

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

March 19, 2012 - 1:07 p.m.  
Concord, New Hampshire

REDACTED  
FOR PUBLIC USE

RE: DT 07-011 NHPUC APR05'12 AM10:52  
VERIZON NEW ENGLAND, INC., ET AL.:  
Transfer of Assets to FairPoint  
Communications, Inc.  
*(Proposal to Expand Broadband to  
the New Hampshire North Country.)*

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

Sandy Deno, Clerk

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

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

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: We will open the  
3 hearing in Docket DT 07-011. It's really a compliance  
4 issue growing out of that docket from long ago. The  
5 docket was long ago. In 2008, the Commission approved a  
6 Settlement Agreement that permitted the transfer from  
7 Verizon New England to FairPoint Communications. And,  
8 relevant to today's proceedings, there were settlements in  
9 2008 and 2010, in which FairPoint agreed to abide by  
10 certain service quality standards and self-enforcing  
11 penalties if it was not able to meet those standards.  
12 What we are taking up today and noticed is the refund of  
13 what appears to be approximately \$2.6 million, although  
14 there's a dispute about the actual number, in penalties,  
15 either by refund or by an alternative use, that the  
16 penalty amounts be used for certain broadband deployment.

17 FairPoint filed a proposal in response  
18 to the Commission's order on March 1st. And, scheduled  
19 the hearing -- we scheduled the hearing for March 15th,  
20 which, at FairPoint's request, was rescheduled to today.

21 So, let's take appearances please.

22 MR. McHUGH: Good afternoon, Chairman  
23 Ignatius. Patrick McHugh, the State President for  
24 FairPoint Communications, as well as Assistant General

1 Counsel of Northern New England. With me today is Steven  
2 Freeman. Steve is the FairPoint's Director of Network  
3 Engineering. And, if I could just take a moment to  
4 welcome the new members, Commissioner Harrington and  
5 Commissioner Scott, to the Commission, and congratulate  
6 Chairman Ignatius to the elevation of the Chair.

7 CHAIRMAN IGNATIUS: Thank you.

8 MR. McHUGH: There may be one  
9 housekeeping matter.

10 CHAIRMAN IGNATIUS: All right. Why  
11 don't we take appearances and we'll come back to that  
12 after.

13 MR. McHUGH: Okay. Thank you.

14 CHAIRMAN IGNATIUS: Mr. Fossum.

15 MR. FOSSUM: Yes. Matthew Fossum, for  
16 the Staff of the Public Utilities Commission. And, with  
17 me at the table here are Kate Bailey and Michael Ladam  
18 from the Commission Staff. I also wanted to say that,  
19 consistent with what I understand the Commission's  
20 instructions to be, the phone line was opened up today for  
21 others to listen, but not participate. And, I just wanted  
22 to mention that for the record. And, that there is a  
23 possibility that there may be some confidential  
24 information discussed that those on the phone may not be

1 permitted to listen in on.

2 CHAIRMAN IGNATIUS: Thank you. Is there  
3 anyone on the phone right now?

4 MR. FOSSUM: We're not sure. We've  
5 tested the system, and it seems to be working, but we  
6 haven't heard anybody respond to a request to make  
7 themselves known.

8 CHAIRMAN IGNATIUS: Do we know if anyone  
9 was trying to get in? Is there a way to double check by  
10 calling them, to make sure they're not having trouble?

11 MR. FOSSUM: That I don't know. As I  
12 said, we had somebody call in and say they could hear it.  
13 So, we had that at least confirmed. But, whether there  
14 was anybody else who has joined since that time, we do not  
15 know.

16 CHAIRMAN IGNATIUS: All right.

17 MR. FOSSUM: So, I mean, yes, the  
18 response on the telephone from the conference calling  
19 company was that there was at least two participants on  
20 the line, but we did not, as I said, receive any  
21 confirmation from whoever the participants may be.

22 CHAIRMAN IGNATIUS: So, we know that  
23 some people have called in on this line, but we're not  
24 hearing from them now.

1 MR. FOSSUM: Right. And, I don't know  
2 the reason for that. It could, in fact, be that one of  
3 the participants is the call-in from this location. So,  
4 there may only be one participant. I simply don't know.  
5 And, as I said, we tested the system, and it seems that  
6 those listening can hear us.

7 CHAIRMAN IGNATIUS: Well, I think, if we  
8 go into a confidential session, we just need to turn it  
9 off, because it's hard to know if anyone's there or not,  
10 and just to avoid inadvertently putting out more than is  
11 appropriate. We'll just have to do it that way. Thank  
12 you.

13 Mr. McHugh, there was another matter you  
14 wanted to raise?

15 MS. BAILEY: Wait. I heard somebody.

16 CHAIRMAN IGNATIUS: Ms. Bailey, yes?

17 MS. BAILEY: I'm sorry. I think I heard  
18 somebody trying to say something on the phone. I think  
19 the problem may be we can't hear them.

20 CHAIRMAN IGNATIUS: Is there anyone on  
21 the phone who can hear my question?

22 UNIDENTIFIED SPEAKER: Comcast is on the  
23 phone.

24 MR. MCHUGH: Comcast is on the phone.

1                   CHAIRMAN IGNATIUS: All right. So, just  
2 so you're aware, we can hear just the tiniest bit of  
3 sound. So, I don't know what's going on with ours. But,  
4 if you're there to listen, are you able to hear the  
5 discussion here?

6                   UNIDENTIFIED SPEAKER: We can. I can  
7 hear you.

8                   CHAIRMAN IGNATIUS: All right. We think  
9 you said you "can hear us". So, that's good. We'll  
10 proceed. And, if we get to a confidential session,  
11 hopefully, you heard that, we will have to turn off the  
12 phone line. Mr. McHugh, what else did you have?

13                  MR. MCHUGH: First, a really  
14 administrative matter, how would you like to be addressed?

15                  CHAIRMAN IGNATIUS: This has been the  
16 most controversial issue.

17                  MR. MCHUGH: I just thought I'd -- I  
18 won't try and fumble through it. I've asked you, you tell  
19 me, and then I'll do it.

20                  CHAIRMAN IGNATIUS: The main thing I  
21 care about is that people not get worried about it. So,  
22 people have chosen different things, you know, "Chairman",  
23 "Madam Chair", whatever.

24                  CMSR. HARRINGTON: "Fearless Leader"?



1 MR. McHUGH: "Your Excellency"?

2 CHAIRMAN IGNATIUS: Anything that's not  
3 too cumbersome.

4 MR. McHUGH: Okay. Second thing, what I  
5 really was going to stand up and ask is, I thought I heard  
6 you say in sort of the background information in the very  
7 beginning of the hearing that there were "penalty amounts  
8 in dispute". And, I wanted to just clarify, at least from  
9 my perspective, to my knowledge, there is no dispute. I  
10 mean, I think we at FairPoint and the Commission Staff are  
11 on -- are in agreement that the initial penalties that  
12 were subject to my earlier letter were \$2,590,418. In my  
13 submission of March 1, I simply was indicating that we  
14 have provided to the Staff information that relates to  
15 potentially another \$233,000 worth of penalties. So, when  
16 I added those numbers together, I came up with 2,823,751.  
17 But that -- I did add a footnote in my proposal that says,  
18 you know, "The Staff is still working from their end."  
19 But I didn't think there was really anything in dispute,  
20 from my perspective.

21 CHAIRMAN IGNATIUS: Well, I saw all of  
22 that. We hadn't seen any submission about that additional  
23 \$233,000, other than the footnote. And, didn't know if --  
24 is the amount that's agreed upon for this is the almost

1 2.6, or has the Staff reviewed and thinks that the 2.8 is  
2 a better number to work with?

3 MR. FOSSUM: To answer your question at  
4 least partially, as to the initial underlying amount, the  
5 approximately 2.5 million, yes, Staff does agree to that  
6 amount. Of the additional 233,000, Staff is still  
7 reviewing that amount, but, initially, it looks to be  
8 accurate.

9 CHAIRMAN IGNATIUS: All right. Is there  
10 an agreement on how best to proceed this afternoon? We  
11 don't have prefiled testimony, but the reference in, Mr.  
12 McHugh, in your submission said, if there were  
13 confidential treatment, you would provide more detail.

14 MR. McHUGH: It really depends, I think,  
15 what the Commission actually would like. I tried to make  
16 the proposal as public as possible, so it was very  
17 transparent. And, so, I don't have much to add, other  
18 than the proposal. I did bring Mr. Freeman, because he  
19 can explain what he's been doing, in terms of -- overall,  
20 he's been involved in the three Northern New England state  
21 broadband build projects, and certainly been involved in  
22 the New Hampshire project. So, I can have him provide a  
23 little background information, if the Commission would  
24 like it, and especially it's likely new to Commissioners

1 Harrington and Scott. But, you know, other than that, I  
2 think I tried to put everything, you know, that I was sort  
3 of asking for into the submission.

4 To the extent the Commission has  
5 questions of me, I don't know if you really want me  
6 sitting up there, but I'm here to answer them. But, so,  
7 for some of the background information, you know, Mr.  
8 Freeman would be here -- or, is here to testify. I don't  
9 think he has a lot to say publicly, though. That's the  
10 issue, in terms of, other than maybe just a broad  
11 description of it, we'd be happy to give that in the  
12 public session. But, I think, really anything he would  
13 have to add, other than that, you know, general  
14 description would have to be in a confidential setting.

15 CHAIRMAN IGNATIUS: We do have  
16 questions, and they may -- some of them may deal with  
17 non-confidential matters, but probably many of them deal  
18 with confidential matters as well. I think it would be  
19 beneficial having Mr. Freeman testify. And, to the extent  
20 that there are matters that you're aware of and he is not,  
21 then we -- either through an offer of proof or however we  
22 get there, to get as much as we can in the record.

23 Does Staff have any concern with that?

24 MR. FOSSUM: No. Staff does have a few

1 questions as well, but we're not certain which among them  
2 may result in disclosure of potentially confidential  
3 information, because we simply don't know what FairPoint's  
4 doing. And, so, to the extent that the information could  
5 be identified, that would be helpful. And, if that's in a  
6 confidential session, then that's acceptable to us.

7 CHAIRMAN IGNATIUS: All right. I'll  
8 tell you, if it would help, a few categories of things  
9 that I know we might want to explore. And, then, maybe,  
10 to the extent we can cover anything that is not  
11 confidential first, would be good. And, I haven't seen a  
12 motion for confidentiality. Is there anything that's been  
13 submitted? And, you can stay seated, if you'd like. It's  
14 up to you.

15 MR. MCHUGH: I will sit down for a bit.  
16 Yes. This morning, a Motion for Confidential Treatment  
17 was sent to the service list, and then filed when I got up  
18 here this afternoon, at about 12:30 or 20 or so, 20 of  
19 1:00.

20 CHAIRMAN IGNATIUS: It hasn't made it to  
21 us yet. So, we'll need to track down the copies, which  
22 may even be at the front desk. I don't know if anyone  
23 from Staff could run and see. So, we could take a look.  
24 Thank you.

1                   The categories I think of off the bat,  
2                   and Commissioner Scott and Commissioner Harrison may have  
3                   some -- Harrison? Excuse me. Harrington, may have some  
4                   others to think of as well. But it seems to me, one of  
5                   the issues that may not be in dispute is whether the -- I  
6                   take it there's no dispute on the amount, other than  
7                   whether to add this additional \$233,000. And, it doesn't  
8                   sound like there's any dispute as to the prior settlements  
9                   and orders setting up this refund mechanism as a starting  
10                  point. It's only whether there's a basis to deviate from  
11                  that mechanism, a better use of the funds. Is that fair  
12                  to say?

13                   MR. MCHUGH: I think that's fair to say.  
14                  I do, as I, again, tried to explain a bit in the March 1  
15                  submission, you know, had issues with applying bill  
16                  credits beginning on April 1. And, I don't know if you  
17                  have questions about it. But, I mean, so -- but, in terms  
18                  of the overall mechanism then, no.

19                   CHAIRMAN IGNATIUS: Okay. So, there is  
20                  a question about timing?

21                   MR. MCHUGH: Right. Correct.

22                   CHAIRMAN IGNATIUS: When to begin, how  
23                  long to take in doing it, if the bill credit system is  
24                  used. So, that would be one thing. And, I don't know if

1 any of that needs to be confidential.

2 I guess another issue would be details  
3 on how these funds might be used that are part of the  
4 95 percent deployment level that the prior settlement  
5 calls for, because your proposal seems to bring the two  
6 together. And, I imagine some of that is confidential.

7 Another question would be, do these  
8 funds, if they were put towards broadband deployment, do  
9 they result in a greater than 95 percent deployment of  
10 broadband? And, if so, how do we know that? How do we  
11 measure that? And, what would that percentage be?  
12 There's references to going beyond 95 percent, but not  
13 much more detail. So, that may be a confidential matter.

14 And, there's another whole timing  
15 mechanism for just reaching the regular 95 percent that's  
16 already existing, to extend the dates and put in greater  
17 incentives to accelerate some of that at the front end,  
18 and extend out the time at the other end. And, whether  
19 that -- how is it that those pieces fit with this penalty  
20 issue? Two separate issues that seem to be kind of  
21 brought together into one. And, whether the ARRA-funded  
22 project has also been brought in to be somehow part of  
23 this?

24 MR. MCHUGH: I'm sorry, what project?

1 CHAIRMAN IGNATIUS: Well, the reference  
2 to the fiber loop system that you referred to as a  
3 "government funded" project that's "requiring a lot of  
4 FairPoint time to make ready work".

5 MR. McHUGH: Oh, oh. Yes. Yes.

6 CHAIRMAN IGNATIUS: How much that  
7 factors into this or not. Are there other issues that --  
8 Mr. Harrington, anything else you know that you --

9 CMSR. HARRINGTON: Well, I guess I would  
10 start out by just basically looking at the request. I  
11 would like the Company to provide some type of a legal  
12 basis for what they're proposing. In that we seem to be  
13 taking a transfer of penalties that were going to go in  
14 the form of rebates to customers of a regulated utility,  
15 and we're going to be turning that money over to a  
16 non-regulated company. And, I'm just -- I'm not sure what  
17 the legal basis is that allows us to do that. So, I guess  
18 that would be a good place to start.

19 And, there's also the SB 48 that's kind  
20 of floating around behind all of this, and how that fits  
21 in, if that, indeed, were to pass. So, I don't know,  
22 again, from a legal perspective, what effect that would  
23 have on any ruling out the Commission on this. So, that's  
24 if it passes, it would appear to be taking the

1 Commission's authority --

2 (Court reporter interruption.)

3 CMSR. HARRINGTON: Just dealing with SB  
4 48. And, it would appear to take a lot of the  
5 Commission's authority away to deal with what's now a  
6 regulated utility. And, I'm just not sure what that  
7 leaves us with, whatever we come up with in this docket,  
8 how it affects us. So, I think that's something that  
9 needs to be anticipated, because I think that bill is  
10 tomorrow in front of the Science & Tech, so...

11 CHAIRMAN IGNATIUS: Commissioner Scott,  
12 did you have other issues to raise?

13 CMSR. SCOTT: No. I had finer points  
14 within those topics, but no other issues come to mind.

15 CHAIRMAN IGNATIUS: Okay. So, if that's  
16 helpful to try and think about what needs to be, if we  
17 manage to get through the public information first, not  
18 mix-and-match, in-and-out, and address anything we can  
19 publicly, and that may be some overview of what the  
20 Company has already been doing and the issues that you  
21 don't feel the need for confidential treatment. And,  
22 then, we sort of begin again with the things that are more  
23 sensitive?

24 MR. McHUGH: I think that's fair enough.



1 CHAIRMAN IGNATIUS: All right.

2 MR. McHUGH: Let me, in terms of going  
3 down the list, and I tried to make notes for the Chair.  
4 So, if I need to be corrected, please. But, in terms of  
5 the deployment levels and the 95 percent requirement, what  
6 we were proposing is to use the penalty funds to build  
7 beyond the 95 percent level. So, I was not asking that  
8 the funds be used to subsidize the 95 percent build.

9 In terms of the overall timing, what we  
10 got together and discussed, so I had input from my friends  
11 in Engineering at FairPoint, as well as Construction.  
12 And, we have quite a bit of work to accomplish over the  
13 coming year, and into 2013. And, that I think I'd prefer  
14 to discuss in more detail in a confidential setting. I  
15 used as an example, in the March 1 submission, the fact  
16 that the fiber build being done, you know, with government  
17 funds, the UNH project, is, you know, just consuming a lot  
18 of time. And, we can get into more of the details of  
19 that. But that was just an example of several of the  
20 projects that the Company has to work on. And, so, from  
21 sort of an overall engineering and construction based, you  
22 know, project management system, what we were proposing to  
23 do is to, you know, (a) get as much done as possible in  
24 2012, in terms of expanding broadband in New Hampshire to

1 get as close as possible to the 95 percent deadline by the  
2 end of year. And, then bundling everything up to do a,  
3 you know, at least in our view, sort of a more measured  
4 and manageable program, because I didn't want to have two  
5 broadband expansion programs going on in 2013. We were  
6 asking, you know, that one, and hence, you know, the  
7 request for the extension. But recognizing that, you  
8 know, I wouldn't think the Commission would want to just  
9 say "Yes, you can have another year, McHugh. You know, so  
10 don't worry about doing anything in 2012." You know, what  
11 I proposed is some mechanism to say "Well, it's sort of a,  
12 you know, sort of a carrot/stick approach, without, you  
13 know, financial penalties. But, to say, "If you had a  
14 certain percentage in 2012, then we would give you the  
15 time. And, if you don't hit this level in 2012, then you  
16 don't get any time, and you got to get it done by March 31  
17 of 2013 or you're subject to penalties." And, then, you  
18 know, in asking for the extension to 2013, we would still  
19 have penalties. The penalty measurement date would just  
20 be moved. So, that's a broad outline of what we were  
21 seeking. And, that's sort of how they came together as  
22 one.

23 In terms of the legal basis,  
24 Commissioner Harrington, I didn't really undertake a legal

1 research project. Happy to do it, if you want something  
2 more formally filed. But I think the Commission has broad  
3 discretion to amend its orders. And, the standard is  
4 fairly broad, as I recall the cases. And, so, I didn't  
5 think, in terms of -- that I was asking for anything that  
6 the Commission could not do under the current statutory  
7 scheme.

8 With respect to Senate Bill 48, I mean,  
9 I --

10 CMSR. HARRINGTON: Well, excuse me,  
11 before we leave that, maybe I can clarify what I was  
12 looking for. The portion of FairPoint that puts in the  
13 broadband or Internet provider is not a regulated utility,  
14 is that correct?

15 MR. McHUGH: The services are provided  
16 through Enhanced Communications of Northern New England.  
17 And, let me make sure I get my entity straight. That it  
18 was -- I mean, it's not an incumbent local exchange  
19 carrier in New Hampshire. That the funds would be, you  
20 know, used and held in a restricted account, so that they  
21 could be segregated, and we'd come up with some mechanism.  
22 If, really, you know, Senate Bill 48 goes through goes  
23 influence, then we'd come up with some mechanism so that  
24 everybody in the State of New Hampshire is comfortable

1 knowing that we have the money and that we're spending it,  
2 you know, as we said we would.

3 But I don't think -- I don't envision  
4 any type of intercompany transfer of funds. FairPoint  
5 holds its cash in some accounts. I'm not going to get  
6 into details on the public session. But it would -- what  
7 we're doing in Vermont, let me just say as an example, is  
8 the money that the Vermont Public Service Board approved  
9 of in this manner. So, this sort of program that we put  
10 together, we tried in Vermont and Maine; Maine denied the  
11 request, and the Public Service Board of Vermont granted  
12 the request. So, in Vermont, and I forget the exact  
13 amount of money, but it's north of \$6 million. So, that  
14 money will be held in a segregated, restricted account,  
15 and tracked for purposes of spending it, to make sure we  
16 get there. So, --

17 CMSR. HARRINGTON: Well, let me maybe  
18 make it a little bit more specific then. If you put out  
19 this broadband cable, who owns the cable or the delivery  
20 mechanism?

21 MR. MCHUGH: It's the ILEC. It's  
22 Northern New England Telephone Operations, LLC.

23 CMSR. HARRINGTON: Okay. So, that's a  
24 company that's not regulated by this Commission?

1 MR. McHUGH: No, it is. That's the --

2 CMSR. HARRINGTON: That's the incumbent.  
3 I lost track.

4 MR. McHUGH: Yes, I know. I apologize.  
5 So, Northern New England Telephone Operations, LLC, the  
6 incumbent local exchange carrier, in Maine and New  
7 Hampshire. That's the regulated entity. It would be the  
8 ILEC's assets that it would be -- the money would be used  
9 for.

10 CMSR. HARRINGTON: Okay. So, the ILEC  
11 would own the equipment, but the rates are not controlled  
12 by the Commission?

13 MR. McHUGH: That's correct.

14 CMSR. HARRINGTON: Okay. And, I guess  
15 what I'm -- maybe I'm getting at this a little round  
16 about, but I'm trying to figure out, we started with  
17 customers who apparently did not get adequate service.  
18 And, as a result of that, there was penalties imposed on  
19 FairPoint. And, now, the people that didn't get that  
20 adequate service, instead of getting a rebate for their  
21 troubles that they have experienced, you're proposing to  
22 take the money and give it to somebody else, so that they  
23 can put in more broadband in Coos County. How does that  
24 help the other counties in the state?

1                   MR. McHUGH: Well, we can get into some  
2 details in the confidential setting in terms of Coos  
3 County. A couple of things I guess I would respond in  
4 that regard. So, certainly, the bulk of the penalties  
5 were incurred back when FairPoint had Cutover issues in  
6 2009. Since 2009, I don't have the numbers, but,  
7 certainly, we've lost, we, at FairPoint, lost a  
8 significant number of access lines. So, to the extent  
9 that there is that, you know, the customers who were  
10 adversely affected ought to be getting the money, I can  
11 tell you, we could get, you know, more numbers, in terms  
12 of what access lines we had, say, January 1 of 2009 versus  
13 what we just publicly reported, but we certainly have had  
14 customers leave. So, any customer who has left, they're  
15 not going to get the bill credit. If we do it, you know,  
16 and, again, the request is also to do, if we have to, if  
17 the Commission, you know, doesn't approve the proposal,  
18 what I would like to do is just do one bill credit,  
19 versus, you know, trying to do bill credits over a  
20 roughly, you know, nine to eleven-month period. And, so,  
21 the bill credit would come up to somewhere between, I  
22 think, six and seven dollars, is what you're talking about  
23 per customer. And, so, I guess, in the end, in terms of  
24 what benefits the state?

1 CMSR. HARRINGTON: I was talking about  
2 the customers. The person who had to experience that  
3 inadequate service, whenever it was, how do they get any  
4 benefit out of this, unless they happen to be in Coos  
5 County?

6 MR. McHUGH: Well, if there's an  
7 economic benefit to the state, in terms of the ability to  
8 buy goods and services, then, you know, some of those  
9 folks could benefit that way. If, overall, it's good for  
10 the state, then I would say it's good for the citizens.  
11 And, if it's, on the other hand, just more preferred that  
12 somebody get a \$6.00 bill credit, then that's what we'll  
13 do.

14 CMSR. HARRINGTON: All right. I think  
15 you've answered my question. Thank you. But I'm still  
16 looking for that legal basis. I'm just not sure, if, I  
17 mean, you say that it's going to Northern, whatever LLC  
18 there, I just want to make sure that we have a solid legal  
19 basis for this. I mean, or are you assuming we could  
20 transfer the money to somebody else, some other entity?  
21 Or, does it have to be associated with, this is a  
22 FairPoint customer that's not getting their penalty money  
23 back, if you will, so is there any limit on where that  
24 money could be transferred to? Could it go to some other

1 entity completely outside of FairPoint? Or, does it --  
2 can it only go for broadband service? Or, could it go for  
3 repairs to the telephone system in New Hampshire? That's  
4 what I'm trying to find out.

5 MR. McHUGH: Right. So, what I think,  
6 you know, the way I would envision it would work, and the  
7 way, you know, it's -- let me give you an example. We had  
8 other restricted accounts. And, so, you know, as projects  
9 get completed, the data is gathered and compiled, in terms  
10 of what is, you know, whether it's outside invoices or,  
11 you know, internal time and materials, how it's allocated  
12 to the project. And, then, the money is simply deducted  
13 on a monthly basis. So, you know, let's say --

14 CMSR. HARRINGTON: Excuse me. I don't  
15 mean to interrupt, but that's not really where I was  
16 going.

17 MR. McHUGH: Oh, I'm sorry.

18 CMSR. HARRINGTON: What I was trying to  
19 determine is, maybe you can come back, and you probably  
20 can't do this off the top of your head, but where, in what  
21 rule and what law does -- gives us the authority to take  
22 penalty money from customers and give it to another third  
23 party, I guess? That's what I'm trying to find out.

24 MR. McHUGH: I'll provide that. That's



1 fine. I understand.

2 CHAIRMAN IGNATIUS: I want to be sure I  
3 know, Mr. Harrington, there is -- when you say a "third  
4 party", it's FairPoint, the utility, instead of refunding  
5 to its customers, the proposal is that FairPoint, the  
6 utility, invests in broadband service for its customers?

7 MR. McHUGH: Correct.

8 CMSR. HARRINGTON: Well, a limited  
9 amount of their customers, in a specific geographic area  
10 of the state. And, I would also assume to be corrected,  
11 if FairPoint gets this money and invests it in their  
12 customers in Coos County, that will somehow increase  
13 profits to FairPoint. I'm assuming you make money off of  
14 your broadband service?

15 MR. McHUGH: You know, I would really  
16 question that. Because, if you think about it, I mean,  
17 the -- so, we haven't had the chance, and I think I  
18 explained, to do all the engineering work, to identify,  
19 you know, exactly what customers would be, say, beyond the  
20 95 percent build and, you know, when it would get there.  
21 But what you're talking about is some equipment that,  
22 initially, yes, would be, you know, the funding for the  
23 equipment, the installation, would be used with these  
24 penalty funds. But that doesn't mean that all of a sudden

1 the Company now has some financial windfall. You know,  
2 you've got equipment that needs to be maintained, has to  
3 be replaced and upgraded. We have service technicians  
4 that have to drive around, you know, the northern part of  
5 the country -- or, northern part of the state, which is  
6 quite expansive. That all takes time, money, and  
7 resources. And, depending on what the product offerings  
8 are, you know, take rates, even in not highly densely  
9 populated areas, you know, there's not a 100 percent,  
10 like, take rate. So, you just -- and, I just -- it's not  
11 overall a financially, you know, profitable endeavor.

12 I think it would -- there's some benefit  
13 to the Company, don't get me wrong. I'm not saying this  
14 is, you know, of no benefit to the Company at all. I  
15 don't want to convey that impression. But I also think  
16 that, to the extent anybody in the State of New Hampshire  
17 thinks that somehow this is going to provide a financial  
18 windfall to FairPoint, because of its expanding customer  
19 base and rates they're going to charge you, it's just --  
20 it's not going to happen.

21 CMSR. HARRINGTON: Well, it sounds  
22 almost as if you're not even sure on the financials that  
23 this is going to be a break-even point of view. I mean,  
24 what if we approve this \$2.8 million, and three years from

1 now the cost of it, based on the take rate of the  
2 customers and the cost of doing all this driving around in  
3 northern New Hampshire and repairing things, that you're  
4 constantly losing money. Have you done a financial plan  
5 on this and even come up with an estimate on what you  
6 expect to be the take rate? What you expect your costs to  
7 be? Expect your revenues to be? Hopefully, it's going to  
8 come out at least even.

9 MR. McHUGH: Well, I think that one of  
10 the benefits would be that we can use these funds in such  
11 a manner as it will help the Company secure funding based  
12 on the FCC's recent USF reform orders. So, there's  
13 certain requirements in order to get, and I am not the FCC  
14 expert, so, you know, I would have to -- you would have to  
15 give me an opportunity to correct the record if I get it  
16 wrong. But, you know, for some of the Connect America  
17 funding, you have to hit speeds of four up and one down?

18 MR. FREEMAN: Yes.

19 MR. McHUGH: So, four up and one down.  
20 And, it's very expensive to do that. And, I believe the  
21 FCC is only going to fund that level to the factor  
22 approximately, I think the formula is finished, but it's  
23 approximately \$775, I think, per household. But this --  
24 so, this money could be used to expand broadband the way

1 we set it, but then it would lay the foundation to get to  
2 that four-to-one speed, which might -- might allow us to  
3 get, you know, more -- better chance of taking the Connect  
4 America funding.

5 CMSR. HARRINGTON: But it still doesn't  
6 sound as if you have a financial plan laid out for this,  
7 saying you could get this money and you spend it on  
8 upgrading broadband in Coos County, that two or three  
9 years from now, that will at least not show a negative  
10 cash flow to the Company?

11 MR. McHUGH: I think that's right.

12 CMSR. HARRINGTON: You haven't done  
13 that?

14 MR. McHUGH: We haven't done that.

15 CMSR. HARRINGTON: Okay. That would be  
16 something I think we'd like to see, or at least I would,  
17 before we authorize \$2.8 million.

18 CHAIRMAN IGNATIUS: Mr. McHugh, you were  
19 knocking off some of the things that we've -- I had  
20 raised, and, in fact, all three of us raised. I don't  
21 think they're -- we're not done with each of these issues,  
22 as you do. But, if there's any other comments you want to  
23 make on any of the items that we raised, we'll let you go  
24 ahead and do that before we --

1                   MR. MCHUGH: No. And, that's what I was  
2 trying to do. But I was also just about done looking at  
3 the list, because I'm thinking, in terms of what I have to  
4 say publicly, I'm close to being done, if not just done.

5                   CHAIRMAN IGNATIUS: Okay. Does the  
6 Staff have any other items they think need to be on the  
7 table as well for today's discussion that we've forgotten  
8 to mention? This is a very informal, kind of odd  
9 structure to today's hearing, I understand.

10                  MR. FOSSUM: I don't -- I'm not entirely  
11 sure what you mean by "on the table". But the Staff had  
12 viewed this as, I mean, the Commission issued its order  
13 back in February, that allowed for this plan to be filed  
14 and for a hearing on it. And, in the context of that  
15 order, had set out a few concerns that the Commission had.  
16 It was essentially our intent to ask questions about  
17 those, those particular concerns, relative to what was  
18 filed here. So, to the extent that they appear in that  
19 order, I mean, specifically, they're -- you know, the  
20 scope of the expansion; the accountability of the 95  
21 percent, which you've already raised; the time frame for  
22 the work to be completed, which is in the plan and has  
23 been discussed a little bit; and the obligations of the  
24 plan to survive would be enforced, which has been touched

1 upon a little bit so far as well.

2 So, to the extent that any of those have  
3 already been raised, no, we don't have any amendments to  
4 that, that list. But we do intend to go through the  
5 Commission's list as it exists.

6 CHAIRMAN IGNATIUS: All right. Thank  
7 you. Yes?

8 MS. MILLER: Good afternoon. I wasn't  
9 going to testify, but I thought that I would have to go on  
10 record with a couple of things. First of all, I'm a  
11 resident of Coos County, born and bred, lived there all my  
12 life. I don't have phone lines, and I do wireless  
13 broadband. I commend FairPoint for all the deployment and  
14 the costs and the hassle of driving Coos County. There's  
15 a lot of miles, lots of trees, and not a whole lot of  
16 people.

17 But I do want to go on record to discuss  
18 a real issue with Coos County, which was, in my mind, more  
19 important than broadband, is the lack of a redundant loop  
20 being turned up through Pinkham Notch. And, just to go  
21 further into that and explain why I bring that up, on  
22 February 17th of this year, we had a major outage. A  
23 tractor-trailer truck took out FairPoint's fiber between  
24 Lancaster, New Hampshire, and Jefferson, and it resulted

1 in seven hours of no service. Which was wonderful for me,  
2 because there was no e-mail or a cellphone or any  
3 communication, like the old days, but it did present some  
4 problems for emergency management at the Androscoggin  
5 Valley Hospital and the Gorham Emergency Management  
6 Services. There was a critical patient transfer that  
7 needed to take place, and the protocol required a call to  
8 Dartmouth-Hitchcock, which could not take place. The  
9 hospital could not make an outgoing call. The EMS  
10 Director in Gorham drove 30 miles to the  
11 Jefferson/Lancaster line, saw what was going on and was  
12 able to make the call then. He had to apply for a waiver,  
13 because the protocol calls for the actual doctor in the  
14 hospital to communicate with Dartmouth-Hitchcock before  
15 they accept that transfer. So, that protocol was waived  
16 due to the lack of communications.

17 So, I just simply say that, if the  
18 redundant path or rerouting of traffic is not turned out  
19 between Gorham and Jackson, bringing broadband in will  
20 make no difference, because we're still going to be  
21 susceptible to the loss of service, because of the layout  
22 of the telecom infrastructure in the North Country, being  
23 basically a stub at this point.

24 So, I just wanted to go on record. I

1 know that FairPoint has addressed it, and there are plans  
2 to rectify that. But it's been four years since fiber and  
3 conduit has been put in the ground through the National  
4 Forest. And, I think the order got lost somewhere or,  
5 through the transition, really didn't make it to the top  
6 of the list of items to be completed. So, I just wanted  
7 to go on record for Coos County and saying that is a major  
8 issue that needs to be rectified.

9 CHAIRMAN IGNATIUS: Ms. Miller, can you  
10 give your full name and title, all for the record please.

11 MS. MILLER: Oh, sorry. For the record,  
12 my name is Carol Miller. I'm the Director of Broadband  
13 Technologies for the Department of Resource and Economic  
14 Development, in Concord.

15 CHAIRMAN IGNATIUS: Thank you. And, did  
16 you -- are you stating support or opposition to  
17 FairPoint's proposal or just further issues that are of  
18 importance to the North Country?

19 MS. MILLER: I'm neither supporting nor  
20 opposing. But I am stating that there is work to be done,  
21 and we'll leave it at that.

22 CHAIRMAN IGNATIUS: All right. Thank  
23 you. Is there information that Mr. Freeman can give in  
24 the public record that we should next take up, and then



1 move to matters that are confidential?

2 MR. McHUGH: One minute?

3 CHAIRMAN IGNATIUS: Please, take your  
4 time.

5 (Atty. McHugh conferring with Mr.  
6 Freeman.)

7 MR. McHUGH: If it pleases the Chair, I  
8 think what we can do is have Mr. Freeman provide just a  
9 very basic overview of the Broadband Expansion Program. I  
10 think that there's some things he can say publicly, but it  
11 would be limited. But we're happy to do that. And, if  
12 there's maybe public questions that folks have, we can get  
13 those out of the way.

14 CHAIRMAN IGNATIUS: All right. Before  
15 -- you could get settled, if you want, Mr. Freeman. But,  
16 I think, Commissioner Scott, you had a question first to,  
17 probably, just to Mr. McHugh?

18 CMSR. SCOTT: Yes.

19 MR. McHUGH: Sure.

20 CMSR. SCOTT: Again, I'm trying to do  
21 the stuff that won't go confidential while we're on the  
22 public session here. I'll give you a little bit of  
23 background. Usually, with -- you know, what we're talking  
24 about in your proposal, obviously, is penalties, as you

1 discussed with Commissioner Harrington. At least from my  
2 experience, from when the state looks at penalties,  
3 there's usually not a benefit to the entity being  
4 penalized, which you kind of talked to a little bit  
5 already with Commissioner Harrington, to the extent that  
6 it seemed unclear, you know, it seemed unclear how much of  
7 a benefit, but, certainly, you would have the lines and  
8 the customer base, to some extent, would be there. So, if  
9 you could talk a little bit more about that. I guess what  
10 I'm trying to get at, my end state here is the penalties  
11 are roughly \$2.8 million. One venue would have it go  
12 right back to the ratepayers, which, in theory, would have  
13 no benefit directly to the Company. If we're to do your  
14 proposal instead, which would have some benefit, why would  
15 that penalty or the amount going into that project still  
16 be \$2.8 million? Meaning, usually, if Company X is  
17 penalized for some activity, if there's some benefit that  
18 goes on as a project, there's usually an adder, if you  
19 will. That says, "Okay, you get some benefit. So,  
20 instead of 2.8, it would be some other larger amount to  
21 take that into account." Does that make sense?

22 MR. McHUGH: It does. I think I  
23 understand what you're asking. But, first, let me say, I  
24 don't know that there is zero benefit to the Company of

1 rebating this money to the customers. I think, certainly,  
2 customers, in the end, who don't, say, follow what goes on  
3 in the telecom industry, they see a \$6.00 bill credit and  
4 they're going to see a line item that says some type of  
5 service quality, you know, rebate. You know, I think they  
6 will appreciate it. So, I don't know -- so that it's  
7 certainly an intangible benefit. And, you know, maybe not  
8 one nearly as good as, you know, allowing us to use the  
9 money to expand the network and provide broadband services  
10 to residents who won't have it. But the likelihood is  
11 that, if we don't use the money, this 2.8 million, for  
12 broadband expansion, we won't go to the other areas,  
13 because I don't see it's an economically feasible endeavor  
14 to do it.

15                   So, I guess the question comes down to,  
16 does the Commission see, assuming, you know, certainly,  
17 that Commissioner Harrington's concerns about the legality  
18 of it are addressed, in the end, is it beneficial to the  
19 state to have broadband expanded to some of the folks who  
20 otherwise aren't going to get it, other than maybe, I  
21 guess, if they have some type of access to a  
22 satellite-based service. Which every customer I've spoken  
23 to that has satellite-based service, they don't think very  
24 highly of it. So, I guess I'll leave it at that for now.

1 CHAIRMAN IGNATIUS: Okay.

2 CMSR. SCOTT: Okay. So, let me ask it a  
3 different way, I guess. Given that there's some kind of  
4 tangible benefit to doing this with penalty money, is  
5 there an amount beyond 2.8 million the Company would be  
6 willing -- would there be an amount beyond the \$2.8  
7 million penalty, if the Company were -- if the Commission  
8 said "yes, go ahead and do this project", what I'm  
9 struggling with is, the 2.8 is supposed to be a penalty  
10 alone, not something the Company would benefit from. So,  
11 if the Company were putting in more than 2.8 towards that,  
12 that would give me a little more assurance that --

13 MR. McHUGH: Oh. So, you're saying, you  
14 know, if you approve the 2.8, is there some factor above  
15 the 2.8 that the Company would be willing to invest in, in  
16 the broadband?

17 CMSR. SCOTT: Yes.

18 MR. McHUGH: I'd have to take that back  
19 and ask. Because, I mean, we didn't discuss that  
20 internally, the management of the Company. So, I can't  
21 tell you "yes" or "no", right now.

22 CMSR. SCOTT: That would be helpful for  
23 me to make a decision anyways.

24 MR. McHUGH: Sure.

1                   CHAIRMAN IGNATIUS: And, just to make  
2                   sure I understand this, I'll make up numbers. The choice  
3                   might be "refund 2.8 million" or "invest 3.8 million", or  
4                   whatever number it might be? That's what you're getting  
5                   at?

6                   CMSR. SCOTT: Right.

7                   MR. McHUGH: That's what you're asking.  
8                   That's what I understood.

9                   CHAIRMAN IGNATIUS: Right.

10                  CMSR. SCOTT: And, again, that would  
11                  help me in the mind of, it's supposed -- the 2.8 is  
12                  supposed to be a penalty alone, not something of benefit  
13                  to the Company. So, how do we make those two work  
14                  together? And, I have one more question?

15                  CHAIRMAN IGNATIUS: Please. Go ahead.

16                  CMSR. SCOTT: And, Mr. McHugh, you also  
17                  reference in your discussion with Commissioner Harrington  
18                  with -- you had a brief discussion regarding Senate Bill  
19                  48, and I understand that's not passed yet, so there's  
20                  some uncertainty there. I guess I'd -- and, you mentioned  
21                  there would have to be some kind of language made up  
22                  moving forward. But I'd be looking towards some kind of  
23                  assurance that, if you were to do this type of project,  
24                  what would happen if it wasn't done on time? What happens

1 if it wasn't done at all? That type -- you know, what are  
2 the ramifications? And, how would we work that? I'd be  
3 looking for some kind of language that, again, makes me  
4 feel a little bit more comfortable.

5 MR. McHUGH: Yes. That certainly would  
6 have to -- that would have to be worked out. I mean, the  
7 proposal certainly would be that the bottom line is, if we  
8 didn't use the money to build broadband, it goes back to  
9 the customers as a refund. So, there's no -- no  
10 alternative proposal from our end. It's either we use it  
11 as we say we use it, you know, say we use it over and  
12 above the 95 percent, or it goes back to customers. I got  
13 no issues with that. So, it's a matter of maybe  
14 documenting it, so you're assured that it gets done. But  
15 that's what would happen.

16 CMSR. SCOTT: Okay. Thank you.

17 CHAIRMAN IGNATIUS: All right. If  
18 nothing else, perhaps you can walk Mr. Freeman through  
19 some public information about the status of broadband  
20 expansion and how he can help enlighten us on the proposal  
21 that you're making.

22 MR. McHUGH: Sure. And, maybe just --  
23 I'll just, so everybody has a little background on him,  
24 I'll ask him to provide some information on his history

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1 with the Company, things like that.

2 CHAIRMAN IGNATIUS: All right. Before  
3 you begin, Mr. Patnaude.

4 (Whereupon **Steven Freeman** was duly sworn  
5 by the Court Reporter.)

6 **STEVEN FREEMAN, SWORN**

7 **DIRECT EXAMINATION**

8 BY MR. MCHUGH:

9 Q. Could you state for the record your full name, Mr.  
10 Freeman.

11 A. Steven Freeman.

12 Q. And, what's your title at FairPoint?

13 A. Director of Network Engineering.

14 Q. Okay. And, how long have you been with FairPoint?

15 A. Twelve years with FairPoint, and Verizon subsequently.

16 Q. Okay.

17 A. Previously.

18 Q. Right. So, in terms of the work you've been doing,  
19 just provide some background information. What did you  
20 do at Verizon? What did you do -- and, what are your  
21 responsibilities at present here at FairPoint?

22 A. Sure. I've been in engineering my whole career. As  
23 far as with FairPoint, I've always been in charge of  
24 the broadband projects throughout the three Northern

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[WITNESS: Freeman]

1 New England states. I also currently have  
2 responsibilities for all outside plant engineering.  
3 All the outside plant tariff engineers across the three  
4 Northern New England states, also indoor plant, as well  
5 as my broadband implementation responsibilities.

6 Q. And, what are your responsibilities for the broadband  
7 implementation?

8 A. In charge of scheduling the turn-up of all the sites,  
9 as well as ensuring all the reporting is done correctly  
10 to the various regulatory bodies.

11 Q. And, when you say "turning up the sites", what do you  
12 mean by that?

13 A. The network turn-up. The connection into the network,  
14 as well as make -- ensuring that all of our systems are  
15 updated with the appropriate information to allow  
16 customers to call in for service from all these newly  
17 equipped sites.

18 Q. And, can you give a general overview of the New  
19 Hampshire Broadband Expansion Project, being mindful  
20 that we're not in a confidential session?

21 A. Well, in order to increase our broadband coverage to  
22 meet our merger commitments, we have to equip remote  
23 terminals, as well as central offices, with the  
24 equipment that is able to provide high-speed Internet

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1 service to our customers. This would include running  
2 fiber, fiber cable to our remote terminal sites, as  
3 well as installing any equipment, new or -- at either  
4 new remote terminal sites or existing remote terminal  
5 sites. So, we plan, engineer, and build all the  
6 facilities necessary to provide high-speed Internet  
7 service to our -- to customers.

8 I can go into the -- from a planning,  
9 so, for where we stand now, we are -- the normal flow  
10 goes from planning, to engineering, to construction.  
11 And, we don't complete all the planning before we move  
12 into engineering, before we move into construction.  
13 It's not a sequential type activity. These activities  
14 are going on concurrently. So, we are -- we've been in  
15 the planning phase for this part of the New Hampshire  
16 Broadband Program for the better part of eight months  
17 now. Engineering is fully underway. And, we've  
18 actually started construction in various sites across  
19 the State of New Hampshire.

20 MR. McHUGH: I wouldn't have anything  
21 else for a public question and answer session.

22 CHAIRMAN IGNATIUS: All right. Does  
23 Staff have questions?

24 MR. FOSSUM: We do. I'll try to -- I

[WITNESS: Freeman]

1 guess I'll try to look through them and see which ones  
2 would sort of result in answers that would be more likely  
3 to be public. And, to the extent they would not be, I'll  
4 accept the Company's representation and stop that line of  
5 questioning.

6 **CROSS-EXAMINATION**

7 BY MR. FOSSUM:

8 Q. Now, Mr. Freeman, you're familiar with the plan that  
9 was submitted on March 1st, is that correct?

10 A. Yes.

11 Q. You've at least reviewed it and you're familiar with  
12 the terms?

13 A. Yes.

14 Q. So, just to get it on the record, and, though, Mr.  
15 McHugh has already, I think, said this, this plan  
16 doesn't define or describe the physical or geographic  
17 scope of an expansion plan, does it?

18 A. No, it does not.

19 Q. The plan also notes that, on the second page, I  
20 believe, it says that some plans -- "engineering and  
21 construction [are]...subject to constant change." Just  
22 generally speaking, does that change make it -- or,  
23 that potential for change make it very difficult to  
24 define a scope of expansion?

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1 A. At this point in time, it does, because we're not  
2 complete with the full 95 percent planning and  
3 engineering. So, as I said, the general flow goes from  
4 planning to engineering to construction. Planning  
5 defines the site list, based on their records, their  
6 knowledge of the area. They move the plans over to  
7 engineering, where we actually go out in the field, do  
8 site visits, look at the physical condition of the  
9 plant, obtain various right-of-ways, if necessary, if  
10 we're placing a new site, and then it moves over to  
11 construction. If we find that there are any issues  
12 during the engineering that would increase the cost of  
13 the various site that we're going to equip, or the  
14 field conditions have changed, we will go back to  
15 planning and negotiate -- not necessarily "negotiate",  
16 but we will determine whether or not that site should  
17 actually stay on the current list. So, that will go --  
18 there will be some back-and-forth on "this site is on  
19 the list" versus "off the list", which -- how many  
20 sites do we have to pull in from unequipped, from the  
21 unequipped list, to make up for the numbers from that  
22 site that was previously planned.

23 So, without all the engineering being  
24 complete or a good portion of it being complete, it's

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1 hard to say exactly where you're going to go in the  
2 future. You have to actually get to that 95 percent  
3 threshold, know which sites you're going to build, and  
4 then figure out your next set of sites that you're  
5 going to build. Which is why there's nothing specific  
6 as part of the \$2.8 million plan.

7 Q. And, keeping all that in mind, do you have an estimate  
8 of when something like a final plan or a final scope  
9 could be defined?

10 A. I would say, certainly, during the second half of this  
11 year. I don't have a certain date. I would have to  
12 say late third quarter, early fourth quarter.

13 Q. Now, the plan mentions "target communities". Is there  
14 a -- without necessarily disclosing who might be on it,  
15 or just whether there is one or not, is there a  
16 preliminary list of "target communities" that the  
17 Company may be looking at for their -- for this  
18 expansion?

19 A. Well, Coos County was sort of the target. Was there  
20 anything specific? There wasn't anything specific  
21 we're looking at right now.

22 Q. Okay. Trying to figure out how to phrase it so that  
23 it's appropriate for this session. To the extent that  
24 you know, is it the intent of this plan to reach

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[WITNESS: Freeman]

1 customers who would not otherwise be served at all?

2 A. Yes.

3 Q. And, to that end, is it your understanding that the  
4 plan would attempt to avoid over-building, where there  
5 might be an existing broadband provider?

6 MR. McHUGH: I would simply say, on  
7 behalf of the Company, in response to the question, we'd  
8 be willing to work with the Staff in that regard, if that  
9 were the preference. I mean, it's something that wouldn't  
10 come up until the end of the year, until the engineering  
11 was more refined. So, we'd be willing to work with them  
12 in that regard. And, to be fair to the question, that's  
13 not indicated in my proposal or in the proposal submitted  
14 March 1.

15 MR. FOSSUM: Agreed.

16 MR. McHUGH: Yes.

17 MR. FOSSUM: That's why I'm trying to,  
18 as I said, you know, that in the Commission order it had  
19 discussed the scope. So, I'm trying to determine the  
20 scope that we're talking about.

21 BY MR. FOSSUM:

22 Q. I think I have just one other one for public session.  
23 Getting back to the issue of "target communities", and  
24 the plan mentions, and you had just repeated a moment

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1 ago, Coos County. So, does that mean that, to the  
2 extent some other community might be identified  
3 elsewhere, it is not your intention to, as part of this  
4 plan, to build to that community?

5 MR. McHUGH: I don't understand the  
6 question, I'm sorry.

7 BY MR. FOSSUM:

8 Q. To the extent that -- I'll try to rephrase. The plan  
9 mentions building in Coos County. So, if there is a  
10 community that might not otherwise be served in some  
11 other county, is it your understanding that, pursuant  
12 to this plan, you would not revise the plan to reach  
13 that community?

14 A. So, I'm not -- I guess I'm not quite understanding the  
15 question.

16 Q. Well, I could --

17 A. The way that we're -- maybe this will help. When we're  
18 designing this 95 percent plan, it's not taking into  
19 account necessarily this potential plan. So, we're --  
20 we're looking at the sites. We're trying to build out  
21 to the best sites that we can now. This would be above  
22 and beyond those sites. This plan would not exclude  
23 other communities that we're currently targeting.

24 Q. I guess that's what I'm trying to -- So, for example,

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1 say a community in Strafford County appeared to be one  
2 that could be reached by extension of the network, that  
3 community would not be part of this plan, but may be  
4 part of your 95 percent plan otherwise?

5 A. Correct.

6 MR. FOSSUM: I think that's all I have  
7 for the moment on the public side.

8 CHAIRMAN IGNATIUS: Commissioner  
9 Harrington.

10 CMSR. HARRINGTON: Yes.

11 BY CMSR. HARRINGTON:

12 Q. Just to clarify maybe, just want to make sure I'm clear  
13 on this. Your plan for going beyond the 95 percent  
14 that you would use the \$2.8 million to finance, would  
15 you be competing with any existing broadband suppliers  
16 in the implementation of that plan, except for  
17 satellite?

18 A. That wasn't -- I believe what Pat said, that's not  
19 something that was written in the order, but it's  
20 certainly something we could consider, we could work  
21 with the Staff to do.

22 Q. I'm not sure what that means.

23 MR. McHUGH: Well, we didn't address it  
24 in the plan one way or the other, Commissioner Harrington.

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1 So that, because he couldn't get down to the engineering  
2 phase, and won't for some time, that's a question that we  
3 simply can't answer at this time.

4 CMSR. HARRINGTON: Okay. But you can  
5 see my concern. There's an existing company out there,  
6 your competitor. They wouldn't be getting money from  
7 their ratepayers to subsidize their thing because of  
8 penalties. That's my issue.

9 BY CMSR. HARRINGTON:

10 Q. Do you have an estimate now? So far, what I've heard  
11 is it's going to be areas that were not anticipated to  
12 be reached under the existing 95 percent goal. This  
13 would be some new territories beyond that. And, how  
14 many customers do you estimate that you'll connect with  
15 this \$2.8 million?

16 A. I can't give you an estimate at this time, just because  
17 we haven't narrowed down the sites enough to determine  
18 which ones we're going to, which determines the number  
19 of customers we'll be able to reach.

20 Q. And, I'm assuming that these would be the fairly rural  
21 areas of Coos County, and not like Berlin, for example,  
22 because I'm assuming that that would be covered under  
23 the 95 percent?

24 A. It's reasonable to assume that it will be the more

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[WITNESS: Freeman]

1 rural areas.

2 Q. What's your estimated, I don't know what the correct  
3 term is there, but hook-up rate? I mean, you go by 20  
4 houses -- I'll make it easy, you go by 10 houses, how  
5 many, or businesses, how many do you expect them to  
6 subscribe to the service? What percentage?

7 MR. McHUGH: Commissioner Harrington,  
8 that, to me, would be confidential information.

9 CMSR. HARRINGTON: Okay. Well, I'll  
10 wait then. That was all I had, basically. Thanks.

11 CHAIRMAN IGNATIUS: Commissioner Scott.

12 CMSR. SCOTT: Real quick.

13 BY CMSR. SCOTT:

14 Q. I was just wondering, obviously, there's got to be a  
15 lot of factors that go into how you determine where you  
16 go. Do you give deference to business customers over  
17 residential or you just take it all into account?

18 A. It's usually all, everything is taken into account.

19 CMSR. SCOTT: And. Madam Chair, I did  
20 have a question for Mr. McHugh, before we go to the  
21 confidential session also, but I can wait.

22 CHAIRMAN IGNATIUS: All right. Hold the  
23 thought. Thank you.

24 BY CHAIRMAN IGNATIUS:

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[WITNESS: Freeman]

1 Q. Mr. Freeman, is there any kind of a ballpark estimate  
2 you can give for an amount of money should translate  
3 into roughly a certain number of miles covered or  
4 connections made? You know, for every million dollars  
5 spent, you can expect somewhere in the range of X  
6 number of miles?

7 A. I really can't, just because it varies site to site.  
8 If you have a rural site that has fiber already there,  
9 available to it, you can get to that site for a  
10 relatively reasonable dollar figure. But, if you have  
11 a remote that's several miles from any existing fiber,  
12 it's going to cost a significant amount of money to  
13 cover a relatively few number of households, or  
14 businesses.

15 Q. How -- go ahead.

16 A. Uh-huh.

17 Q. How then do we evaluate the impact of going to a  
18 broadband investment plan, if we don't know if the use  
19 of this money results in 25. -- I mean, 95.1 percent  
20 deployment or 98 percent deployment? Those are very  
21 different results, in my mind, and in some of the  
22 fairness questions that Commissioner Harrington asked  
23 earlier. Is there any way to get a sense of what the  
24 level of coverage might be, if this plan were approved?

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[WITNESS: Freeman]

1 MR. McHUGH: I can answer that, Chair.  
2 I think, because we can't provide you with the information  
3 that you need at this time for that, the way I envision  
4 this essentially would work is that, you know, we would  
5 essentially hold the money in the restricted account, as I  
6 had mentioned, and then work with the Staff, over the  
7 course of this year, to come up with what the program  
8 would be. And, you know, so, your question, though, made  
9 me think of something else. So, I think the next step  
10 would be to say that, if, really, it looked like, you  
11 know, you would get from 95 percent coverage to, say,  
12 95.1 percent, that the money probably ought to go back in  
13 the form of refunds to customers, because it's -- the  
14 thought that there is some meaningful economic benefit to  
15 the state really wouldn't bear in out, in terms of the  
16 facts.

17 But that, if it was some acceptable  
18 percentage, and I don't have any ideas as to what it might  
19 be, or what -- certainly, I'm not going to sit here and,  
20 you know, ask you at this point in time what would you  
21 think is acceptable, but, basically, come up with a way to  
22 say that, "okay, this looks like what we can do." The  
23 Staff would file, you know, essentially a memorandum with  
24 the Commission saying "we recommend", you know, I mean,

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1 lay it out a little bit more, you know, "here's what we  
2 think we can get accomplished with the 2.8, or FairPoint  
3 thinks it can get accomplished with the \$2.8 million.  
4 And, we, the Staff, don't think it provides a benefit to  
5 the state, so the money should go back to customers." Or,  
6 "We think it, you know, it's a worthwhile program, and we  
7 recommend the Commission, you know, give final approval  
8 and authorize FairPoint to build."

9 And, it's not going to get done until  
10 sometime in 2013, in any event. So, we would have some  
11 work, you know, to get back to you this year.

12 So, I mean, the way I envisioned it, in  
13 light of the fact of what, you know, Mr. Freeman was  
14 explaining, that we can't give you these details, I was  
15 not expecting, quite frankly, some type of final order  
16 that would pop up in the next, you know, whatever it is, a  
17 couple a weeks or whatever, the Commission can issue an  
18 order saying "yes, it's approved", because there's just  
19 too much work that needs to get done.

20 So, you know, essentially the way it  
21 would, you know, if it doesn't pass sort of the  
22 preliminary threshold of "is it worthwhile?" Then, I'm  
23 just expecting an order that says -- whether it's legally,  
24 you know, permissible or just, even if it is, and it's not

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1 worthwhile in the Commission's view, then I would just get  
2 an order that says "give the money back to customers." In  
3 which case, you know, one of the reasons we are here today  
4 is also to say, you know, let us just do it in one bill  
5 credit, or maybe two, from a cash flow perspective.

6 But -- or, in the alternative is to get  
7 an order out that says "Well, you know, it sounds like it  
8 might have some potential, so we'll let you work with the  
9 Staff until later in year, to see if you can provide, you  
10 know, more details of where you would go." And, if the  
11 Commission finds it acceptable, at that time you would  
12 authorize the build.

13 I mean, if I could have come here,  
14 wrapped up an engineering package, you know, I would have  
15 been here saying "Here's what we want to do. You know,  
16 would you approve it." But we can't do that.

17 BY CHAIRMAN IGNATIUS:

18 Q. Mr. Freeman, you had said that you thought the final  
19 scope of the plan might be able to be filed late in the  
20 third quarter or the beginning of the fourth quarter of  
21 this year, is that right?

22 A. Yes.

23 Q. And, would that include actual locations, that the plan  
24 would be to extend out a certain area or go into a town

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1 that isn't currently covered?

2 A. Yes.

3 Q. How much more, the kind of plan that you're envisioning  
4 at that phase, would be -- what more would have to be  
5 done at that point to get to a construction level plan?  
6 How far down the process are you at that phase?

7 A. I would say that would be the planning would have  
8 provided their -- they would have done their initial  
9 analysis, and engineering would have a chance to do a  
10 high-level review of the jobs, so we don't have too  
11 many surprises that would be encountered when we  
12 actually get into the detailed engineering drawings to  
13 hand over to construction. So, that's sort of the  
14 level that I was looking at.

15 From a "what else would be required?"  
16 We'd actually have to go out and actually engineer, and  
17 provide all the necessary work for us -- for  
18 construction, so they could build the job.

19 Q. How long would that likely take?

20 A. That would take another three months.

21 Q. And, then, at that point, does it move into the  
22 construction phase?

23 A. Yes.

24 Q. I wanted to ask about the inclusion in the plan that

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1 says, if FairPoint can meet its 95 percent -- under the  
2 existing 95 percent requirement, if it can get to the  
3 point of 92 percent by December 31st, then it has  
4 another full year to get to 95 percent. But, if it  
5 isn't capable of getting there by the end of December  
6 of this year, then it doesn't have another year to get  
7 to the full 95 percent, it only has three months to get  
8 to the 95 percent. That seems illogical to me. "If  
9 you're ahead of the time, you get more time; if you're  
10 falling behind, you get less time." So, can you help  
11 me with the logic of that proposal?

12 A. The logic is, so, if this -- if an extension is  
13 granted, to spread out the build for next year, it's  
14 not that we're not going to -- the rationale is that we  
15 will not stop work that is ongoing this year. We  
16 wouldn't wait until next year to build everything. We  
17 would actually continue on our current plan, building  
18 this year, and meeting some minimum thresholds for  
19 year-end 2012, that would then allow us to roll this  
20 plan into sort of the second half of the 95 percent  
21 plan, that originally had a date of March 31st, 2013,  
22 and we could extend it for the year-end, so we can  
23 build that plan more efficiently. Making sure that  
24 we're focusing our workforce in areas that may or may

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1 not be 95 percent plan related, but also \$2.8 million  
2 plan related.

3 Doesn't look like I've explained it very  
4 well.

5 Q. I'm pondering.

6 A. No.

7 Q. I'm trying.

8 A. Let me see if I can -- let me take one more stab at it.

9 MR. MCHUGH: I can provide more details  
10 in the confidential setting on some other projects, that  
11 might help with some context.

12 CMSR. HARRINGTON: I mean, I think what  
13 I heard you say is that, if you complete the 92 percent by  
14 the end of this year, then the remaining 3 percent of that  
15 95 percent build-out will be combined into one larger  
16 project, if the 2.8 million is approved, and that planning  
17 would be done as a package deal?

18 WITNESS FREEMAN: Correct.

19 CMSR. HARRINGTON: Okay. That's what I  
20 thought. Thanks.

21 BY CHAIRMAN IGNATIUS:

22 Q. The plan also says that these penalty amounts could be  
23 put into a restricted fund and would be available for  
24 both capital expenditures and operating expenses. What

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1           protections are there, would there be to be certain  
2           that it doesn't all go to operating expenses for  
3           existing business of the Company, even existing  
4           broadband business of the Company, for example, all of  
5           the maintenance and driving and work that is involved  
6           in maintaining a broadband system? Is there any risk  
7           that those funds might be eaten up with legitimate  
8           operating expenses, and it's gone, and there's never  
9           been any expansion beyond the 95 percent?

10       A.    Well, from what Pat had said before, I believe we would  
11           have to work with the Staff before any plan is  
12           finalized, to ensure that everyone is comfortable of  
13           what the plan is. What sites are included, what's the  
14           expectation, what are the estimated costs, in order for  
15           the Commission to feel comfortable that the funds were  
16           used appropriately.

17                           CHAIRMAN IGNATIUS: All right.

18                           MR. MCHUGH: Can't we track that by job,  
19       Mr. Freeman?

20                           WITNESS FREEMAN: You can track it by  
21           job, by expenditure type. You can track it any number of  
22           ways.

23                           CHAIRMAN IGNATIUS: All right. Mr.  
24       McHugh, is there any, I guess you'd call it "redirect",

[WITNESS: Freeman]

1       although this isn't quite as formal as we often do, for  
2       Mr. Freeman?

3                       MR. MCHUGH:   No, ma'am.

4                       CHAIRMAN IGNATIUS:  All right.  And,  
5       Staff, anything that was raised you wanted to address,  
6       while we're still on the public session?

7                       MR. FOSSUM:  Not in the -- no, not in  
8       the public session.

9                       CHAIRMAN IGNATIUS:  All right.  Then,  
10       why don't we think about moving into more restricted.  
11       I've looked at the Motion for Confidential Treatment.  
12       And, does Staff have any view as to whether this is  
13       appropriate for confidential treatment?

14                      MR. FOSSUM:  Well, quite honestly, I  
15       don't know that I could even answer that.  I mean, and  
16       just the motion states that "FairPoint anticipates during  
17       [the] hearing, the Commission may request information".  
18       We don't know what the information is yet.  So, you know,  
19       we have the Company's representations at this point, but  
20       representations on information that nobody has yet seen or  
21       heard.  So, I don't know that I can answer that question  
22       at this time.  You know, I have no reason to doubt the  
23       Company at the moment.  But, and, again, we haven't heard  
24       anything and we haven't seen anything.

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1 MR. McHUGH: It's perhaps not a perfect  
2 remedy, but, certainly, one I think we've -- I think we  
3 worked on it before here, I don't want to get my states  
4 confused. But I know I've done it in other states, where,  
5 you know, at this point I think the public would have to  
6 leave, the phone would have to be shut off. But, to the  
7 extent there was public information or public testimony  
8 provided, you know, we can work with the transcript  
9 after-the-fact and identify what really should be  
10 confidential and what can be released in the transcripts,  
11 then posted on the Commission's website. And, I don't  
12 really -- I think that's workable at least. That's what I  
13 would offer.

14 CHAIRMAN IGNATIUS: Well, I think the  
15 motion does make a reference to "information may include  
16 location of planned facilities deployment, details on  
17 additional projects that FairPoint may have underway." I  
18 assume it may also include level of investment, level of  
19 percentage coverage at this point. Perhaps, I'm hoping,  
20 more on any kind of way to estimate a level of investment  
21 might lead to a certain level of percentage deployment or  
22 miles covered or something, some sort of ranges. I think  
23 all of those things would be -- would constitute  
24 commercial and sensitive information.

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1                   So, why don't we -- why don't we move  
2 forward into a confidential --

3                   (Chairman and Commissioners conferring.)

4                   CHAIRMAN IGNATIUS: Oh, yes. Okay. All  
5 right. In a moment, we'll move into a public -- a  
6 non-public session. But there was another question that  
7 Commissioner Scott had that I forgot to turn back to him.

8                   MR. McHUGH: Oh.

9                   CHAIRMAN IGNATIUS: To you, Mr. McHugh,  
10 in the public.

11                  CMSR. SCOTT: Should be quick. On your  
12 March -- Page 2 of your March 1 memo, you discuss some  
13 concerns regarding, in a billing solution, having time to  
14 get an IT solution done to make that happen. What's the  
15 -- and, then, later on in that same memo you talk perhaps  
16 you could bill in May or June. What's the time lag  
17 between us issuing an order, if we were to say "you need  
18 to bill", and you being able to do it?

19                  MR. McHUGH: Three to four months.

20                  CMSR. SCOTT: Three to four months.

21                  MR. McHUGH: Right.

22                  CMSR. SCOTT: So, May or June --

23                  MR. McHUGH: May or -- I've worked with  
24 the team. I mean, like a June bill credit should work.

[WITNESS: Freeman]

1 CMSR. SCOTT: So, May, as you suggested  
2 here, is not on the table anymore, as far as you're  
3 concerned?

4 MR. McHUGH: It would be very difficult,  
5 and other -- other work might have to be bumped.

6 CMSR. SCOTT: And, can you -- what does  
7 that mean, "other work would have to be bumped", what type  
8 of --

9 MR. McHUGH: So, to get billing changes  
10 made as an example, and there are other information  
11 technology changes that, you know, the Company has  
12 underway, some for wholesale customers, some for just, you  
13 know, system functionality. But, you know, these things  
14 get processed through what is called the "Change Request  
15 Process", and then the team works on developing the actual  
16 change request information, what has to get done to the  
17 systems to effectuate whatever the change is. And, so,  
18 there is a grouping of projects in that regard that are  
19 underway, you know, now. And, if we were really forced to  
20 do a May bill credit, it would -- it would result in some  
21 things that are currently underway getting pushed out into  
22 the future. So, we only -- we only have a certain  
23 capacity to get every change request through the system  
24 that you might want to have. So, you have to schedule

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1       them out, and, you know, and this is not -- well, it's on  
2       the schedule now, but it wasn't on the schedule back then.  
3       So, it would take some time.

4                   CMSR. SCOTT:    So, if we were to issue an  
5       order 1 April, you could meet a June deadline, is that --

6                   MR. McHUGH:    Yes.

7                   CMSR. SCOTT:    Thank you.

8                   CHAIRMAN IGNATIUS:  And, Mr. McHugh, you  
9       know from the order the concern raised that, with Senate  
10      Bill 48, there's a potential for a very limited number of  
11      areas that the Commission would have enforcement  
12      authority, and a concern in our order that perhaps a  
13      promise to make refunds might not fall within the  
14      parameters of the things the Commission could enforce?

15                   MR. McHUGH:    I think, from a timing  
16      perspective, I don't think June's going to be an issue.  I  
17      mean, there's a 60-day effective period in the bill.  And,  
18      I don't know when it possibly could get to the Governor,  
19      and if you assume he signs it.  You know, I just don't  
20      know how that would really be much before mid April.  So,  
21      you're taking about a mid June, maybe, implementation.  
22      But I've already, you know, told the team of the concern  
23      that the Commission had.  So, you know, I would expect  
24      that, you know, for some reason it came out earlier, you

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[WITNESS: Freeman]

1 would want the bill credits issued earlier, and we would  
2 have to deal with it. But, you know, the bottom line is,  
3 SB 48 or not, if the determination is these credits go  
4 back to customers, then that's what we're going to do.  
5 Period.

6 CHAIRMAN IGNATIUS: So, your view is  
7 that you don't need an amendment to SB 48 to make that  
8 happen, and that the commitment that you make on the  
9 record on behalf of the Company would guarantee that it be  
10 repaid, whether it's in June or August or September?

11 MR. McHUGH: Correct.

12 CHAIRMAN IGNATIUS: All right. Why  
13 don't we then move to a confidential portion of the  
14 transcript. Turn off the phone listening system. And, I  
15 want to ask, Mr. McHugh, Ms. Miller is here from DRED, do  
16 you have a concern with her being present?

17 MR. McHUGH: I do. I would ask that she  
18 be excused.

19 CHAIRMAN IGNATIUS: All right. Thank  
20 you for your attendance today, Ms. Miller. If you want to  
21 stay and return, we can find you down the hall. If you  
22 have other work to do, that's all right, too.

23 MS. MILLER: Do you have an anticipated  
24 amount of time the confidential session will take place?

[WITNESS: Freeman]

1 CHAIRMAN IGNATIUS: You know, I think it  
2 could be 30 minutes, perhaps longer.

3 MS. MILLER: Okay.

4 MR. McHUGH: Would there be anything  
5 left for public? I'm just asking that.

6 MS. MILLER: Oh. Yes.

7 CHAIRMAN IGNATIUS: Yes, there may not  
8 be a lot left to do.

9 MR. McHUGH: That's all I was --

10 CHAIRMAN IGNATIUS: Yes, we don't -- I  
11 don't think we're holding anything back, but you never  
12 know. This isn't the normal hearing to begin with.

13 MS. MILLER: Okay. Well, I appreciate  
14 your time and have a good day.

15 CHAIRMAN IGNATIUS: Thank you. Mr.  
16 Fossum, is the -- this is off the record.

17 (This hearing moved into a **Confidential**  
18 **Session. Pages 65 through 102** of the  
19 hearing transcript is contained under  
20 separate cover designated as  
21 "**Confidential & Proprietary**".)

22

23

24



1                   **(Hearing continues on the public**  
2                   **session.)**

3                   CHAIRMAN IGNATIUS: I think, can we get  
4 off the confidential transcript? Is there anything else  
5 that needs to be addressed of a confidential nature?

6                   MR. FOSSUM: I have one question, I  
7 think that's sort of a mix, confidential and not. And, if  
8 my notes are up to speed, at the moment, FairPoint has  
9 agreed to provide I believe it's five things that the  
10 Commission has requested to see. And, the last one, the  
11 cost example that Mr. McHugh was just referring to, the  
12 Commission reserved a confidential record request for  
13 that. Is the Commission reserving record request space  
14 for the others, or are those simply for informational  
15 purposes and are not -- is it your intention that they be  
16 part of the record?

17                   CHAIRMAN IGNATIUS: Thank you. And, I  
18 -- this has been the strangest proceeding that I know of.  
19 And, so, our kind of normal protocols are -- I'm not doing  
20 a very good job of keeping track of them, because it  
21 doesn't seem to quite fit with part oral argument and part  
22 witness.

23                   I think that's a good point, to make  
24 sure that whatever comes in, we identify clearly what it

1 is. We mark it to be in the record. And, to the extent  
2 it requires confidential treatment, we can make that  
3 arrangement. And, so, although I hadn't mentioned that  
4 yet, I think that's a very good suggestion.

5 I think the five items, why don't you  
6 lay out what you've written down, because I'm not sure I  
7 have them as orderly in a list as you might have.

8 MR. FOSSUM: From what I have written  
9 here, in response to Commissioner Harrington, there's a  
10 request that FairPoint provide a legal analysis for the  
11 authority to transfer funds or to use the funds for this  
12 broadband expansion.

13 The second, again, in response to  
14 Commissioner Harrington, was a financial analysis, I don't  
15 know that there was a level of detail specified, about the  
16 payback on this investment, in term of its overall  
17 profitability over time.

18 The third, in response to Commissioner  
19 Scott, I guess a general question about a dollar amount  
20 above the \$2.8 million that the Company would invest in  
21 this project.

22 A question about -- the fourth is a  
23 question on the take rate of broadband in rural areas, I  
24 guess, particularly in Coos County, in this example.

1                   And, finally, the cost examples that Mr.  
2                   McHugh spoke about for equipping remote terminals. And,  
3                   my understanding was that that -- those examples would be  
4                   part of the 95 percent that they have already done some  
5                   planning and engineering for, and would also set out the  
6                   number of access lines served by that equipment upgrade.

7                   So, that's what I have.

8                   MR. McHUGH: That's fairly -- I feel  
9                   that's consistent with my notes.

10                  CHAIRMAN IGNATIUS: And, it looks as  
11                  though all but the first, which is the sort of legal  
12                  analysis or is it even a "fairness" analysis of how the  
13                  funds might be used, that that would not require  
14                  confidential treatment, but the other four, involving  
15                  financial estimates, take rates, examples of other  
16                  investments, seem fairly to be given confidential  
17                  treatment.

18                  MR. McHUGH: I would agree with that.

19                  CHAIRMAN IGNATIUS: Commissioner Scott.

20                  CMSR. SCOTT: Yes. And, maybe it's not  
21                  on the list for a reason, but the other thing we talked  
22                  about, Mr. McHugh, is some kind of language that would  
23                  make this binding, you know, moving forward, if we were to  
24                  go with the proposal. Now, maybe that was in your mind,

1 and maybe it's the right case, that that also would be  
2 worked out with Staff, much like the final details. But  
3 that was an issue I was looking to delve further into.

4 MR. McHUGH: I'll try and address that  
5 in the -- sort of the legal analysis requested by  
6 Commissioner Harrington.

7 CMSR. SCOTT: Thank you.

8 CHAIRMAN IGNATIUS: I think, we haven't  
9 given Staff an opportunity just to speak to what it thinks  
10 is the appropriate treatment here. We've been discussing  
11 the Company's proposal. I assume -- well, I shouldn't  
12 assume. Does Staff intend to call a witness?

13 MR. FOSSUM: No. Staff does not intend  
14 to call a witness.

15 CHAIRMAN IGNATIUS: Does Staff have an  
16 intention to make an sort of offer of proof or wait for  
17 closings at the end of the proceeding?

18 MR. FOSSUM: I believe, at this point,  
19 it was our intent to -- excuse me, our intention simply to  
20 wait for closings.

21 CHAIRMAN IGNATIUS: All right. Then, is  
22 there anything else that the Company had intended to bring  
23 forward today?

24 MR. McHUGH: No, ma'am.

1 CHAIRMAN IGNATIUS: Any other questions  
2 Staff has to the Company?

3 MR. FOSSUM: Not at present, no.

4 CHAIRMAN IGNATIUS: Questions  
5 Commissioners have to the Company? Any questions that the  
6 Commissioners have to the Staff? I mean, I'll ask sort of  
7 the corollary of some of what I was asking the Company.  
8 Are you aware of responses to any of the things, such as  
9 is there a standard take rate one can expect in a rural  
10 community for new broadband deployment in an area that's  
11 not now served?

12 MR. FOSSUM: I'll allow those who would  
13 be more apt to know this information to respond to it. On  
14 behalf of myself, I know that that is, my thought, is that  
15 is generally marketing type information that Staff  
16 generally would not collect. But I would defer to more  
17 expert members of Staff on that.

18 MR. LADAM: I guess I would just observe  
19 that one factor in take rate is going to be whether  
20 there's a competitive offering. So, if you can get  
21 broadband from the cable company, you would expect a lower  
22 take rate from the telephone company offering, and vice  
23 versa. And, therefore, it's often the case that the take  
24 rate in a rural area, with less competition, is higher

1 than in a metro area, I think.

2 CHAIRMAN IGNATIUS: And, I think Mr.  
3 McHugh had said something about "a rural area might be  
4 more in the 40 percent range than the 30 percent range."  
5 That's for that very reason?

6 MR. McHUGH: Right. I would agree with  
7 that. That's fair.

8 CHAIRMAN IGNATIUS: How about the  
9 question of any way to estimate a million dollars of  
10 investment should get you somewhere in the range of  
11 something, in terms of what results from that investment  
12 for broadband?

13 MS. BAILEY: I think the Company could  
14 produce a range. This would have to be probably -- I'd  
15 have to go on the confidential record for what I'm about  
16 to say, okay? When we were working on the bankruptcy  
17 case, they had an exhibit that showed the number of remote  
18 terminals that required a fiber build. And, then, they  
19 broke it out by customers served. So, if it were a remote  
20 terminal that served 25 customers, and it needed fiber to  
21 get from the central office to the remote terminal, the  
22 range was "X" millions. And, then, you could even figure  
23 out how many dollars per customer it cost. And, then, it  
24 went down from there. So, then, there were remote

1 terminals that served 50 customers, with or without fiber.  
2 And, the breaking point, from my recollection was, if it  
3 needed fiber, it was really expensive. And, if it didn't  
4 need fiber, it wasn't that expensive, but the cost per  
5 customer depended on how many customers were served by the  
6 remote terminal. I don't know, is any of that  
7 confidential?

8 MR. McHUGH: I think the way you laid it  
9 out, no. Not that I can see.

10 MS. BAILEY: Okay.

11 MR. McHUGH: I don't recall the exhibit.  
12 I would assume, based on your description, the exhibit  
13 would have -- the document would have been confidential?

14 MS. BAILEY: Yes. It was confidential.  
15 And, it was something that was presented, it wasn't an  
16 exhibit in the case.

17 MR. McHUGH: Oh. Okay. I'm sorry.

18 MS. BAILEY: It was, you know, it was a  
19 conversation that we had, and you were showing me, --

20 MR. McHUGH: Okay. That's --

21 MS. BAILEY: -- you know, how many lines  
22 you needed to get to with remote terminals that serve this  
23 many customers. And, we haven't had an update on that, so  
24 that would be really interesting to know. But it would

1 probably take a lot of work to put that together.

2 CHAIRMAN IGNATIUS: All right. I guess,  
3 then, if there's nothing else, does Staff have a position  
4 on the proposal the Company has made on the best use of  
5 the penalty funds?

6 MR. FOSSUM: Our position is -- well,  
7 while as a general matter, I think that we agree that  
8 providing services to those who would otherwise not have  
9 services is sort of an inherently good thing. It's not  
10 clear that this particular plan meets the concerns that  
11 the Commission had set out. I mean, at the moment, and  
12 subject, of course, to whatever else the Company may  
13 provide, there are questions about the scope of the  
14 expansion to be undertaken, the number of customers that  
15 would ultimately be served, and the cost to serve them,  
16 and whether -- well, not "whether", but I guess the degree  
17 to which that amount would be incremental to the  
18 95 percent that's already obligated.

19 And, as the Commissioners have also  
20 asked about, too, there are questions about the ongoing  
21 enforceability or the enforcement authority of the  
22 Commission. The plan, the time frame for the plan runs  
23 through the end of 2013, another year and a half or more  
24 from now. And, it's not clear at present what enforcement



1 authority the Commission would have in a year or a year  
2 and a half, should any of the obligations that arise from  
3 this plan be permitted to go into effect.

4 To the extent the Commission ultimately  
5 determines that the money should be spent on bill credits,  
6 rather than the plan itself, Staff doesn't object to  
7 bringing the credits down to one or two months from the  
8 original recommendation that Staff had made.

9 And, I guess, to the extent that's a  
10 position, that would be Staff's point of view. Thank you.

11 CHAIRMAN IGNATIUS: Thank you. Mr.  
12 McHugh.

13 MR. McHUGH: I don't have a closing  
14 argument, *per se*. I didn't look at this proceeding as  
15 something of that nature. In light of the fact, and it  
16 might have been different, but, in the light of the fact  
17 that, from what I can tell, and what we have here today,  
18 there's no opposition to the plan from competitors or  
19 other parties to the original merger docket, DT 07-011.  
20 So, I think that's one of the reasons for the Commission  
21 why it sort of came out this way. Because I didn't see  
22 the need to formally marshalize like seven or eight  
23 witnesses to explain every little piece and component, and  
24 why I've been trying to explain it to you as, you know,

1 the State President in New Hampshire and Assistant General  
2 Counsel for the Company.

3 In light of -- so, obviously, I'm going  
4 to need some time to work on the requests. I can't tell  
5 you right now off the top of my head when I think I can  
6 get these. So, that some of them, you know, will be I  
7 think fairly quick, right, I can call up our marketing  
8 folks and they can probably tell me the take rate. And,  
9 Mr. Freeman has got to work on some of the community  
10 estimates we talked about. I don't know how long, for  
11 example, the financial impact analysis will take. And,  
12 I'm just going to need some time to set aside for myself  
13 to work on sort of the legal basis type exhibit. And, I'm  
14 out-of-state all of next week. So, that's -- that's not  
15 an excuse, I mean, I'm going to be trying to work on it,  
16 but I'm in meetings out-of-state for most of next week.

17 I guess then, so, the question is, "so  
18 what do you want us to do, Mr. McHugh?" And, I guess what  
19 I would ask for right now is that you do amend the  
20 February 6 order to allow FairPoint to provide the bill  
21 credits at some point in June of this year, if it's  
22 ultimately required, because (a) the Commission does not  
23 want to move forward with use of the money for a broadband  
24 program, or (b) if I cannot satisfy any concerns with

1 respect to enforceability and/or whether they relate or  
2 don't relate to Senate Bill 48. But, if I can't satisfy  
3 those concerns, then, and you want to make sure that the  
4 rebates go out on a specific date, it would be, I would  
5 say, in June. And, then, -- then, we leave it at that,  
6 almost as like an interim order. And, then, the "interim"  
7 would clearly mean to me "more to follow", if you get past  
8 the enforceability issues, then I would submit that still  
9 you would want, I would think, more time to evaluate just  
10 what can we do with 3 -- or, I keep saying "3", but it's  
11 the \$2.8 million. So that, if the Commission feels it's  
12 not of a benefit to the state to use the money to serve  
13 maybe a very, very limited number of customers, then it  
14 would go back to bill credits. Or, the alternative is  
15 that the Commission does feel that it would be of a  
16 benefit to the state to use the money to build broadband  
17 where FairPoint otherwise would not build, then we, you  
18 know, we proceed in that course. And, that will just take  
19 some time into later this year. I personally don't see  
20 any other way how we can go about it, other than into sort  
21 of phases or steps, for lack of a better description.

22 CHAIRMAN IGNATIUS: So, are you saying,  
23 if we were to conclude "This just isn't a good idea, let's  
24 just move to bill credits," to have an order that says "do

1 that no later than June 2012"?

2 MR. McHUGH: Right. Yes.

3 CHAIRMAN IGNATIUS: And, if we were to  
4 say "We're still thinking about it, and we want to see  
5 more information. Then, don't do anything with bill  
6 credits, and provide more information, and await a further  
7 order of the Commission"?

8 MR. McHUGH: Correct.

9 MR. FOSSUM: If I may interject for a  
10 moment, I think that, I'm not sure what the Commission  
11 wants to do with this exactly, but the Commission may have  
12 to issue another order in any event. The February order  
13 essentially was self-executing, and stated that "if the  
14 plan, as proposed, wasn't approved, then bill credits  
15 would begin on April 1st." So, in any event, the  
16 Commission is going to have to issue some kind of order by  
17 April 1st, if it wants to do anything other than start  
18 applying bill credits by April 1st, potentially.

19 Somewhat related to that, I don't know,  
20 Mr. McHugh, with respect to his schedule and what he may  
21 do, I don't know how long it would take FairPoint to put  
22 together the information that the Commission has  
23 requested. But it would seem to make sense to put some  
24 sort of date certain on the record, so that we all know

1 what to expect and by when.

2 CHAIRMAN IGNATIUS: I agree. I think  
3 that -- I had been hoping two weeks would be sufficient  
4 for those five record requests.

5 MR. McHUGH: I was just going to  
6 suggest, why don't we wait for two weeks. And, if, for  
7 some reason, I need more time, I'll simply communicate it  
8 to the Staff and the Commission and ask for more time.  
9 And, understanding that, whatever I have, I will provide  
10 as well by that deadline.

11 And, in terms of, and maybe I'm under  
12 thinking it, but, in terms of the April 1 deadline, would  
13 it be possible to issue, from Ms. Howland, a secretarial  
14 letter that says "temporarily, pending further Commission  
15 review, the April 1st deadline in the order of February 6  
16 is temporarily suspended"? And, I don't know, I'm  
17 thinking of something relatively easy that would work is  
18 all I'm trying to express.

19 CHAIRMAN IGNATIUS: I understand. You  
20 need to know whether you're gearing up for doing bill  
21 credits or not?

22 MR. McHUGH: Correct.

23 CHAIRMAN IGNATIUS: All right. We'll  
24 take all of that into consideration.

1                   Are there any other questions that --  
2 Commissioner Scott.

3                   CMSR. SCOTT: Just one, sorry to keep  
4 continuing this. Assuming, again, the plan, rather than  
5 the billing, we've been kind of talking about a generic  
6 number of people, number of places served, that type of  
7 thing. I'm wondering, when we look at public benefit, the  
8 schools, libraries, public places like that, and perhaps  
9 businesses, I'm wondering, does it make sense to try to,  
10 if there were limited resources, there are pockets where  
11 we could get those type of facilities, is that not the --  
12 I guess it's not a question, I guess. Do you have the  
13 capability to look at that type of thing in a plan? That  
14 would be the question I'd ask.

15                   MR. McHUGH: See, I think -- well, maybe  
16 I'll let Steve answer, but what I was thinking is, it  
17 would depend on, in the end, what a plan would look like,  
18 because we're going to equip the RTs, which are then going  
19 to serve whatever customers happen to be, you know,  
20 associated with those RTs. So, if the goal is that, you  
21 know, "Pat and Steve, go pick a bunch of RTs that run by  
22 schools that would otherwise be unserved", I mean, as  
23 something to look at, would something like that work?

24                   MR. FREEMAN: We can look at it.

1 MR. McHUGH: I mean, we can look at it.  
2 I don't know that I can get you that in two weeks, though,  
3 Commissioner Scott. That's --

4 CMSR. SCOTT: No. I was thinking as a  
5 criteria, maybe.

6 MR. McHUGH: Yes. Okay.

7 CHAIRMAN IGNATIUS: And, anything else?  
8 Commissioner Harrington, you had another question.

9 CMSR. HARRINGTON: Yes. Just to clarify  
10 something I brought up before, on the -- if you would be  
11 -- I'm assuming the idea of this is to go where there  
12 isn't any broadband now. And, I asked you if you would be  
13 competing with existing broadband suppliers, with the  
14 exception of satellite, and you said "it simply wasn't  
15 addressed." So, maybe that's another thing that you can  
16 come back with an answer for. Do you anticipate that  
17 there would be -- you'd be building in areas where you  
18 would be in direct competition with somebody else, or are  
19 you saying except for satellite?

20 MR. McHUGH: And, we will, I'll talk to  
21 Steve and other members of the team. But I'm just trying  
22 to think how I can explain it to you, other than, you  
23 know, the competitors don't tell us where they are. So,  
24 we're not -- I mean, you might know, when you go to a

1 town, that Comcast, you know, provides its voice and  
2 television service. So, --

3 CMSR. HARRINGTON: Aren't they  
4 franchised by the town?

5 MR. McHUGH: But that doesn't mean they  
6 provide service to everybody or every area in the town. I  
7 mean, yes, I think that each town has a franchise  
8 requirement, at least that I know of. But that doesn't  
9 mean they're actually going to provide service to the  
10 entire town.

11 CMSR. HARRINGTON: Well, maybe to the  
12 extent possible, I guess is what I'm looking at here, is  
13 your intent to minimize the amount of bringing into areas  
14 where there's presently broadband, and to concentrate on  
15 the areas where there isn't any?

16 MR. McHUGH: Okay. Fair enough.

17 CMSR. HARRINGTON: Okay.

18 CHAIRMAN IGNATIUS: All right. If  
19 nothing further, this is an odd one, in terms of format.  
20 But I appreciate everyone's willingness to be a little bit  
21 unusual in how we got the information out, and I found it  
22 very helpful. So, thank you.

23 Unless there's anything further, we'll  
24 take all of this under advisement.



1 MR. MCHUGH: Thank you for your time  
2 today.

3 (Whereupon the hearing ended at 3:44  
4 p.m.)

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