then, under subpart (j),
24 there's a reference to "Puc 451".

1 It's expected that the
2 Telecommunications Division at the Commission will work to
3 develop an Initial Proposal for new telecom rules over the
4 next several months. And, there are likely going to be
5 many changes related to SB 48 in those.

6 So, the question is, do we kind of
7 front-load references to FairPoint and other excepted
8 local exchange carriers being exempt from this structure
9 now, or do we do it a little bit later. Because I think
10 the Staff is aware that FairPoint is an ELEC. And, we
11 just want to make sure that we don't necessarily act
12 prematurely in integrating a rule scheme that doesn't
13 reflect the real reality of how we have to interpret SB 48
14 and apply SB 48 on a day-to-day basis.

15 There are certain ambiguities within the
16 law that we have to be careful about. But we do want to
17 protect FairPoint's rights. And, so, we are not doing
18 this in an attempt to ignore SB 48 or paper it over. It's
19 just some legal housekeeping that needs to be done before
20 the spring. And, we also have, on a parallel track,
21 telecom revisions that are forthcoming.

22 So, if FairPoint would like to suggest
23 specific revisions, we would welcome that. I would
24 definitely have them reviewed by my fellow Staff members,

1 and we could look into that. I won't dismiss it out of
2 hand. But I would caution against trying to shoehorn,
3 especially shoehorn language from the statute itself into
4 -- into the rules, because these aren't necessarily the
5 place to put it. We could maybe put a definitional fix in
6 the telecom rules or in the 200 rules generally somewhere,
7 that would be more specific and more elegant than trying
8 to scatter it across these provisions.

9 CMSR. HARRINGTON: Mr. Speidel, this is
10 my concern on this. If we take out, let's just start by
11 exempting the people in this room and, say, even this
12 building, it probably gets us down to, you know, less than
13 one-tenth of one percent of the people know what SB 48 is
14 and how it affects their ability to make complaints about
15 telephone companies.

16 MR. SPEIDEL: Right.

17 CMSR. HARRINGTON: People have grown up
18 over the years with the idea that, if you have a complaint
19 against a utility, you call the PUC. And, in fact, what
20 the rules say right now, "A retail customer with a
21 complaint against a public utility that concerns the
22 customer's service or payment for such service shall
23 submit the complaint to the Commission." This is under
24 "Complaints Against Public Utilities". They're going to

1 say "FairPoint", or one of the other telephone companies,
2 "is a public utility." They're going to go to the rules,
3 and we have a website we encourage people to use. And,
4 they're going to run down to the section "Complaints
5 against public utilities." "Oh, this is what I do. Oh,
6 good. And, here's an e-mail address. I'm going to send
7 my complaint in." And, we come back and say, "oh, I'm
8 sorry, we have no jurisdiction over that part for that
9 public utility", they're going to say "well, what the hell
10 good are your rules then?" I mean, how do you address
11 that concern that, if we're going to just send people to
12 check some other rule with another rule and another rule,
13 the rules become totally useless to the general public?

14 MR. SPEIDEL: Sure. I understand where
15 you're driving at, Commissioner. There are certain
16 complaints you might imagine that, let's just call it, and
17 in order to avoid names, let's just call it "XYZ ELEC".
18 And, XYZ ELEC inadvertently damages some property at a
19 homeowner's residence. Or, their pole breaks in half and
20 hits their car or something. Or, there's a cramming
21 situation, or something. Any miscellaneous issue that
22 happens for all sorts of utilities that might, in theory,
23 be at least entertained to some extent.

24 What I'm trying to get across is, we can

1 develop a definition, but it will have to be very
2 specific. And, we'll work on that. And, if it's an issue
3 for FairPoint, I think Staff should definitely look at
4 that carefully. But, merely reciting the statute itself,
5 I don't think would answer all of our questions. It
6 probably would lead to even more customer confusion and
7 uncertainty.

8 If there were some way, perhaps, that we
9 could list exempt carriers on our own website or within
10 even -- well, the rules might not be necessarily the best
11 place for this. But, for instance, if there were a list
12 of excepted local exchange carriers and there were a clear
13 reference to the fact that ordinary customer complaints
14 about service, *etcetera, etcetera*, are not considered by
15 the Commission, and then list the names, put that on the
16 website. That might be another good fix, too, that
17 doesn't involve the administrative rules process.

18 So, I think we can work on this. There
19 will be a lot more changes in the telecom rules, I would
20 expect, that are forthcoming as a consequence of SB 48.
21 So, that might provide consumers with some guidance as
22 well. We're in a funny spot. Because I wouldn't want to
23 necessarily wait for the definitive word on how SB 48
24 impacts these, until we really know, say, later in the

1 springtime, when it will be too late to launch this
2 rulemaking.

3 So, it's just a little bit of bad luck
4 in that JLCAR has interpreted non-expiring and procedural
5 rules in their own ways, so that these have to be
6 readopted in the spring, and then they will expire in ten
7 years after that. It's a little bit of a relief, versus
8 the eight.

9 So, what I can do is we'll have a look
10 at what FairPoint has to say. I will confer with Telecom
11 Staff, and also keep OCA in the loop, and perhaps we can
12 develop a revised proposal.

13 CHAIRMAN IGNATIUS: Ms. Hollenberg?

14 MS. HOLLENBERG: Thank you. If I may, I
15 just wanted to make a couple of points or offer a couple
16 of comments in response to Commissioner Harrington's
17 comments, which I appreciate your sharing this morning.
18 One thing to be mindful of is that these rules are not a
19 repromulgation of Puc 1200, which are complaints filed by
20 residential customers, or retail customers, for that
21 matter. These are complaints filed by other than
22 customers against utilities. So, even if we wanted to
23 signal to the public that there are some differences in
24 the way that telecom services in New Hampshire are being

1 regulated at this point in time, this might not
2 necessarily even reach them, because they are looking at
3 another set of rules to file their complaints, which are
4 not being changed yet.

5 The other thing that I would just offer
6 a comment in response, would be I am all for working
7 through a way of signaling and informing customers how
8 their services are regulated, because certainly an
9 informed customer is better for all of us to work with. I
10 am, though, worried about customers perhaps filtering
11 their own complaints out, because they are trying to
12 attempt to interpret a rule that doesn't necessarily make
13 sense to them.

14 I would say that SB 48 is probably the
15 most complicated piece of legislation that I've ever had
16 the opportunity to look at, because of the way it is
17 drafted. So, I would worry about getting -- having
18 customers be reluctant to file something. I'm more of the
19 mindset that it would be better, at least in the interim,
20 to be -- err on the side of caution, and not attempt to,
21 at this point, within these sets of rules, given the
22 circumstances of everything that's going on right now, try
23 to signal or clarify what the extent of SB 48 is on the
24 Commission's jurisdiction.

1 CMSR. HARRINGTON: Just -- oh, excuse
2 me. Go ahead.

3 MS. HOLLENBERG: Yes. Thank you.

4 CMSR. HARRINGTON: No, I'll let you
5 finish.

6 MS. HOLLENBERG: No, that's okay. Thank
7 you.

8 CHAIRMAN IGNATIUS: Just so maybe it's
9 clear what I'm trying to get across. I mean, there are
10 will be other rules, and I know sometimes the rules get
11 very complicated. But I'm picturing myself as a customer.
12 I go to the PU website. It says "Rules". I start going
13 down the rules, and I get to Part 204, "Complaints against
14 public utilities". It tells me, "A retail customer with a
15 complaint against a public utility [go do this]."

16 MS. HOLLENBERG: Yes. Go to another set
17 of rules.

18 CMSR. HARRINGTON: Yes.

19 MS. HOLLENBERG: Yes.

20 CMSR. HARRINGTON: And, I guess my
21 concern here is, not that we take SB 48 and try to put it
22 into the rules right now, because we all know that's kind
23 of an evolving process, and you said it's extremely
24 complicated, and I think it's going to be something that's

1 going to be worked out over time. But somehow we have to
2 let the people know that there's been a substantial change
3 in what happened. The way that they have always thought
4 about things, going back to Ma Bell days, was you have a
5 complaint with your landline telephone company, you call
6 the Public Utilities, and they call them up and they beat
7 them on the head and tell them to "straighten up and don't
8 do that bad stuff again", if, indeed, the utility was at
9 fault. They understand that wireless isn't covered. Some
10 people understand cable TV isn't covered. But everybody
11 right now in New Hampshire still thinks that landline
12 telephones are just the way they always have been.

13 So, just somewhere in these rules, if we
14 could incorporate something to the effect that, you know,
15 "there's been a major change in the regulation of", you
16 know, I don't have the right words in front of me, but
17 "previously regulated telephone services, such that
18 certain items are no longer under the jurisdiction of the
19 PUC". Or, just something so people come in here and they
20 get that the rules give them some useful piece of
21 information. I don't know exactly how to write that, but
22 maybe if the three groups could work together.

23 But what I don't want them to do is then
24 go from here, then go someplace else, and then file a

1 complaint, then someone comes back and says "Oh, well, I
2 mean, you wasted your time. We don't have any
3 jurisdiction over that anymore."

4 MS. HOLLENBERG: Well, I guess, if I
5 might just respond really quickly. I think that the
6 purpose of the new Comcast remand docket is very much
7 analogous to the resolution or the issue or the signal
8 that your trying to send to customers. And, we don't yet
9 know what that is yet. So, I guess I worry that we would
10 all try and craft an interpretation of what SB 48 did
11 amongst the three of us or four of us, and you are all in
12 the process still of receiving -- you will be receiving
13 positions on that in the near-term future about how it
14 impacted. And, you haven't yet decided it.

15 So, even in the interim, you are still
16 in the process of working that through. And, so, how is
17 it that you could signal to customers now that something
18 is or is not covered. Maybe there are a handful of things
19 that you could for sure say "we know this isn't covered".
20 But, because it's all in flux, I just wonder if it's at
21 this point not advisable to do it within the context of
22 these particular 200 rules, rather than, I mean, I think I
23 heard Attorney Speidel mention doing something in the body
24 of all the 200 rules, which will come up at some point in

1 the near future for a repromulgation, and putting
2 something in there that really just explains the impact of
3 SB 48 on the 200 rules. And, I'll leave it at that.

4 CMSR. HARRINGTON: Well, again, my
5 concern, and I'm not suggesting that we try to take SB 48
6 and converge it into the rules in this section.

7 MS. HOLLENBERG: Yes. You want it to be
8 more.

9 CMSR. HARRINGTON: But there should be
10 some mechanism so that people understand that, and I know
11 you mentioned the Comcast thing, but, again, I think
12 there's more awareness on the average person, when they
13 actively switch their telephone company, and they go to
14 Comcast or Metrocast, or they delete their landline
15 altogether and go strictly wireless. They realize they're
16 playing in a different game.

17 MS. HOLLENBERG: Uh-huh.

18 CMSR. HARRINGTON: But the person that's
19 had, you know, New England Telephone, NYMEX, Verizon, and
20 now FairPoint, for the last 48 years, and they haven't
21 switched anything, they are going to think they're covered
22 exactly the way they were 22 years ago, when they had to
23 make their last complaint on something, or 22 weeks ago.
24 So, I just think, and I don't know, I'm looking for help

1 here.

2 MS. HOLLENBERG: Uh-huh.

3 CMSR. HARRINGTON: I think that needs to
4 be addressed.

5 MS. HOLLENBERG: I agree.

6 CMSR. HARRINGTON: So, the people
7 understand that those -- that the old rules that always
8 applied, if you didn't change, don't apply anymore.

9 MS. HOLLENBERG: I agree. I think
10 consumers need to be informed about the changing
11 landscape. I guess what I would say is it's not -- the
12 rules aren't the place to do it. And, that there are
13 other ways that we can reach out to them and inform people
14 through education and outreach, at this point in time.

15 CHAIRMAN IGNATIUS: It sounds as though,
16 at a minimum, regardless of how the rules are ultimately
17 written, that we would be wise to put something on the
18 website that says --

19 MS. HOLLENBERG: There is, actually.

20 CHAIRMAN IGNATIUS: Okay. Good.

21 MS. HOLLENBERG: Yes. You have all of
22 your telecommunications law change or something like that
23 right on the front page of your website, which is great.
24 I mean, it's the second bullet down, I think.

1 CHAIRMAN IGNATIUS: But, I think, in
2 addition, when you get to the rules section, --

3 MS. HOLLENBERG: Uh-huh.

4 CHAIRMAN IGNATIUS: -- you know, you
5 could put a similar thing on complaints, that "the
6 jurisdiction of the Commission is not as broad as it used
7 to be. Some things may not be within our jurisdiction."
8 You know, whether you try to define them all or not. And,
9 I think, as we live with the statute, we'll get more
10 clarity. So, I don't think anyone's trying to resist
11 making clear, it's just, I think there's some question, at
12 this -- today, you know, can we give a definitive list
13 that helps people, or do we muddy it by trying to do that
14 before each really goes through it. I know, each time we
15 discuss it, new things come to my mind that I hadn't
16 thought about before. But maybe you can work on some
17 language that either within the rule that you think would
18 be helpful, in whatever degree of detail each of you
19 think, or some other educational note to put -- we can't
20 have two sets of rules, but some other educational piece
21 at various points on the website, so that, when people do
22 go to rules, might be reminded of that.

23 You know, in some ways, the Co-op is
24 similar, the New Hampshire Electric Cooperative. They're

1 a utility for some purposes, with jurisdiction, the
2 Commission's reach of jurisdiction on some things, and
3 absolutely none on some others. And, I don't think we've
4 ever rewritten our rules to reflect that. But that's --
5 we've been living with that for the last, I don't know
6 what, ten or fifteen years.

7 MS. HOLLENBERG: I would just add that,
8 I mean, rulemaking is something that lives for a long
9 time, and it is a process. I'm sure Staff is more attune
10 to how much of a process it is than the rest of us that
11 actually have to not walk it through the process. So,
12 it's just -- I think that there's less flexibility if you
13 were to put it into a rule than to do it through other
14 avenues.

15 CHAIRMAN IGNATIUS: All right. Well, I
16 encourage everyone to talk together, see if there's
17 anything that you can agree on, or even if separate points
18 of view come in, the conversation helps to develop some
19 alternatives.

20 Other issues? Mr. Malone, did you have
21 other issues you wanted to raise, other sections --

22 MR. MALONE: No.

23 CHAIRMAN IGNATIUS: I'm sorry,
24 Mr. McHugh first, and then we can go back to Mr. Malone?

1 MR. McHUGH: No, ma'am.

2 CHAIRMAN IGNATIUS: All right.

3 Mr. Malone, did you have any sections to raise?

4 MR. MALONE: No.

5 CHAIRMAN IGNATIUS: Ms. Hollenberg, did
6 you?

7 MS. HOLLENBERG: No thank you.

8 CHAIRMAN IGNATIUS: Mr. Speidel,
9 anything to raise?

10 MR. SPEIDEL: Yes. I think we'll
11 informally confer with the commenters today. And, we'll
12 probably see some written feedback from them. And, on
13 that basis, I think it's pretty fair to presume that there
14 will be some period of internal Staff deliberation, where
15 we might have to amend this proposal to some degree. So,
16 that's going to be forthcoming later in November, I would
17 imagine.

18 CHAIRMAN IGNATIUS: Help me with
19 deadlines. First, the written deadline under the notice
20 for today's proceeding is November 15th?

21 MR. SPEIDEL: That's correct.

22 CHAIRMAN IGNATIUS: End of business.

23 And, I think we're accepting both, you know, hard copy,
24 even email, is that right?

1 CMSR. HARRINGTON: Yes.

2 MR. SPEIDEL: Yes.

3 CMSR. HARRINGTON: Fax or e-mail.

4 CHAIRMAN IGNATIUS: So, we'll take it
5 however you want to deliver it. And, the actual
6 expiration date for the current rules, you said was the
7 "Spring 2013". Do you have a tighter --

8 MR. SPEIDEL: I can be very specific,
9 yes. Just a second please. They come in a few baskets or
10 a couple baskets. 202.01 was made effective on, let me
11 see, just want to be careful, it was made effective on
12 June the 10th of 2006. So, that would be expiring on June
13 the 10th of 2013, I believe, or '14. And, then we have --

14 CHAIRMAN IGNATIUS: Excuse me. What was
15 it? 2013 or '14, I heard two dates?

16 MR. SPEIDEL: I think it would be 2013,
17 as I recall. And, then, you have 204 --

18 CHAIRMAN IGNATIUS: We actually have
19 those dates in our draft, it shows, so that would also be
20 06/10/06.

21 MR. SPEIDEL: Yes. There's a series of
22 06/10/06, but there's one miscellaneous that's earlier in
23 the spring, 204.03 -- let's see. Ah, here we have
24 alternative regulation was effective January the 27th of

1 2005. So, that would be basically the beginning of
2 February of next year. But, under the new JLCAR
3 provisions, you can, if you have an open rulemaking, have
4 some overlap, in terms of when the expiration dates occur.
5 So, if we were to be finished at some point next spring,
6 that should be all right to have these continued in place.

7 CHAIRMAN IGNATIUS: Is it an eight-year
8 duration under these rules?

9 MR. SPEIDEL: Yes, I believe so.

10 CHAIRMAN IGNATIUS: So, the one adopted,
11 the 206, alternative regulation, would come due
12 January 27th, 2013. That would mean then that the first
13 ones we talked about, that were adopted in June of 2006,
14 would actually be in 2014, correct?

15 MR. SPEIDEL: In the Spring of 2014.
16 Yes. I would have to double check one thing, because
17 there's a lot of little -- I have the letter here, let me
18 just take a look here. I have a letter from Scott Eaton
19 that provides a lot of background on these. Yes, that's
20 correct. That would be 2014. I had remembered 2013,
21 probably being too cautious, but 2014 is, in fact, the
22 date.

23 CHAIRMAN IGNATIUS: So, our earliest one
24 to expire is Section 206, and that's February of 2013, the

1 end of February correct?

2 MR. SPEIDEL: Yes. The end of January.

3 CHAIRMAN IGNATIUS: I'm sorry. You're
4 right. The end of January.

5 MR. McHUGH: Madam Chair?

6 CHAIRMAN IGNATIUS: Yes, please.

7 MR. McHUGH: May I just make an
8 observation or two? So, I don't know if the Commission is
9 willing to parse these out. But, for example, I don't
10 view that anything in Senate Bill 48 affects the
11 Alternative Form of Regulation statute, that can be dealt
12 with. All of these other ones expire so much later, it's
13 like, to me, the process is flipped. We ought to be
14 focusing on the 400 rules, getting them done, then coming
15 back to some of the administrative rules. And, just for
16 example, I mean, there's no guarantee, of course, I turn
17 the page, but there's no guarantee under 202.01 that there
18 will be a Puc 431 type chapter. I mean, there could be.
19 But it might be a different number, and it might be
20 applicable to ELECs, because, certainly, by definition,
21 the existing competitive local exchange carriers -- or, by
22 definition, excepted local exchange carriers. So, you
23 know, it's sort of like, to me -- and those things are --
24 that's just sort of administrative, getting the numbers

1 right. But it's like this is readopting rules for an
2 eight-year period that might have absolutely no relevance
3 in the spring of next year, to me, it's almost like I'm
4 wondering why we wouldn't want to flip it and see what we
5 can get through on the Part 400 rules, and then deal with
6 sort of the rules of practice and procedure before the
7 Commission. I mean, it's just a thought. It's just an
8 observation as we were going through the final end of the
9 dialogue.

10 CHAIRMAN IGNATIUS: Yes, I think that
11 makes some sense. I guess the thought would be to go
12 forward with readoption of Section 206 only, because that
13 one's due to expire soon. Continue to work on all of the
14 rules that's underway anyway, and then loop back to the
15 remaining procedural rules next summer, let's say, to get
16 that rolling, to be able to have readopted by the Summer
17 of 2014. Well, I'll leave you to think about that.

18 MR. MCHUGH: Sure.

19 CHAIRMAN IGNATIUS: Discuss it with
20 yourselves. That may make more sense. I think everyone
21 is trying their best to respond to the legislative change
22 in the various forms that we have to step in. And,
23 wherever we start, other pieces are going to have to catch
24 up. But it may be that that -- the heart of it really is

1 in those other proceedings with the more specific
2 telephone rules. So, that's not a bad suggestion.

3 Other thoughts comments?

4 MS. HOLLENBERG: No thank you.

5 CHAIRMAN IGNATIUS: All right.

6 MR. McHUGH: None.

7 CHAIRMAN IGNATIUS: We appreciate you
8 thinking about it. Any time you can spend after this
9 closes to work on it would be, I think, time well spent.
10 And, we'll await whatever recommendations jointly or
11 separately people want to bring forward.

12 If there's nothing else, we'll take this
13 matter under advisement. I do want to mention just one
14 other thing. I appreciate tremendously, Mr. McHugh, the
15 response of FairPoint during the hurricane. You and I
16 spent a lot of time on the phone. And, it was very
17 helpful to have immediate responses to specific questions,
18 and as definitive identification of problems as you were
19 able. And, it was always a moving target, but it was very
20 helpful in our response and our being able to work with
21 the Governor. So, thank you for that.

22 MR. McHUGH: Thank you for the
23 recognition. And, may I just say for the record, I hope
24 that we are not speaking on Friday, at 1:00 in the

1 afternoon, in light of the upcoming nor'easter.

2 MS. HOLLENBERG: Amen.

3 CMSR. HARRINGTON: We're going to hold
4 you to that.

5 (Laughter.)

6 CMSR. HARRINGTON: Now we know who to
7 blame.

8 CHAIRMAN IGNATIUS: Thank you.

9 MR. MCHUGH: Thank you.

10 CHAIRMAN IGNATIUS: We're adjourned.

11 **(Whereupon the hearing was adjourned at**
12 **10:41 a.m.)**

13

14

15

16

17

18

19

20

21

22

23

24