

1 STATE OF NEW HAMPSHIRE

2 PUBLIC UTILITIES COMMISSION

3 *(Redacted- Confidential Pages Removed)*

4 October 25, 2007 - 9:22 a.m.
5 Concord, New Hampshire

Day IV

6
7 RE: DT 07-011
8 VERIZON NEW ENGLAND, ET AL:
9 Transfer of Assets to FairPoint
10 Communications, Inc.

NH PUC NOV05'07 PM 3:42

11 **PRESENT:** Chairman Thomas B. Getz, Presiding
12 Commissioner Graham J. Morrison
13 Commissioner Clifton C. Below

Jody O'Marra, Clerk

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16 Patrick McHugh, Esq. (Devine, Millimet..)
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P R O C E E D I N G S

CHAIRMAN GETZ: Okay. Good morning, everyone. We're back on the record in DT 07-011. Actually, first off, let's take appearances for today.

MR. COOLBROTH: Good morning, Mr. Chairman. For FairPoint Communications, Inc., Frederick Coolbroth, Melinda Gehris, and Kevin Baum, of the firm of Devine, Millimet & Branch. And, with us at counsel table are Walter Leach and Peter Nixon from the Company.

CHAIRMAN GETZ: Good morning.

CMSR. MORRISON: Good morning.

CMSR. BELOW: Good morning.

MR. DEL VECCHIO: Good morning, Mr. Chairman, Commissioner Morrison, Commissioner Below. Ready to rock and roll on behalf of Verizon are Victor Del Vecchio and Sarah Knowlton. And, with us is Sheila Gorman, among others.

CHAIRMAN GETZ: Good morning.

CMSR. MORRISON: Good morning.

CMSR. BELOW: Good morning.

MR. MANDL: Good morning, Commissioners. Alan Mandl, for New England Cable and Telecommunications Association and Comcast Phone of New Hampshire.

CHAIRMAN GETZ: Good morning.

1 CMSR. MORRISON: Good morning.

2 CMSR. BELOW: Good morning.

3 MR. RUBIN: Good morning. Scott Rubin,
4 representing the Communications Workers of America and the
5 International Brotherhood of Electrical Workers. With me
6 at the table is our consultant, Randy Barber, and, from
7 IBEW, Robert Erickson.

8 CHAIRMAN GETZ: Good morning.

9 CMSR. MORRISON: Good morning.

10 CMSR. BELOW: Good morning.

11 MR. LINDER: Good morning. Alan Linder
12 from New Hampshire Legal Assistance, representing Verizon
13 residential customer Irene Schmitt.

14 CHAIRMAN GETZ: Good morning.

15 CMSR. MORRISON: Good morning.

16 CMSR. BELOW: Good morning.

17 MR. LINDER: Good morning.

18 MS. HOLLENBERG: Good morning. Rorie
19 Hollenberg, Meredith Hatfield, Kenneth Traum, Susan
20 Baldwin, and David Brevitz here for the Office of Consumer
21 Advocate.

22 CHAIRMAN GETZ: Good morning.

23 CMSR. MORRISON: Good morning.

24 CMSR. BELOW: Good morning.

10/25/07 DAY 4 VERIZON/FAIRPOINT-PUBLIC

1 MS. FABRIZIO: Good morning. Lynn
2 Fabrizio, Kate Bailey, John Antonuk, Randy Vickroy, and
3 David Goyette for Staff.

4 CHAIRMAN GETZ: Okay. Good morning.

5 CMSR. MORRISON: Good morning.

6 CMSR. BELOW: Good morning.

7 CHAIRMAN GETZ: Before -- We'll get to
8 Mr. Brevitz in a second, I just want to suggest this. The
9 procedural schedule has been kind of a moving target as
10 we've gone along. We may have created some -- I may have
11 misspoke or miscommunicated at some points about what the
12 intentions are. I guess I would suggest that we -- folks
13 speak over the break, if there's any preferences about how
14 we proceed from here on out, and then we'll talk about it
15 when we return after the morning recess.

16 I'd just say a couple of things. In
17 general, expecting not to do the Electric panels until
18 next week. There's, I think, a request for oral argument,
19 both from Verizon and from PSNH, on Verizon's motion to
20 exclude, and, you know, maybe we could get that done
21 tomorrow. There's the two MOUs, one with NHTA and one
22 with NHLA, that I'm assuming won't take up a lot of time.
23 So, if there's a recommendation of the parties where best
24 to fit those in, then I think we're flexible on how that

1 occurs. My understanding for Monday was that we had
2 scheduled the Brown/Harrington/Smee panel. And, I believe
3 FairPoint is asking that Mr. Nixon go after that panel, is
4 that correct?

5 MR. COOLBROTH: That's correct, Mr.
6 Chairman.

7 CHAIRMAN GETZ: Okay. And, then, also I
8 believe, Mr. Del Vecchio, you've asked that Mr. Nestor be
9 able to go after the Electric panel. So, I guess, setting
10 out those general parameters, I'm hopeful today that we
11 get -- we hear from Mr. Brevitz, Mr. Antonuk, and
12 Mr. Vickroy. And, my understanding is there's a
13 possibility of hearing from Mr. Skrivan, and I guess see
14 how far we go with him. And, then, I guess, with those
15 procedural principles, if we can -- if the parties can
16 speak at the morning break, and then let's revisit where
17 we are after that, to see if we have a meeting of the
18 minds on what happens next.

19 Okay. And, then, with that, is there
20 anything else anyone would like to bring up?

21 MR. RUBIN: Yes, Mr. Chairman. Another
22 I guess a combination procedural/evidentiary matter. The
23 parties had a brief discussion this morning about the best
24 procedure to get FairPoint's S-4 filing into the record.

1 And, I believe we have agreement of all counsel that the
2 Commission could just take administrative notice of that
3 document. It's on file with the Securities & Exchange
4 Commission. And, I believe FairPoint indicated they could
5 provide for the record the link on the -- on a website to
6 the full text of that document, rather than reproducing
7 the several hundred page document. So, I guess I would
8 formally ask the Commission to take administrative notice
9 of that document.

10 MR. COOLBROTH: And, Mr. Chairman, we
11 have no objection to doing so and can provide the link.
12 The SEC operates a Electronic Data Generation and
13 Retrieval site, known as "EDGAR" is the acronym for that
14 site. And, we can provide a link to that site where the
15 registration statement on Form S-4 as it became effective
16 is located.

17 CHAIRMAN GETZ: Okay.

18 MS. HOLLENBERG: Excuse me. Actually, I
19 don't want to be heard on this issue, but just one issue
20 before we proceed.

21 CHAIRMAN GETZ: Okay. All right. Is
22 there any objection to taking administrative notice?
23 Hearing no objection, we will take administrative notice
24 of the S-4.

1 (Administrative notice taken.)

2 CHAIRMAN GETZ: Ms. Hollenberg.

3 MS. HOLLENBERG: Thank you. I just
4 wanted to mention, before we proceed with Mr. Brevitz, and
5 I've spoken with FairPoint about this this morning, when
6 the Company redesignated the testimony, there were some
7 differences that resulted between the redesignated version
8 and the original version filed with the Commission. And,
9 I just wanted to advise the Commission of what those
10 differences were. Generally, there are some differences
11 in line numbers and pages numbers, and there are also, the
12 way that FairPoint filed the redesignated testimony, they
13 filed the public exhibits with the public version and the
14 highly confidential exhibits with the highly confidential
15 version. And, so, if you only have one version of them,
16 you might not have all of the exhibits. So, you will need
17 to collate the three versions of exhibits in order to have
18 a full packet of them.

19 CHAIRMAN GETZ: Well, you may not know
20 the answer to this question, I guess, is what do we have
21 electronically?

22 MS. HOLLENBERG: I do not know. That
23 would be the Company. The Company made the filing.

24 MR. COOLBROTH: You have everything, Mr.

1 Chairman. And, in terms of, in each file, --

2 MS. GEHRIS: Do you want --

3 MR. COOLBROTH: Ms. Gehris can answer.

4 MS. GEHRIS: Mr. Chairman, what you have
5 is the public version with the public exhibits, the highly
6 confidential version with the highly confidential
7 exhibits, and you should also have the confidential
8 version of the confidential exhibits. And, if it's easier
9 to have them in paper, we can certainly make that happen
10 as well.

11 CHAIRMAN GETZ: Okay. Well, we'll just
12 have to make sure, when we go through, that we have paper
13 and electronic versions, to make sure we've got it all
14 before us. Okay. Thank you.

15 MS. HOLLENBERG: And, just to give you
16 the heads-up that the same problems, I believe, are going
17 to occur with Ms. Baldwin's, or the same inconsistencies,
18 not necessarily "problems", but will be present with
19 Ms. Baldwin's testimony as well.

20 CHAIRMAN GETZ: Okay. Thank you.
21 Anything else?

22 MR. DEL VECCHIO: Yes, Mr. Chairman, one
23 other procedural matter. We were asked yesterday to
24 provide a reply in New Hampshire to a question asked as a

1 record request in Maine, I believe it was ODR-14 regarding
2 customer migration, and we will also reply in New
3 Hampshire. And, I would ask that we mark for
4 identification as "Verizon Exhibit 10" the record request
5 associated with that.

6 **(Verizon Exhibit 10 reserved.)**

7 CHAIRMAN GETZ: Let me -- Mr. Del
8 Vecchio, was there one other thing about the -- did OCA
9 ask on Exhibit 57 about a citation correction that there
10 was -- do you recall, Ms. Hollenberg? There was a
11 citation that you thought was an error that you had asked
12 that the --

13 MS. HOLLENBERG: Oh, yes. I think that
14 was to FairPoint --

15 CHAIRMAN GETZ: In Mr. -- I'm sorry, it
16 was in Mr. King's testimony, I believe.

17 MS. HOLLENBERG: Yes. Yes, he was -- in
18 one of his responses, and I can get that to FairPoint at
19 the break, but I don't have my notes from yesterday. In
20 one of his responses, he referred to "OCA R-1", and we did
21 not receive a response to OCA R-1, we only received an
22 objection. So, he must have meant another, another data
23 response.

24 MR. COOLBROTH: Mr. Chairman, we are

1 checking on that, following up.

2 CHAIRMAN GETZ: Okay. All right. Thank
3 you. Okay, that's all I have from my list.

4 MS. HOLLENBERG: Thank you.

5 CHAIRMAN GETZ: Anything else?

6 (No verbal response)

7 CHAIRMAN GETZ: Okay. Mr. Brevitz has
8 been waiting patiently. And, I believe we start with you,
9 Mr. Rubin.

10 MR. RUBIN: Yes. Thank you, Mr.
11 Chairman. Good morning, Mr. Brevitz.

12 WITNESS BREVITZ: Good morning.

13 **DAVID BREVITZ, Previously sworn**

14 **CROSS-EXAMINATION (resumed)**

15 BY MR. RUBIN:

16 Q. Were you involved as an expert witness in the review of
17 the transaction that created Windstream Communications?

18 A. Yes, I was.

19 Q. Who were the parties to that transaction?

20 A. There were two joint applicants, one was Alltel, on
21 behalf of its Local Telecommunications Division, the
22 second party was Valor Communications.

23 Q. Was the structure of that transaction similar to the
24 proposed structure of this transaction?

1 A. I address that in my testimony. And, in -- there are
2 some superficial similarities, in that it's a Reverse
3 Morris Trust transaction. But, beyond that, there are
4 more differences than there are similarities.
5 Essentially, Alltel acquired Valor. Alltel
6 shareholders owned 85 percent of the resulting new
7 company, while Valor owned 15 percent. That's compared
8 to the 60/40 split here. Valor management did not stay
9 with the new entity. It basically left and was
10 replaced in entirety by the Alltel Local
11 Telecommunications Division management. In fact,
12 Alltel went so far as to hire a chief operating officer
13 from outside, rather than take Valor management people.

14 The leverage was different. The
15 leverage for the new company was proposed at 3.5 times,
16 here it's 4.1. And, what I consider to be a striking
17 difference is the Valor telecommunications entity was
18 already served by Alltel for its back office system.
19 So, there was no integration or development required to
20 the extent that's being contemplated with this
21 transaction.

22 And, in sum, and I think this is what I
23 said in general in my testimony, is, essentially,
24 Alltel's intact Local Telecommunications Division was

1 transferred with its management and operations intact
2 to this new entity, and along the way they picked up
3 Valor Communications, which was in some financial
4 difficulties at the time anyway.

5 Q. Yesterday there was a document marked as "FairPoint
6 Exhibit 38", it's a one-page document. Do you have a
7 copy of that with you?

8 A. That was in the green folder I've got. Yes, I do have
9 it.

10 Q. Yes. That's a one-page financial summary for Verizon
11 New Hampshire. Are we looking at the same thing?

12 A. Yes.

13 Q. Would it be fair to call you an expert on the
14 regulation of public utilities?

15 A. Yes, particularly on telecommunications utilities.
16 I've been in this business since 1981.

17 Q. As a regulatory expert, can you render an opinion about
18 Verizon New Hampshire's financial condition or its need
19 for a rate change based on this one-page document?

20 A. No such opinion can be rendered based on this one page.
21 I have seen this sort of accounting display many times.
22 It's a starting place for a rate case. It's a starting
23 place from the Company's books. When a company does
24 file for rate relief, they tend to start with these

1 kind of figures and make a variety of adjustments to
2 them, in order to present an adjusted going-forward
3 view of operations financially. Likewise, the
4 intervenors that participate in that case also present
5 adjustments to the financial picture. This one page is
6 not the end of the story, as far as what the actual
7 earnings of the company would be deemed to be from a
8 regulatory standpoint.

9 In fact, I have participated in many
10 rate cases, one of the most recent ones in New England
11 was in Vermont in 2004 and 2005. The picture there was
12 similarly gloomy to this presentation, and the Board
13 issued there a final order finding 24 million in excess
14 revenues and ordering rate reductions. Two of the
15 issues there were with regard to corporate allocations,
16 and there was also an issue with regard to how the --
17 how Verizon was implementing the FCC's separations
18 freeze. And, both of those were taken into
19 consideration in terms of the Board finding a
20 \$24 million revenue excess. And, similarly, over in
21 Maine, the hearing examiner there just has recently
22 rendered an opinion that the Verizon Maine operations
23 are overearning to the tune of \$32 million. But, in
24 both cases, there would have been an earnings statement

1 presentation like this that would have, obviously, is
2 far different from what a regulatory commission finds.

3 MR. RUBIN: All right. Thank you.

4 That's all we have for the witness, Mr. Chairman.

5 CHAIRMAN GETZ: Thank you. Ms.
6 Fabrizio.

7 MS. FABRIZIO: Thank you, Mr. Chairman.
8 Good morning, Mr. Brevitz.

9 WITNESS BREVITZ: Good morning.

10 BY MS. FABRIZIO:

11 Q. Do you have before you an exhibit labeled "Staff 43"?

12 A. I do.

13 Q. And, would you please read the title of the article and
14 the date.

15 A. The title is "Cable versus Telco: The Battle Heats
16 Up". The date is "October 10, 2007". The author is
17 Richard Siderman from Standard & Poor's.

18 Q. Great. Thank you. Are you familiar with this article?

19 A. I am.

20 Q. And, in fact, this was an article referenced in Staff
21 Exhibit 27 that was discussed earlier this week. Is
22 that your understanding as well?

23 A. Yes. Staff Exhibit 27, the last line indicates that
24 "For related industry commentary, please see the

1 article published earlier today."

2 Q. Thank you.

3 A. And, I believe this to be the same.

4 Q. So, you said you have read the article. You're
5 familiar with it?

6 A. Yes.

7 Q. And, what are the major themes of this article?

8 A. On Page 1, the third paragraph states "Standard &
9 Poor's Ratings Services believes that the key
10 determinants of credit quality in both telecom and
11 cable are a company's ability to differentiate its
12 products and services and its financial policy." So,
13 the opinion really is based on two factors going
14 forward. And, the article goes from there to explore
15 those two factors, in terms of a company's ability to
16 differentiate its products and its financial policy.

17 Q. Okay. Thank you. Could you please turn to Page 2.

18 A. Okay.

19 Q. In the section entitled "Fighting Back with Video
20 Services". In the third paragraph of that section,
21 could you please read the first sentence, starting --
22 beginning "The second,".

23 A. Yes. It says "The second, and potentially most potent,
24 defense against cable operators is the telephone

1 companies' video product."

2 Q. Could you comment for us on that statement.

3 A. The article talks in some detail about Verizon's FiOS
4 and AT&T's U-Verse offering. The analogous service
5 here in this case going forward would be FairPoint's
6 potential provisioning of a video product. And, my
7 sense from the record in this case is that there is no
8 concrete plan on FairPoint's part to offer video, other
9 than perhaps through an affiliate arrangement with an
10 affiliate -- I mean, a marketing arrangement with a
11 satellite provider.

12 Q. Thank you. Now, turn to Page 3, the section entitled
13 "Financial Policy Must Reflect Maturing Market".

14 A. Okay.

15 Q. Please read the first short paragraph under that
16 heading.

17 A. It says that "Financial policy will play an
18 increasingly important role in determining credit
19 ratings. Currently, the ratings on Alltel, Intelsat
20 and Cablevision are on CreditWatch Negative because of
21 pending leveraged buyouts."

22 Q. Do you agree with that statement?

23 A. Yes.

24 Q. Turning to Page 4, and under the section entitled "Some

1 Likely Casualties". Could you please read the first
2 sentence of that first paragraph, beginning with "For
3 most pure wireline players".

4 A. Okay. "For most pure wireline players, including
5 CenturyTel, Citizens Communications, Embarq, Qwest
6 Communications International, and Windstream, the
7 prospect of flat or declining revenues is not just a
8 future possibility but a current reality.

9 Q. And, the last sentence of that same paragraph please.

10 A. The last sentence indicates "The pressure to satisfy
11 equity investors lessens the ability of those companies
12 to reduce debt to offset challenging business
13 prospects."

14 Q. Do you agree with these statements?

15 A. I do. That's a concern that goes through my testimony
16 and my recommendation on behalf of OCA.

17 Q. So, you believe that FairPoint faces these same
18 concerns?

19 A. Yes.

20 Q. Thank you. That's all with regard to that article.
21 Now, I'd like to refer you to --

22 MS. FABRIZIO: I stand corrected. That
23 concludes my questions for Mr. Brevitz.

24 CHAIRMAN GETZ: Mr. Coolbroth.

1 MR. COOLBROTH: Thank you, Mr. Chairman.
2 Good morning, Mr. Brevitz.

3 WITNESS BREVITZ: Good morning.

4 BY MR. COOLBROTH:

5 Q. Just returning briefly to FairPoint Exhibit 38, and, in
6 response to Mr. Rubin's questions, you indicated that
7 you were an expert in utility regulation?

8 A. Yes.

9 Q. Are you familiar with the New Hampshire statute on
10 temporary rates, RSA 378:27?

11 MS. HOLLENBERG: Mr. Chairman, I'm going
12 to object to that question.

13 CHAIRMAN GETZ: On what grounds?

14 MS. HOLLENBERG: Well, because he's
15 asking about a legal statute, and this witness is not an
16 attorney.

17 CHAIRMAN GETZ: I don't hear him calling
18 for a legal opinion. I think he's testified of his
19 regulatory expertise. I think it's fair to inquire to the
20 extent of that expertise as it applies to New Hampshire
21 law. If we get into the area of him asking for a legal
22 opinion or legal interpretation, then, of course, we would
23 not require that of the witness. Mr. Coolbroth.

24 BY MR. COOLBROTH:

1 Q. Mr. Brevitz, do you know whether, in granting temporary
2 rates, the New Hampshire Public Utilities Commission
3 looks at the reports of the utility filed with the
4 Commission?

5 A. I assume that -- I don't know that for a fact. I
6 assume that this report is, in fact, filed with the
7 Commission. And, the Commission, among the other
8 reports it receives from other utilities, will take
9 notice of the reports when they're filed.

10 Q. So, you don't know whether the Commission would
11 consider this report in determining whether or not to
12 grant temporary rates for Verizon?

13 A. I do not.

14 Q. Now, your testimony, your prefiled testimony, and in
15 your responses to Mr. Rubin this morning, you discussed
16 the Embarq and Windstream transactions, is that right?

17 A. I definitely discuss those transactions in my
18 testimony.

19 Q. And, in fact, with the Embarq transaction, you advised
20 the Office of the Attorney General in Nevada?

21 A. I had two projects in which I worked on the
22 Sprint/Nextel spin-off. One was for the Bureau of
23 Consumer Protection within the Office of the Attorney
24 General in Nevada. The second was for the -- as a

1 member of the advisory staff, on who I still currently
2 serve, to the Kansas Corporation Commission.

3 Q. And, in both of those jurisdictions, was a stipulation
4 reached with respect to approval of that transaction?

5 A. Yes.

6 Q. And, the transaction was, in fact, approved and has
7 closed, is that true?

8 A. Yes.

9 Q. Are you familiar with the common stock booked equity
10 balance of Embarq at December 31, 2006?

11 A. I may have been at some point in time.

12 Q. Can I direct your attention to FairPoint Exhibit 34?
13 And, do you see the second page of that exhibit?

14 A. I do.

15 Q. And, in the left-hand column of numbers, as of
16 December 31, is that 2006, that left-hand column?

17 A. Yes. This appears to be a two-year comparison of the
18 Embarq Corporation consolidated balance sheets,
19 comparing end of year 2006 to end of the year 2005.

20 Q. And, I'd like to just have you look at the next to the
21 last line shown in that column. Could you explain to
22 the Commission what that entry is and what the number
23 is?

24 A. It's captioned as "Total Stockholders Equity", if I'm

1 looking at the same line that you intend me to?

2 Q. That's correct.

3 A. Okay. And, the balance in 2005 is 4,852,000,000. The
4 balance at the end of the period 2006, after the
5 transaction has been consummated, is a negative
6 468 million.

7 Q. Thank you. And, we've had discussions about the
8 Alltel/Valor transaction. And, just to keep names
9 straight, which I think are a little difficult in that
10 case, a company that was spinning off the wireline
11 business was Alltel, is that right?

12 A. Correct. Alltel was the parent company.

13 Q. And, the third party company involved in the
14 transaction was Valor Communications?

15 A. Yes. Alltel, the corporate parent, was spinning off
16 its Local Telecommunications Division with a subsequent
17 merger with Valor Communications Group.

18 Q. And, the merged company of the spin-off and Valor was
19 next called "Windstream"?

20 A. Yes.

21 Q. So, that's where the three names come from?

22 A. Yes.

23 Q. And, I'm sorry to go out of order here, but just do you
24 know what Embarq's credit rating was at December 31,

1 '06?

2 A. I believe it was investment grade. There was a -- one
3 factor that influenced how that transaction was
4 consummated was the FCC approval process. And, there
5 was a discussion at the FCC level, which culminated in
6 a concurring opinion from one of the commissioners to
7 approve the transaction, based on an understanding that
8 he had that the Company would be spun off with adequate
9 financial resources. So, there was work done at the
10 FCC level to make sure that the Local
11 Telecommunications Division of Sprint/Nextel was spun
12 off with adequate financial resources. And, the way
13 that eventuated, as a matter of fact, is that Embarq
14 was spun off, able to achieve an investment grade
15 rating.

16 Q. So, a company meeting those FCC requirements, and being
17 investment grade, could carry a common stock equity
18 balance of negative 468 million, is that correct?

19 A. Well, I'll agree that the result at the time of
20 spin-off was a negative equity balance. But, also, as
21 a result of the financial strength, through the FCC
22 essentially requiring a commitment, was that the trend
23 of that equity balance has turned positive. Embarq has
24 recently gone to a positive equity balance. And, that

1 is something that's entirely different from what is
2 projected here in this case. The trend for equity is
3 increasing shareholder deficit.

4 Q. So, the Commission should look not as closely at the
5 indicators at the time of close, but the prospects over
6 time, is that your testimony?

7 A. Yes. I think the negative equity matters, but what I
8 think is more important is what happens with that over
9 time.

10 Q. And, I wanted now to turn to the Alltel and Valor
11 transaction. Now, your testimony is that this
12 transaction is very different from the FairPoint
13 transaction, is that correct?

14 A. My testimony is that there are some similarities, but
15 there are a lot of differences.

16 Q. Well, one difference was the price, isn't that true?

17 A. In what sense? I mean --

18 Q. That the price --

19 A. -- it would be a sheer coincidence if the price were
20 the same.

21 Q. That the price per access line in the Valor transaction
22 was twice as much as the price per access line in this
23 one?

24 A. I don't recall, but it could be.

1 Q. Well, we've asked the Commission to take administrative
2 notice of the Form S-4. And, on Page C-1-11 of that,
3 and the Commission will be able to find, subject to
4 check, that the access line multiple for the Alltel
5 transaction -- Alltel/Valor transaction was 3,863 per
6 access line. Does that sound about correct to you?

7 MS. HOLLENBERG: Excuse me, could you
8 show him that page please.

9 (Atty. Coolbroth handing document to the
10 witness.)

11 MS. HOLLENBERG: Thank you.

12 **BY THE WITNESS:**

13 A. Yes. That's correct. It's at Page C-1-11 of the S-4.

14 BY MR. COOLBROTH:

15 Q. And, that same table shows the price of this
16 transaction per access line of \$1,802?

17 A. Yes, that's correct.

18 Q. And, the price, as a measure of EBITDA, in that one was
19 7.6 times, is that right?

20 A. That's correct.

21 Q. And, the price as a measure of EBITDA here is 5 8
22 times?

23 A. That's what the page says.

24 Q. Do you have reason to believe that that's incorrect?

1 A. I don't have reason to believe that's incorrect. I
2 have reason to believe that there are reasons that
3 explain the differences.

4 Q. Now, your testimony reviews at some length the risk
5 factors that are contained in the FairPoint S-4, is
6 that true?

7 A. That's correct.

8 Q. And, in the Embarq and Valor transactions, were there
9 similar securities filings?

10 A. Yes.

11 Q. And, would those similar securities filings have
12 included statements of risk factors?

13 A. Yes. I believe that's an obligation to address those
14 sorts of things.

15 Q. I'd like to ask you to direct your attention to Exhibit
16 35, FairPoint Exhibit 35.

17 A. Okay.

18 Q. And, this is an excerpt from the Embarq information
19 statement, is that right?

20 A. It is selected pages from the Embarq Corporation
21 information statement dated "March 14th, 2006".

22 Q. And, directing your attention to Page 13, to the page
23 numbered at the bottom "13" in that exhibit.

24 A. Okay.

1 Q. And, the first risk factor on this page is, and correct
2 me if I read this wrong, "We may experience increased
3 costs or decreased operational efficiencies as a result
4 of our need to replace corporate functions previously
5 provided by Sprint-Nextel. Did I read that right?

6 A. That's correct.

7 Q. And, directing your attention to Page 15, we have a
8 statement in the middle "Following the spin-off, we
9 will have substantial indebtedness which could restrict
10 our ability to pay dividends and have a negative impact
11 on our financing options and liquidity position." Did
12 I read that right?

13 A. That's correct.

14 Q. And, on Page 16, in the middle of the page, is there a
15 risk factor "We face widespread competition that may
16 reduce our market share and harm our financial
17 performance"?

18 A. That's --

19 Q. Did I read that right?

20 A. That's correct.

21 Q. And, on Page 18, just above the last paragraph, "Due to
22 competitive, technological and regulatory changes, we
23 cannot assure you that our core business will grow, and
24 it could decline, which could have an adverse effect on

1 our business and future prospects." Did I read that
2 right?

3 A. Yes, you did.

4 Q. And, on Page 19, about two-thirds of the way down. "A
5 significant portion of our workforce is unionized.
6 And, if we are unable to reach new agreements before
7 our current labor contracts expire, our unionized
8 workers could engage in strikes and other labor actions
9 that could materially disrupt our ability of providing
10 service to our customers." Did I read that right?

11 A. Yes, that's what it says. But this is a -- it's a
12 spin-off of an intact local telecommunications division
13 from Sprint-Nextel. It's not a merger of a company
14 that is, for the most part, not unionized with the
15 Company. It is, in fact, unionized.

16 Q. So, is it your testimony that they put those things in
17 risk factors while they didn't think themselves that
18 those were material risks?

19 A. No, I think there probably is some risk there. But the
20 risk would be different, comparing Embarq to the
21 proposed transaction here.

22 Q. And, directing your attention to Exhibit 36, FairPoint
23 Exhibit 36.

24 A. Okay.

1 Q. I'm looking at -- And, this is a similar securities
2 filing in the Alltel/Valor transaction, is that right?

3 A. It appears to be, yes.

4 Q. And, if I look at Page 23 in that document, about the
5 middle of the page, is there a risk factor "Windstream
6 may not realize the anticipated synergies, cost
7 savings, and growth opportunities from the merger."
8 Did I read that right?

9 A. Yes.

10 Q. And, lower on the page, "The integration of Spinco and
11 Valor following the merger may present significant
12 challenges to Windstream management, which could cause
13 management to fail to respond effectively to increasing
14 forms of competition facing Windstream's business and
15 accelerate Windstream's rate of access line loss." Is
16 that a risk factor that they put in?

17 A. Yes.

18 Q. And, on Page 26, just before the middle of the page,
19 "Failure to complete the merger could adversely impact
20 the market price of Valor common stock, as well as
21 Valor's business and operating results". Did I read
22 that right?

23 A. Yes. And, that would have been a reference to Valor
24 Communications Group, which, at the time, was a high

1 debt/high dividend RLEC operating in New Mexico, Texas,
2 and Oklahoma.

3 Q. And, that would have been a reference to the
4 consequences if the transaction failed to close?

5 A. Correct. Valor would have been in the same or worse
6 financial trouble than it was already in prior to this
7 transaction.

8 Q. Now, in the Valor case, there was no -- and, you were
9 involved in Kentucky, is that right?

10 A. Yes. I testified on behalf of the Office of Rate
11 Intervention for the Kentucky Attorney General's
12 Office.

13 Q. So, there was no stipulation in that case, is that
14 right?

15 A. Correct.

16 Q. And, in fact, did the Communication Workers Of America
17 and the International Brotherhood of Electrical Workers
18 also participate in that docket?

19 A. Yes. I recall them as a party. There was an
20 organization of cities that was a party, and there may
21 have been some others.

22 Q. And, your testimony in that case, it seems very similar
23 to the testimony in this case, isn't that true?

24 A. Yes. I'm testifying for the same type of client, on a

1 transaction that, in my view, had similarly negative
2 consequences.

3 Q. Well, your analysis wouldn't be based on which kind of
4 client you were representing, isn't that true?

5 A. That's true.

6 Q. And, in your testimony, did you discuss what you
7 believe to be an "excessive debt burden" for the
8 resulting company?

9 A. Yes, I did. And, the difference in the transaction
10 there was that one of my key findings was that the debt
11 was incurred for an improper purpose. The debt was
12 proposed to be placed on Windstream by Alltel, in order
13 to de-lever Alltel for future acquisition by another
14 party, which has, in fact, happened.

15 Q. And, did you also testify that the resulting company
16 was unlikely to be able to achieve the synergies they
17 were projecting?

18 A. I did.

19 Q. And, did you go through examples of board materials
20 relating to discussions that led up to the transaction?

21 A. I did.

22 Q. And, did you discuss the consequences of a high debt
23 level?

24 A. Yes.

1 Q. And, did you discuss interest rate risk for a company
2 that's not investment grade?

3 A. Yes.

4 Q. And, did you call the resulting company a quote "high
5 debt/high dividend company"?

6 A. Yes.

7 Q. And, did you talk about Valor's 8 percent dividend
8 yield?

9 A. Yes.

10 Q. And, did you question the Company's estimate of free
11 cash flow available for dividends?

12 A. Yes. There was a piece of evidence in that case that
13 doesn't exist in this case. That was proprietary, that
14 was an important factor to be considered by the
15 Commission there.

16 Q. And, in fact, didn't you accuse the companies there of
17 not being transparent with the Commission, just like
18 you're accusing these companies here?

19 A. What page?

20 Q. Pages 39 and 40 of your testimony.

21 A. Yes. There were two issues there with regard to
22 transparency. And, I would say that "transparency", in
23 a regulatory proceeding, is always a subject that
24 should be evaluated and considered. The different

1 issues regarding transparency in the case in Kentucky,
2 if the Commission's interested, and my whole testimony
3 is there, is that I noted that the Company's own
4 documents show that the proposed capital structure
5 would have significant detrimental impact on the
6 financial viability of the new holding company. And,
7 further, that the joint applicants made a claim of \$200
8 million in annual free cash flow, which was
9 demonstrably false based on the company's own
10 documents. So, those were the two things in Kentucky
11 that I pointed out as problematic from a transparency
12 standpoint. Those two things, I think, are entirely
13 different from what I pointed out here with regard to
14 transparency.

15 Q. And, was your conclusion that the Kentucky Public
16 Service Commission should reject the transaction?

17 A. Yes.

18 Q. And, did you also --

19 A. As being ill-conceived from the standpoint of Kentucky
20 ratepayers, and not -- with the large amount of debt
21 not incurred for proper purpose, which was an
22 applicable consideration in Kentucky.

23 Q. And, did you also recommend that if, notwithstanding
24 your first recommendation that they deny, that if

1 instead they approve, that you would want them to
2 impose 14 conditions, is that right?

3 A. Yes.

4 Q. And, are several of those conditions almost verbatim to
5 the conditions you're proposing in this case?

6 A. Yes, some of them are. They're the kind of conditions
7 that would go along with any entity that was of a high
8 dividend/high debt nature, as Windstream was proposed
9 to be, and as FairPoint is proposed to be under this
10 transaction.

11 Q. And, did the Kentucky Public Service Commission accept
12 your recommendations?

13 A. I don't believe so. The Kentucky Commission just
14 approved the transaction.

15 Q. I'd like to go back to Exhibit 38. And, again, and
16 whether you agree with it or not, but in terms of what
17 this shows, and its Verizon's financial report, before
18 directory service imputation, it shows a company with a
19 net telephone earnings loss of \$18 million?

20 A. It does show that. And, if that were really the case,
21 you'd wonder why FairPoint is spending 2.7 billion to
22 acquire operations like this. I just don't believe
23 that that's really the underlying economics for the
24 enterprise.

1 Q. And, even after the directory imputation, this shows
2 Verizon losing about \$4.3 million?

3 A. That's what the number says.

4 Q. I'm going to ask you to assume that there really aren't
5 any savings or synergies available, and so that there
6 would be no real upside, if there are no savings or
7 synergies available?

8 A. Okay.

9 Q. And, by the way, if the problem with Verizon is cost
10 allocations, and if many of those go away, do you think
11 there is actually a potential for savings?

12 A. It depends on what -- what costs FairPoint replaces
13 those allocated costs with. And, that's the whole
14 issue in this case.

15 Q. But those allocations do go away?

16 A. The allocations go away, but the functions do not go
17 away. The functions, at least in some or most
18 respects, must be replaced.

19 Q. And, are you a systems engineer that can evaluate the
20 replacement systems that FairPoint has proposed?

21 A. I did not undertake such an analysis, no.

22 Q. And, just in looking at this business from FairPoint's
23 perspective, if you're expecting higher costs for the
24 transition from Verizon to FairPoint's systems, that

1 would have a negative impact on these numbers, would it
2 not?

3 A. On an unadjusted basis, yes. This is not a regulatory
4 review all the way through -- a regulatory view all the
5 way through a regulatory review.

6 Q. And, your testimony, in conjunction with Ms. Baldwin's
7 testimony, seemed to suggest that Verizon -- your
8 opinion is they should be spending more on maintenance
9 costs for the network, is that true?

10 A. I think my point more accurately would be that there
11 have been recurrent service quality issues and problems
12 in New England, and that implies that the necessary
13 resources are not being deployed.

14 Q. And, if they expend those resources, would that have a
15 negative effect on that bottom line number?

16 A. That would tend to, yes.

17 Q. And, if there are revenue losses due to competition,
18 would that have a negative effect on that bottom line
19 number?

20 A. Yes, it would.

21 Q. And, if there are higher labor costs, would that have a
22 negative impact on that bottom line number?

23 A. All other things equal.

24 Q. And, I think your testimony identified as a risk, and

1 this is probably going to be a favorite for Mr. Price
2 and Mr. Mandl, but the risk that CLEC customers would
3 go bankrupt. Did you identify that as a risk?

4 A. I don't remember saying it that way. I do remember
5 addressing the projections regarding unbundled network
6 elements within the FairPoint model.

7 Q. Would you turn to Page 104 of your testimony.

8 A. Okay.

9 Q. I'd like you to go down to Line 16.

10 A. Okay.

11 Q. And, in this general passage, are you discussing the
12 risk of CLECs potentially going bankrupt?

13 A. Yes. Thank you for refreshing my recollection.

14 Q. And, if there are bad debts associated with those, with
15 those situations, would that negatively affect this
16 bottom line?

17 A. That would tend to.

18 Q. And, is it your recommendation, as one of your
19 conditions to the approval of this transaction, that
20 there be no regulated rate increases until sometime
21 after 2012, is the true?

22 A. It is indeed.

23 Q. You think this looks like a pretty tough business no
24 matter who operates it under that scenario?

1 A. It depends on how it's managed.

2 Q. Well, isn't that the key?

3 A. Yes.

4 Q. So, and wouldn't that be the basis upon which
5 investment bankers, like Lehman Brothers, would make
6 their decision?

7 A. No.

8 Q. They wouldn't look at management's prospects for
9 operating this business as their basis for making a
10 recommendation or, in fact, committing to lend money
11 into this transaction?

12 A. Not as a sole basis, no.

13 Q. Well, what other bases would Lehman Brothers use to
14 commit major amounts of funds to this transaction?

15 A. I believe that entities such as that would use the --
16 would consider the long-term prospects of a customer
17 relationship. I think FairPoint has been a good
18 customer, in that FairPoint does a lot of transactions,
19 does -- generates a lot of fees. So, there is that
20 aspect that would come into it.

21 Q. But, if that relationship looked like they weren't
22 going to get paid back, they wouldn't go with that,
23 would they?

24 A. Well, earlier this week Merrill Lynch declared its

1 first loss in six years, \$8 billion, based on declines
2 in subprime mortgages and related assets. And, I'm
3 sure at the time Merrill Lynch thought that was a good
4 deal.

5 Q. So, your opinion to this Commission is that Lehman
6 Brothers, one of the major investment bankers, Morgan
7 Stanley, another major investment banker, and Deutsche
8 Bank have made the wrong call on this transaction,
9 that's your opinion?

10 A. No, that's not my opinion. My opinion is that the
11 bankers have no doubt made the right call from a Wall
12 Street perspective. There's a -- From a business
13 standpoint for them, it, obviously, makes sense. But
14 the call for this Commission is whether this
15 transaction makes sense from a Main Street perspective.
16 And, my testimony is that it does not.

17 Q. Well, haven't they made the call that this transaction
18 will succeed financially, and they have put their money
19 on it, isn't that true, sir?

20 A. I don't believe that that's true, no.

21 Q. In terms for the prospects for this business generally,
22 and for FairPoint's operation of it, Mr. Balhoff
23 doesn't agree with you, isn't that true?

24 A. That's true.

1 Q. And, Mr. King doesn't agree with you?

2 A. That's true.

3 MR. COOLBROTH: No further questions,

4 Mr. Chairman.

5 BY CMSR. BELOW:

6 Q. Is it safe to say that you believe that it's more
7 likely than not that FairPoint will not achieve its
8 projected financial results?

9 A. Yes, that is fair to say.

10 Q. Okay.

11 A. As explained in my testimony, I'm not going to try to
12 summarize it.

13 Q. Right, your testimony overall goes --

14 A. Right.

15 Q. -- to that point, would you say?

16 A. Right. Yes. Very much so.

17 CMSR. BELOW: Okay. Thank you.

18 CHAIRMAN GETZ: Redirect?

19 MS. HOLLENBERG: Thank you.

20 **REDIRECT EXAMINATION**

21 BY MS. HOLLENBERG:

22 Q. I guess I'll go back from where you just finished with
23 FairPoint. I'll try and do it that way.

24 A. Okay.

1 Q. You were just talking about the difference between the
2 perspectives of Wall Street versus Main Street, in that
3 analogy, in terms of the perspectives of a financial
4 analyst and their considerations of the financial
5 projections in this case?

6 A. Yes, I did.

7 Q. Is it your -- Do you have an opinion on whether or not
8 the bankers that are financing this proposed
9 transaction are looking out for customers' best
10 interests?

11 A. I don't think that's part of the calculation that the
12 bankers make. They're looking after a different --
13 different series of interests, and it's really a
14 financial interest. Whereas, this Commission, in my
15 opinion, needs to look after a bigger picture, which
16 includes the interests of the ratepayers, and having a
17 financially stable and secure public utility serving
18 them. That's, I think, one of the differences between
19 a Wall Street and a Main Street perspective, is that
20 this is just not -- this is not just another commercial
21 transaction. This is a transaction that involves a
22 public utility that serves the public with a necessary
23 service. It has an entirely different profile, in that
24 the assets it deploys are long life and must be

1 maintained at a high level of quality to provide a
2 service deemed necessary by the public.

3 Q. Thank you. Do you think Wall Street knows that rates
4 can be raised, so that customers, you know, so that in
5 case the companies get into financial problems?

6 A. I'd like to answer that by saying that, in my
7 experience serving public utility commissions,
8 particularly the Kansas Commission, I routinely receive
9 documents -- copies of documents that the Commissioners
10 would get, and they were various Wall Street analyses.
11 And, often, in those analyses, you would see a
12 statement indicating that essentially Wall Street
13 believes that, in cases of trouble, the commissions
14 will step in, in most cases, to increase rates and
15 assure the financial viability of the enterprise,
16 because it's a necessary service.

17 Q. You were asked on cross-examination by FairPoint's
18 counsel about the various risks associated with this
19 transaction. And, you discussed some, in reference to
20 the exhibit, I believe it was 38, FairPoint 38, I
21 believe FairPoint's counsel asked you a few questions
22 about whether or not, if Verizon faced those same
23 risks, if their earnings would also decline. And, what
24 I'm asking -- what I'd like to ask you is, do you agree

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1 that Verizon Corporation has more resource -- financial
2 resources available to it than FairPoint's parent
3 company?

4 A. Yes, that's, I think, clearly indicated.

5 Q. And, is it reasonable to say that Verizon Corporation
6 resources are behind the Verizon New England
7 operations?

8 A. Well, I think, as testified to by Mr. Smith yesterday,
9 and it's also in my testimony, the priorities for
10 Verizon Communications are in a different area than
11 Northern New England. The resources are there, but
12 they're being directed elsewhere.

13 Q. You were asked a good number of questions about the
14 Valor/Alltel transaction and the Embarq transaction.
15 Do you recall that?

16 A. Yes.

17 Q. And, I think your testimony was that there were
18 significant differences in those transactions to this
19 proposed transaction?

20 A. Yes.

21 Q. Is it unusual in your -- well, strike that. You worked
22 for generally similar types of clients in those two
23 transactions, as well as this transaction, do you agree
24 with that? Both government/public interest-affiliated

1 clients, would you agree with that?

2 A. Yes.

3 Q. And, they were all -- all three of them were
4 telecommunications cases?

5 A. That's correct.

6 Q. Okay. And, your focus, as a financial expert, is on
7 financial issues, is that correct?

8 A. That's right.

9 Q. Okay. And, would you agree that there is a relatively
10 finite group of concerns within that area of expertise?

11 MR. COOLBROTH: Mr. Chairman, I'm going
12 to object. This really is leading. I going to ask --
13 this is redirect examination, not cross. And, I would ask
14 that the counsel not lead the witness.

15 CHAIRMAN GETZ: Well, --

16 MS. HOLLENBERG: Okay. I'll rephrase my
17 questions. Thanks.

18 CHAIRMAN GETZ: Let's not -- I don't
19 want to establish a precedent that we're going to grant
20 all types of objections that questions are leading, given
21 that we are -- do not follow the technical rules of
22 evidence and are not required to by statute, and we allow
23 a certain amount of breadth in the questioning that the
24 attorneys make to the witnesses. But, if you would like

1 to rephrase, please do so.

2 MS. HOLLENBERG: Thank you.

3 BY MS. HOLLENBERG:

4 Q. How would you describe the concerns that you would have
5 in those cases and in this case?

6 A. Well, the general concern was the -- in each of the
7 cases was the imposition of a large amount of debt.
8 For the Windstream transaction and this one, the result
9 was a very high relative level of debt for both
10 companies, such that neither company is investment
11 grade. The circumstance was a bit different from
12 Embarq, in that there was the intervention through the
13 FCC approval process, whereby the FCC Commissioners
14 made sure that so much debt was not placed on Embarq
15 that it could not be -- could not achieve an investment
16 grade rating. And, if you look at the results of the
17 two companies that have been approved, Embarq, in fact,
18 has been able to utilize that benefit and has elected,
19 as a management decision, to go ahead and pay down a
20 substantial amount of debt.

21 Windstream, I think, hasn't been able to
22 generate enough cash flow to do that amongst all the
23 other things that it needs to do. Its debt level is
24 substantially the same currently as it was when it was

1 spun. There's, in those two cases, too, there was, I
2 think, a concern about whether the level of debt was
3 proper, given that it was a corporate family splitting
4 up, and that there was a lack of an arm's length
5 decision-making process there arguably.

6 Q. In either of the Valor or Embarq transactions, did the
7 spun-off company need to recreate from scratch the back
8 office system?

9 A. Not at all. Those were both intact local
10 telecommunications operating divisions that were spun
11 off in their entirety with existing systems and
12 existing management and existing personnel.

13 Q. And, in either of those -- I'm sorry, you just answered
14 my next question. When Sprint-Nextel spun off its
15 local operations to Embarq, did Sprint-Nextel retain
16 any local operations?

17 A. No.

18 Q. Is it unusual in any way that, in these three cases
19 that we've talked about, this case here today, as well
20 as the Alltel/Valor case and the Embarq case, is it at
21 all unusual that those three companies would have
22 mentioned the same or similar risks in their S-4?

23 A. I don't believe so, in that both were undergoing
24 organizational change, and both companies operate in

1 the local telecommunications industry. So, it is to be
2 expected that there would be some similarity in the
3 risk factors. The underlying discussion of those risk
4 factors would tend probably to be more company-
5 specific.

6 Q. Does it -- Is it your opinion that having same or
7 similar risks identified in the S-4 means that the
8 risks identified by FairPoint are less real?

9 A. Not at all.

10 Q. In your experience, you were asked on cross-examination
11 by FairPoint about a New Hampshire statute that relates
12 to temporary rates. And, I believe the question was
13 "would the Commission consider FairPoint 38 in granting
14 a request for temporary rates?" And, what I'd like to
15 ask you is, in your experience, are temporary rates
16 generally reconcilable?

17 A. Reconcilable to what?

18 Q. Do you have any experience in rate cases?

19 A. Yes.

20 Q. Okay. Are generally temporary rates that are set at
21 the beginning ordinarily reconciled at the end, if the
22 rate is higher or lower?

23 A. Yes. The term that I'm familiar with that I think is
24 identical is "interim" rates. It's not unusual for a

1 utility to come in and ask for "interim" rates in
2 connection with a rate case filing. In my experience,
3 those -- what I have seen, those requests are very
4 rarely granted.

5 Q. And, any type of reconciliation of rates would occur
6 after a full review by the Commission of the company's
7 financial circumstances, beyond looking at a earnings
8 statement. Do you agree with that?

9 A. That is correct. To the extent a request for interim
10 rate increase is granted, the concept is that the rates
11 are "interim" pending the resolution of the filed rate
12 case. Once the filed rate case is adjudicated, then
13 there typically is a true-up on the rates.

14 Q. You were asked some questions about the difference in
15 the purchase price per access line in this transaction?

16 A. Yes.

17 Q. And, the Windstream transaction, do you recall that?

18 A. Yes.

19 Q. Did the purchase price in Windstream include a fully
20 functioning back office?

21 A. Yes.

22 Q. Customer service?

23 A. Yes.

24 Q. Network operations?

1 A. Yes.

2 Q. Does that have substantial value?

3 A. Yes.

4 Q. Is FairPoint purchasing these systems from Verizon?

5 A. FairPoint is not. It's currently the object of a
6 systems design development and integration process.

7 Q. And, who are they purchasing these from?

8 A. My understanding is that that work has been assigned to
9 CapGemini under contract.

10 Q. And, how much is FairPoint paying CapGemini for these
11 systems? Roughly?

12 A. The number I've heard is 200 million.

13 Q. What does that represent on an access -- a per access
14 line basis, could you calculate that?

15 A. You'd have to divide through by a million and a half.

16 Q. Would you accept subject to check that it's about 130
17 per line?

18 A. Yes.

19 MS. HOLLENBERG: One moment please.

20 BY MS. HOLLENBERG:

21 Q. I guess I'll just ask one last question. Are there any
22 other differences that you didn't have a chance to
23 describe in the circumstances with the Valor and Embarq
24 cases that you think are -- would be helpful for the

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1 Commission to know?

2 A. There probably are. I can't think of them offhand. I
3 think a useful resource will be the exhibit, Exhibit
4 37, which is the entirety of my public testimony there
5 in Kentucky.

6 MS. HOLLENBERG: Thank you. I don't
7 have any other questions. Thank you.

8 CHAIRMAN GETZ: Thank you. Anything
9 further for this witness?

10 (No verbal response)

11 CHAIRMAN GETZ: Hearing nothing, then
12 you're excused. Thank you, Mr. Brevitz.

13 WITNESS BREVITZ: Thank you.

14 CHAIRMAN GETZ: Turn to Mr. Antonuk at
15 this point.

16 MS. FABRIZIO: Mr. Chairman, could we
17 take a five-minute break please, or even shorter,
18 actually?

19 CHAIRMAN GETZ: Sure. We can take a
20 brief recess.

21 MS. FABRIZIO: Thank you.

22 (Recess taken at 10:29 a.m. and the
23 hearing reconvened at 10:43 a.m.)

24 CHAIRMAN GETZ: Okay. We're back on the

1 record in DT 07-011. And, turning to the direct
2 examination of Mr. Antonuk. Ms. Fabrizio.

3 (Whereupon **John Antonuk** was duly sworn
4 and cautioned by the Court Reporter.)

5 MS. FABRIZIO: Thank you.

6 **JOHN ANTONUK, SWORN**

7 **DIRECT EXAMINATION**

8 BY MS. FABRIZIO:

9 Q. Mr. Antonuk, could you please state your full name for
10 the record.

11 A. John Antonuk.

12 Q. And, by whom are you employed?

13 A. With the Liberty Consulting Group.

14 Q. What is your business address?

15 A. Sixty-five Main Street, Quentin, Pennsylvania.

16 Q. And, are you the same John Antonuk who filed direct
17 testimony on August 1st and supplemental testimony on
18 September 10th in this proceeding?

19 A. Yes.

20 Q. On behalf of Staff?

21 A. Correct.

22 MS. FABRIZIO: Okay. And, I would note
23 that those testimonies are marked as "Exhibit 1" for the
24 direct testimony, "Exhibit 4" for the supplemental. And,

1 I would note also for the record that Staff Exhibits 34
2 through 38, that were submitted today and are before you
3 on the Bench, are document sources that were referenced in
4 Mr. Antonuk's direct testimony.

5 BY MS. FABRIZIO:

6 Q. Mr. Antonuk, do you have any changes to your testimony
7 today?

8 A. I do not.

9 Q. And, do you adopt your testimony today as accurate and
10 true?

11 A. I do.

12 MS. FABRIZIO: The witness is available
13 for cross, Mr. Chairman.

14 CHAIRMAN GETZ: Okay. Thank you.
15 Mr. Mandl.

16 MR. MANDL: Good morning, Mr. Antonuk.

17 WITNESS ANTONUK: Hello.

18 **CROSS-EXAMINATION**

19 BY MR. MANDL:

20 Q. I'd like to refer you to Page 13 of your direct
21 testimony please.

22 A. I have it.

23 Q. If we could refer to lines 21 through 23. You
24 recommend that the Commission should review and approve

1 FairPoint's Test Plan and testing that FairPoint has
2 performed on its new system processes and personnel,
3 and to review and approve the test results before
4 FairPoint is allowed to cutover the many Verizon TSA
5 services. Is that correct?

6 A. That's correct.

7 Q. When you refer to "personnel", are you referring to
8 FairPoint's having a full complement of trained staff
9 capable of operating the company as of cutover?

10 A. Capable, in this case, of operating the systems that
11 we're talking about, yes.

12 Q. All right. If we could turn to Page 14 of your direct
13 testimony. And, if we could take a look at lines 15
14 through 18.

15 A. I'm with you.

16 Q. You indicate that, to the extent to which FairPoint has
17 successfully staffed its operations and trained its
18 employees should be a factor in the Commission's
19 approval of cutover from the Verizon provided TSA
20 services to FairPoint systems, correct?

21 A. Yes.

22 Q. Could you explain a little bit further how the
23 Commission would go about rendering an approval of
24 cutover from the Verizon TSA services to FairPoint's

1 own systems and processes?

2 A. We did not have a specific recommendation in mind when
3 we filed the testimony. What has happened since that
4 filing is that, because the question of readiness for
5 turnover was arising in all three states, staffs from
6 the three states began to explore the idea of using a
7 common independent party to do what I would describe as
8 "real-time monitoring" of the development of the
9 systems and the development of the staffs necessary to
10 operate the systems. So, what the readiness issue has,
11 in a way, morphed into is the creation of a process by
12 which a single party for all three state staffs would
13 review and comment at key juncture points on the
14 various elements that it will take for FairPoint to
15 become ready for a successful turnover. "Successful"
16 meaning no -- transparency or no service disruptions
17 for both retail and whole customers.

18 Q. And, would that readiness assurance process include a
19 review and assessment of FairPoint's operational
20 readiness, as opposed to the readiness of its systems?

21 A. Not that three-state process, it would not. We have
22 proposed that operational readiness be addressed
23 through a continuing provision of reports by FairPoint
24 that would be designed to show that the staff that

1 Verizon is preparing to turn over will be as
2 experienced and capable as the staff that has been
3 serving directly in New Hampshire. And, then, there
4 are some support people who are outside the systems
5 area, some networks, some engineering and operations
6 people. We're also concerned about seeing continuing
7 reports about progress in staffing those organizations.
8 And, that part really is what I think you're referring
9 to now, is the operational versus the support
10 personnel.

11 Q. In terms of the reporting on operational readiness,
12 were those reports -- to whom would those reports be
13 made available?

14 A. Maybe we're a little selfish, but we're, obviously,
15 interested in seeing them. To the extent you're
16 suggesting that other people may have a similar
17 interest, it certainly was not our intention that we be
18 the only audience for those.

19 Q. So, you'd agree that wholesale customers would have an
20 interest in FairPoint's being operationally ready prior
21 to cutover?

22 A. I think the interest of retail and wholesale customers
23 are common there. The only caveat I would add is,
24 having done a fair amount of work in resolving disputes

1 between incumbents and CLECs, I think there, at some
2 level, are potentially some competitive information
3 issues, which I would expect to be minor, but I just
4 don't want to rule them out entirely at this point.

5 Q. If such reports were submitted by FairPoint, who would
6 evaluate those reports? And, would you expect any
7 Commission action on those reports, positive or
8 negative, regarding FairPoint's readiness to cutover?

9 A. When we filed this testimony, we, I think, explicitly
10 said we were anticipating discussions, which we hoped
11 would reach at least partial, if not total, agreement
12 on the issues. So, what we had anticipated when we
13 filed this was that we would create a mechanism whereby
14 those reports would be filed. And, if, prior to the
15 Commission's final decisions, they showed some problem
16 that was material, and it's hard to define at this
17 point what those problems would be, because we're
18 talking about staffs of hundreds of people, that there
19 would be an opportunity to address that before the
20 Commission gave its final approval. To the extent we
21 didn't reach common agreement on these, I guess we sort
22 of figured the issue would be moot, because we would be
23 recommending that the transaction not go forward at
24 all.

1 Q. Now, if we could turn to Page 16 of your direct
2 testimony.

3 A. I have it.

4 Q. On Line 6, you refer to a requirement that FairPoint
5 agreed to involve wholesale customers in system
6 readiness training. Is that still your position?

7 A. Line 5 of Page 16?

8 Q. I'm sorry, Line 6.

9 A. Oh, yes. Yes. It is. The -- I think somebody said
10 "the devil is in the details" awhile ago, that the
11 question is, obviously, "how does one design that, so
12 that the transaction finalization and the transition
13 processes aren't delayed, unless there's a clear need
14 to delay them to prevent adverse consequences for
15 customers?"

16 Q. And, would you agree that the system readiness testing
17 would involve activities other than some CLECs being
18 able to interface with FairPoint's WISOR system?

19 A. I do, as a general matter. But I have to say that
20 Mr. King has been following the details of that. And,
21 to the extent you want to make your question much more
22 specific, I think he can help you a heck of a lot more
23 than I can.

24 Q. Okay. Thank you. Now, in the same vein, if I had

1 questions concerning the work involved in FairPoint's
2 changing point codes from Verizon to its own for SS7
3 systems, would that be more appropriate for Mr. King?

4 A. It would be essential, because I don't know much at all
5 about those two subjects.

6 Q. Okay. Thank you.

7 A. But, if he doesn't, I'll be disappointed.

8 Q. With regard to your testimony on Page 16, and you
9 discuss some commitments that you recommend be required
10 of FairPoint over a period of five years, including
11 maintaining a range of services and refraining from
12 seeking regulatory changes that would affect the
13 provision of wholesale services. Have you had an
14 opportunity to review what I guess has been referred to
15 as the "CLEC Settlement" that was filed in this case on
16 October 18th?

17 A. I have not. I think, again, Mr. King has.

18 Q. All right. We'll defer that to Mr. King. Could we
19 then turn to Page 26 of your direct testimony.

20 A. I'm there.

21 Q. You express some concerns about FairPoint's overall
22 staffing plans, starting on Line 12, on Page 26. And,
23 you recommend, as we look down at Lines 22 and 23, that
24 FairPoint should demonstrate the existence and adequacy

1 of what appears to be a newly assembled team prior to
2 securing the Commission's approval of the acquisition.
3 Is that your position today?

4 A. It is. And, what I want to do is distinguish now that
5 we're really talking about the top level of the
6 management team at this point. Your earlier questions,
7 I was addressing more the middle level, the back office
8 support level. So, this particular portion of the
9 testimony is focusing much more specifically on the
10 senior leadership, which is fine, as far as it goes.
11 But, when we prepared the testimony, it hadn't -- the
12 positions had not all been filled.

13 Q. All right. But you'd agree that, in addition to the
14 top level of management, that FairPoint would have a
15 large number of employees that would need to be hired
16 and trained?

17 A. Indeed.

18 Q. Okay. If we could turn to Pages 37 and 38 of your
19 direct testimony. You express some concerns about
20 affiliate cost documentation to be provided by
21 FairPoint. I'd like to ask you a question regarding
22 the reports that FairPoint intends to file. Mr.
23 Skrivan, in his testimony, has stated that, because of
24 its regulatory status, FairPoint does not believe it

1 would be necessary for it to file certain ARMIS reports
2 that Verizon files today. And, I believe he listed
3 those as 4302, 4303 and 4304. Do you believe it would
4 be useful for the Commission to continue to receive the
5 information contained in those reports on a post
6 closing basis from FairPoint?

7 A. I don't remember what's in those reports. But I can
8 tell you this. We've done probably 20 to 25 affiliate
9 transactions, audits, involving telecom and energy
10 utilities for probably more than a dozen different
11 commissions. We believe in detailed cost allocation
12 manuals, detailed service agreements, and clear and
13 complete specificity with how charges are assigned
14 between jurisdictions, which here is inter and
15 intrastate, and between utility and nonutility
16 operations. So, I suspect, if I looked at those
17 reports, my conclusion would be that they would -- they
18 would include the kinds of information that we would
19 want. Whether I think the reports in those formats
20 need to be filed, you know, I'm much less concerned
21 about that, and much more about whether the kind of
22 data we would be looking for is filed. And, that's
23 another area where we had anticipated taking
24 discussions with the stakeholders to a very specific

1 level before making the final recommendation to the
2 Commission. In other words, saying "this is exactly
3 the kind of information we would want to see." And,
4 certainly, the ARMIS reports you're talking about, it
5 would be proper as a part of that process to look at
6 what they include, and to make sure that, if that
7 information is important and is not covered somewhere
8 else, that it is included in the list of things that
9 should be on the "must file" list that we would
10 recommend.

11 Q. Thank you. And, I'd like to turn you now to your
12 supplemental testimony. You indicate, I'm referring to
13 your discussion that begins on Page 1 and carries over
14 to the top of Page 2, that, in your testimony you have
15 not taken a final position on concerns raised by
16 various stakeholders in this proceeding, such as CLECs,
17 electric utilities, and municipalities, is that
18 correct?

19 A. That's correct.

20 Q. In terms of those sets of concerns, you know,
21 specifically concerns raised by CLEC parties, would
22 Mr. King be a more appropriate witness to discuss those
23 issues with?

24 A. To the extent they're operational and technical, I

1 think so. My focus was really more, as far as CLEC
2 concerns, were on the question of what's the right
3 period of stability to provide, so that CLECs could do
4 what I would construe is a reasonable business planning
5 process for continuation of their business.

6 Q. All right. Let's see, and I think I may have asked you
7 this, whether you had had an opportunity to review the
8 CLEC Settlement filed in this case?

9 A. You did, and I put Mr. King on the spot for answering
10 those questions.

11 Q. Okay. That's good. Now, on Page 2, if I could refer
12 you to Page 19 through 21 -- excuse me, lines 19
13 through 21, on Page 2. You indicate that various
14 commitments should be made enforceable through
15 conditions, is that correct?

16 A. That's correct.

17 Q. And, so, I take it that you would favor merger
18 conditions, rather than reliance upon a verbal
19 commitment by FairPoint, because merger conditions are
20 enforceable?

21 A. For sure and for certain.

22 Q. Thank you. Now, if we could turn to Page 19 of your
23 supplemental testimony.

24 A. I have it.

1 Q. Would you agree that among the parties who have
2 identified interests in this proceeding are cable
3 operators?

4 A. I would agree with that.

5 Q. And, that a smooth transition from Verizon to FairPoint
6 is important to the cable industry, do you agree with
7 that?

8 A. I do agree with that.

9 Q. With regard to the smoothness of transition from
10 Verizon to FairPoint, would you consider the condition
11 of parity as between FairPoint's own operations and the
12 operations of cable operators to be an important
13 factor?

14 A. In a closed-end kind of way, I do. I understand the
15 concept of "parity" generally to be wrapped into the
16 sort of performance metrics and PAPs that exist. So, I
17 wouldn't be inclined to think that this case should get
18 into redefining what "parity" is. But I certainly
19 would agree with you, and you might fuss around the
20 edges if there are some minor changes or exceptions,
21 but I would certainly agree with you that continuing
22 with what has been defined as "parity" in New Hampshire
23 for wholesale competitors versus the incumbent's own
24 operations is important.

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1 Q. All right. Now, I believe in your testimony, your
2 direct testimony, you indicate that you hold a law
3 degree, is that correct?

4 A. I do. I'm not holding my license anymore, but I guess
5 you always hold a degree.

6 Q. Okay. That's all I asked. And, is it your
7 understanding that FairPoint, were this transaction to
8 be approved, would have an obligation to provide
9 nondiscriminatory access to poles, conduits, and
10 rights-of-way?

11 A. Yes. Although, I guess I know that less from being a
12 lawyer than having arbitrated a bunch of
13 interconnection disputes between CLECs and ILECs, so --

14 Q. All right. And that, in order to demonstrate that
15 nondiscriminatory access is being furnished by
16 FairPoint, would you agree that FairPoint would need to
17 document the intervals for the performance of work, in
18 the case of cable attachers or CLECs, and similar work
19 for its own operations?

20 A. Well, again, my concern is that -- my experience is
21 those are the very kinds of disputes that are resolved
22 in SGAT proceedings and interconnection agreement
23 disputes in mediations and arbitrations. I would
24 certainly favor a continuation of whatever standards

1 and requirements exist now. I would not want to see
2 this case become a forum for either the expansion or
3 the contraction. If you're going to represent to me
4 that those things aren't defined and never been defined
5 and it's a brand new issue, that may be different.
6 But, you know, generally speaking, those things are
7 documented somewhere in an agreement or an SGAT. And,
8 they have pretty much established the ground rules
9 already, I would think.

10 Q. Yes. In the context of pole attachments, if you take
11 subject to check that Verizon does maintain records of
12 the intervals that it takes for the performance of
13 make-ready work, for example, do you believe that's
14 something that FairPoint should do post closing, if the
15 transaction is approved?

16 A. I'm going to have to answer that two ways. If that's
17 already been subject to negotiation and resolution in
18 an agreement, then what I believe in is what that
19 agreement says. Now, and I don't want to diminish your
20 point, because, at a more general level, I have to very
21 much agree with you that the incumbent should be
22 providing access to facilities to competitors on parity
23 with what it does for itself. Otherwise, it gains a
24 competitive advantage through having monopoly access to

1 valuable space.

2 Q. All right. And, you've heard, probably more than you'd
3 like to hear, about what we've called the "five day
4 transition period"?

5 A. Actually, I wasn't particularly listening to that part.

6 Q. I'm shocked.

7 A. So, I haven't heard -- I guess it's passed through, but
8 I don't think much of it stuck. But go ahead.

9 Q. Okay. Well, will you agree that parity in handling the
10 orders that must be processed on a manual basis during
11 that time period would be important?

12 A. I do. I do. You know, it's a short period. I think
13 there's -- I would expect the last thing FairPoint's
14 going to be worrying about is gaining a competitive
15 advantage, when it's trying to make sure that the whole
16 world doesn't collapse on it. But, you know, in
17 general, yes, I agree with you. There should be a
18 reasonable level of effort taken to make sure that you
19 all don't get disserved on a proportionately greater
20 basis than everybody is going to be disserved during
21 that period.

22 Q. Regarding the Performance Assurance Program that
23 FairPoint will assume from Verizon, would questions on
24 that be more appropriate for Mr. King?

1 A. Well, if you want to talk about specific metrics, yes.
2 If you want to talk about it at a general level --

3 Q. Well, this would be a general question. In the
4 testimony given by Mr. Lippold on the CLEC Settlement,
5 he indicated that a one-month waiver of PAP obligations
6 would apply to the three CLECs that entered into the
7 so-called "CLEC Settlement", whereas a two-month waiver
8 of PAP obligations would apply to everyone else who had
9 not signed that settlement agreement. Would that be
10 consistent with your position that FairPoint should
11 provide equal treatment to all competitive service
12 providers?

13 A. Well, that's a very hard one. My concern is that, in a
14 settlement, there's give-and-take. And, I don't know
15 what, not knowing the settlement, I don't know what the
16 CLECs gave to get that. They may have given something
17 that, as a non-signer, someone else has retained. So,
18 I guess I can't really answer that without looking at
19 the agreements and making an overall judgment about
20 sort of what each side got. And, I'm not trying to
21 duck it. I just think -- I think you really have to
22 look at the details before you can risk an answer to
23 that question.

24 Q. Well, on a high level, would you agree that the PAP

1 itself was set up to provide a level of service quality
2 to all interconnecting carriers?

3 A. I do. And, I'll answer what's probably the next
4 question, which is I think you need to administer the
5 PAP on an evenhanded basis with respect to all CLECs,
6 because I think favoring one CLEC over other CLECs is
7 just as bad as favoring yourself as an incumbent over
8 the CLEC community.

9 But I don't mean that to overtake the
10 answer I just gave you about how complex it is to have
11 to figure out who got and who gave what in a
12 settlement.

13 Q. But the PAP today applies to all competitive local
14 exchange carriers on an equal basis?

15 A. Well, if the New Hampshire one is typical, then it
16 does. I just can't say for certain, because I haven't
17 looked at it in detail. But that would be what I would
18 expect, based on my experience everywhere else with
19 PAPs.

20 MR. MANDL: Okay. Thank you very much.

21 CHAIRMAN GETZ: Ms. Hollenberg. Ms.
22 Hatfield.

23 MS. HATFIELD: Good morning, Mr.
24 Antonuk.

1 WITNESS ANTONUK: Hello.

2 BY MS. HATFIELD:

3 Q. I wanted to ask you a question about your direct
4 testimony, not a specific reference, although, if you
5 look at Page 10, you'll see what I'm referring to you.
6 And, I think your direct testimony focuses quite
7 heavily on the risks of this transaction. And, I'm
8 wondering, can you describe with more detail what
9 caused you to take that particular focus in your
10 testimony?

11 A. Yes. We don't say that FairPoint's projections will
12 not prove true, although I want to narrow that. I do
13 want to say that we have a lot of concerns about the
14 projections that I think they were called "Mr. Balance
15 Sheet" and "Mr. Income Statement" were making. But, if
16 those are part of the projections, we dismiss those,
17 because we don't think they have a useful foundation.
18 But, as to the projections that form sort of the core
19 of FairPoint's case, it's not our position that those
20 risks -- that they're wrong, that they won't happen.
21 It's our position that they're, in certain -- four very
22 specific cases are significant risks that they won't
23 happen. What we very much tried to focus on is, how do
24 we make sure that, if those risks occur, customers are

1 adequately protected? So, that's basically our view of
2 risk. And, our view of risk is central to almost
3 everything we tried to craft on a financial protection
4 basis here.

5 Q. And, did you just say there are "four main areas of
6 risk" that you identified?

7 A. There are four that relate to the financial side of the
8 transaction. They're not necessarily in order,
9 although I think these are the four most important
10 together. On the investment side, there are two risks.
11 One is cost for a significant broadband expansion, and
12 the cost uncertainty as to what it will take to get
13 that level of broadband availability. Two, that the
14 capital expenditures that we need, think are necessary,
15 basically to put the network in a state of reasonable
16 quality, to make sure that, when Verizon makes the
17 handoff, what they're handing FairPoint is a
18 up-to-snuff, consistent with good utility practice
19 network.

20 The third risk is a two-sided risk of
21 the Transition Services Agreement. One is that it will
22 end too soon, in which case we believe the outcome is
23 likely to be similar to what was experienced in
24 Hawaiian Telecom. And, the other side of that

1 transition service risk is that it will extend for much
2 longer. Between the two risks, I'd rather see it end
3 later than end sooner, just because I think the "ending
4 sooner" case is potentially catastrophic. The "ending
5 later" case, it really has the potential to legally put
6 FairPoint's cash flow in significant jeopardy.

7 And, then, the final risk is this whole
8 concept that I think almost everybody has been talking
9 about, which is whether FairPoint will be able to
10 provide common service and support costs at a level
11 that's superior to Verizon's. And, that's what
12 generally has been called the "synergies" issue.

13 Q. And, several of those risks that you discuss,
14 specifically with reference to the build-out of their
15 broadband plan and also their CapEx needs, is one of
16 your concerns related to those risks that FairPoint
17 hasn't conducted sufficient due diligence to understand
18 what the needs are?

19 A. That is correct. That was a concern expressed in the
20 direct testimony. And, we believe they have continued
21 to perform work to find out what's going on. As
22 Mr. King can explain to you in more detail, for
23 example, the broadband estimates have changed, well,
24 they have gone up as FairPoint has learned more

1 information. How much diligence and whether that
2 diligence is ultimately going to prove sufficient
3 before this Commission reaches a decision, I can't say
4 much more than that, something we've continued to talk
5 about with FairPoint through informal discovery
6 sessions and other kinds of sessions that I don't think
7 I should talk a whole lot more about.

8 Q. In your supplemental testimony, I think you focus
9 mostly on describing the conditions that Staff would
10 need to see in order to support the transaction, is
11 that fair?

12 A. Yes.

13 Q. And, in supplement to -- or, excuse me, in the exhibit
14 to your supplemental testimony, which is Exhibit A,
15 which is part of that testimony.

16 MS. HATFIELD: But I do have extra
17 copies, if the Commissioners would like one?

18 CHAIRMAN GETZ: Exhibit A to the
19 supplemental testimony? We have it.

20 BY MS. HATFIELD:

21 Q. I'm wondering if you can talk a little bit about how
22 your conditions that you propose would address the
23 risks that you identified in your direct testimony?

24 A. I guess, trying to put it succinctly, as succinctly as

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1 I can, I better be careful, the best way to think of
2 this is a series of ceilings, with each higher ceiling
3 representing primarily a higher level of leverage. The
4 basic thrust of our conditions is to set ceilings that
5 are lower than what are set in the debt agreements.
6 And, I'm going to focus particularly on what's been
7 called the "leverage" or the "debt to EBITDA ratio".
8 The agreements with the lenders allow 5.75 in the first
9 year and 5.5 thereafter. And, we certainly understand
10 why the first year is a little bit higher, because
11 there will be a lot of one-time costs experienced in
12 that first year. Our problem with that is that those
13 ratios are relatively high, if you look at agreements
14 from peer-type companies, and particularly if you look
15 at the actual ratios that some of those other companies
16 are experiencing. And, in saying that, I rely on
17 primarily the work that Mr. Vickroy has done, which is
18 at a much greater level of detail than I have. Which
19 is my way of saying "if he's wrong, I'm wrong" and "if
20 he's right, I'm right."

21 We are looking to see, on a modeling
22 basis, a ratio that's -- we believe that's still high
23 compared to those peer companies, but puts them in the
24 neighborhood of those peer companies, and that is 4.75

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1 in the first year, 4.5 in the years thereafter. And,
2 the key thing is 4.75, 4.5, measured how? The way we
3 want to measure that is under the assumptions that the
4 TSA, Transition Services Agreement, extends somewhat
5 longer than what FairPoint has assumed, and that the
6 synergies don't occur. There's a whole lot of
7 discussion in my testimony about why I think there are
8 problems with assuming that they will happen.

9 So, what we're -- we've gotten ourselves
10 comfortable with the operation of FairPoint's model.
11 It's been tough, but understandably tough. These
12 models are always different, they're always unique.
13 So, what we're looking for is to see what it will take
14 to generate a ratio of 4.75 to 4.5, under the
15 assumption of a longer TSA and no synergies. So,
16 that's basically what that -- what that ratio that's
17 set forth in Point 1 on Page 1 of Exhibit A is all
18 about.

19 There's one other limit that we need to
20 talk about, too. This one is a little higher. This is
21 what we would impose as a dividend limit, which is 5.0.
22 The bank agreements, the letters of commitment, allow
23 that to go to 5.75 and 5.5. We want to see that ratio
24 lower on dividend payments. The reason we set that

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1 somewhat higher is this: It is -- One place in which
2 we're in agreement with FairPoint is that, you know,
3 this is a dividend-driven company. And, what we don't
4 want to see here is a set of conditions that put them
5 in a situation where, if things don't go well, they cut
6 dividends, the stock price crashes, and they're unable
7 to raise capital. If that's what we have to do to get
8 FairPoint here, I'll be blunt, we don't -- the Staff
9 don't want them here.

10 That's not -- You don't want to create a
11 situation where you bring a company into this state
12 under circumstances where it simply can't thrive as the
13 kind of company that it is. It's not a traditional
14 utility company that's got a lot of equity, that's got
15 an ever-increasing asset base. It's a different kind
16 of animal. And, we don't mind that kind of animal. We
17 just want to make sure that we put some protections in
18 that won't, on the one hand, kill the animal, and, on
19 the other hand, will still make sure that, if things
20 don't go well, after Verizon has left the state with
21 \$2.7 billion, that customers and the Commission,
22 wholesale and retail, and the other stakeholders, are
23 left to deal with the consequences.

24 Q. So, in terms of the possibility of a dividend

1 restriction, did you hear Mr. Leach testify that we
2 could -- I think he said that "we could consider the
3 142 million in dividends as part of a cushion" that
4 FairPoint believes that they have. And, I want to ask
5 you, I think what you're saying is, we really can't
6 consider that whole amount a cushion, because we don't
7 want to put FairPoint in a position where they can't
8 pay dividends at all?

9 A. That's exactly right. If the argument is, we can
10 eliminate dividends, if the argument is even that we
11 can cut dividends to the bone by 50 percent for an
12 extended period of time, that's in the category of what
13 I just said, we don't want them here, if that's what it
14 takes.

15 Is there some level versus what they're
16 paying now at which dividends can be used to absorb,
17 you know, the shocks that I think the new company is
18 inevitably going to experience? Yes. What that level
19 is, I think is something that a lot of people still
20 need to spend some time hammering out.

21 Q. And, I think you mentioned your feeling that the
22 projected synergies are unlikely to occur, or maybe we
23 should call them "cost savings" that FairPoint
24 projects. Can you expand on that a little bit?

1 A. Yes. I actually -- I actually do think "synergies" is
2 the right word, and I'll tell you why. I think there's
3 been a lot of confusion about what these costs are.
4 These costs are the costs it takes to support 2,500 or
5 so people who work directly in the field to provide
6 service in the three Northern New England states. They
7 are not waste, they are not misallocations. Is there
8 some waste? Yes, there's waste in every company. Is
9 there some misallocation? Well, we've done enough
10 affiliates' audits to say "there's a good chance there
11 is." But it's just really wrong to say "these costs
12 are not now producing value to customers in New
13 England." And, it's just wrong to say that "Verizon is
14 careless, inefficient, or sloppy about the costs that
15 they incur to serve New England." The costs are not
16 going to go away. The costs are the same kinds of
17 costs FairPoint is going to need to provide. They're
18 going to have to provide them through some other means.

19 Here's what's going away: Verizon's not
20 going to incur them anymore. Here's what's going to
21 happen: FairPoint is going to incur them. So, it's
22 just way oversimplistic to say "all these costs of
23 Verizon will go away". The real question is "what's
24 replacing them?" Those are built into FairPoint's

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1 assumptions about its costs. We think those
2 assumptions are counterintuitive. You can't accept on
3 faith that a company that, I think was pointed out, is
4 about maybe one or less percent the size of Verizon is
5 going to come in and save that kind of money. We
6 haven't looked at Verizon for a while. We did a
7 management audit of Verizon. We did an affiliates
8 audit. We looked at these organizations in the early
9 to mid 1990s. We found some things that we thought
10 could be improved. But you know what else we found?
11 We found that they, like any other company their size
12 we've looked at, run a fairly efficient ship, do a
13 fairly good job at supporting people. And, I certainly
14 haven't heard Verizon -- anybody from Verizon stand up
15 and say "we waste money in New Hampshire." I haven't
16 heard them stand up and say "we don't pursue revenue
17 opportunities in New Hampshire." And, I don't think
18 they will. And, if they did, I don't think I'd believe
19 them. But I'm certainly not going to believe anyone
20 else coming in and saying "we simply are going to count
21 on the existence on knocking \$70 million of real costs
22 out of this business that we aren't going to have to --
23 we're not going to have to replace, because,
24 ultimately, however it's termed, what FairPoint is

1 saying, they can be more efficient than Verizon.
2 There's no away to get around that when you're done
3 with this.

4 Q. Well, speaking of Verizon, there are several places in
5 Exhibit A to your supplemental testimony where your
6 conditions include a role for Verizon. And, one
7 example is Concern Number 3 about the cost of broadband
8 plan. Can you talk about how you think Verizon can
9 play a role in the solutions you propose?

10 A. Yes. We actually -- We actually put in here two, it's
11 fair to say, are open-ended commitments, which would be
12 that Verizon pays CapEx for broadband, to the extent it
13 exceeds a threshold of 21.6 million. We also say, and
14 that's actually in Point 3, it's the last bullet in
15 Point 3 on Page 1. The other place we talked about
16 those open-ended commitments are on Page 3 of Exhibit
17 A. The first bullet at the top of the page, 50 percent
18 of capital costs to replace all the equipment, and then
19 it goes on. Completion of major capital projects,
20 which is Point 8, and Point 11, other remediation
21 projects. And, that's -- that's what we proposed that,
22 when we filed the testimony at the time, when, as I had
23 indicated earlier, we were concerned particularly about
24 the due diligence issue.

1 More work is being done, we think
2 FairPoint is getting more comfortable. I think at this
3 point, if you sort of look at Verizon's objective,
4 which is to end its relationship with New Hampshire in
5 this aspect of its business, and we're not against that
6 happening, I think we've sort of -- sort of come to
7 grips with the fact that somehow I think we can't leave
8 those kind of obligations open-ended. Because they're
9 an endless source of debate, and they really ask you to
10 put FairPoint in the position of maybe having an
11 incentive to inflate those costs, because these costs
12 clearly inure to -- not just to the benefit of
13 customers, but also potentially to shareowners.

14 So, I think where we are on that one,
15 there needs to be a way to turn those into what we
16 think is a more fixed and predictable commitment.
17 Otherwise, I think we're asking Verizon to do something
18 that's -- that's probably not fair to ask them to do.
19 Now, what that level is, is I think another one of
20 those issues that some time needs to be spent on yet.

21 Q. Mr. Mandl asked you some questions about the work
22 that's happening between the three states' staffs about
23 assessing readiness for cutover. And, I wanted to ask
24 you, is what you're seeking to address some of the

1 things that we discussed with Mr. Smith and Mr. Haga,
2 about the fact that, without that involvement, the
3 cutover could happen prematurely?

4 A. Yes, that's a good point. I think that three-state
5 effort is particularly valuable in avoiding, well,
6 reducing the potential for what I said is the more
7 catastrophic problem with the TSA, cutting over too
8 early.

9 Q. I'm wondering if you have an opinion on limiting future
10 acquisitions by FairPoint, because of the potential
11 disruption it will cause to them fully implementing
12 what they're proposing here in New Hampshire?

13 CHAIRMAN GETZ: Actually, excuse me, Ms.
14 Hatfield, before we get into another line of questioning,
15 I think -- I was concerned that we're going to need to
16 switch court reporters shortly. Do you have 10, 20?

17 MS. HATFIELD: Probably 10 more minutes.

18 CHAIRMAN GETZ: Okay. Then, we'll
19 switch reporters after you complete your cross. Thank
20 you.

21 BY MS. HATFIELD:

22 Q. So, my question was about limiting future acquisitions?

23 A. We, at the time of the filing of the testimony, were
24 approaching that issue indirectly, but, at the time, we

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1 thought effectively. In other words, if we had the
2 right kind of ratios and limits built in, if those
3 limits were followed, they would, I believe,
4 effectively preclude acquisitions of a size that would
5 have the ability to increase the Company's risk in a
6 way that we found troublesome.

7 So, we certainly have never been
8 ignoring the question. Where we sit now, I think the
9 more interesting question is, is there merit in
10 actually attacking that issue more directly and saying
11 "acquisitions should be limited in ways that are
12 necessary to make sure that they don't come at the
13 expense of a reduction in service quality or worsening
14 of the ratios." And, I guess I would say, at this
15 point, we don't have a problem with establishing that
16 kind of a limit. If we do it, I think, to be fair to
17 FairPoint, we need to tie those limits very directly to
18 what concerns us, as opposed to what I would consider
19 kind of a blunt instrument approach that would say "no
20 acquisitions". So, if we could design a mechanism that
21 was targeted and fully consistent with the protections
22 we're looking for, we would -- we would be for that.

23 Q. And, on Page 2 of your supplemental testimony, on lines
24 19 through 21, you state "each of the conditions need

1 to be made enforceable, and a consequence for not
2 achieving or meeting a commitment should be established
3 before approval." And, can you just talk about how you
4 would go about ensuring that the conditions proposed
5 are enforceable and that there is a consequence for not
6 meeting them?

7 A. Well, yes, I can do that by way of a couple of examples
8 just to show you, because I think the mechanisms would
9 have to vary by condition. And, you said "ten
10 minutes", so --

11 CapEx, if we asked for CapEx to not drop
12 below projected levels? Well, what do you do if it
13 does drop? Do you say "well, they just have to make it
14 up later"? I'm not sure that's much of an incentive.
15 Broadband has to reach a certain level. I think it's
16 entirely fair for this Commission to look at broadband
17 availability as part of the public interest here. But,
18 once we do that, I think we all recognize that what
19 this Commission does and doesn't do, it can and can't
20 do, with respect to broadband, is different from what
21 it can and can't do with respect to basic local
22 exchange service. So, if we don't create a mechanism
23 now that will deal with the failure to meet the
24 commitment, then it seems to me we've created a huge

1 mess, which is, if they don't meet it, what are we
2 going to do? Spend months arguing jurisdictional
3 issues about whether the Commission can or can't do
4 anything about it? So, those are a couple of examples.

5 Service quality measures, one of the
6 ways to deal with that are the establishment of
7 specific penalties for not meeting retail service
8 metrics, which some states have done, and particularly
9 have done in the context of a similar type arrangement
10 like this, which is where a control of the business is
11 passing from one entity into the other. So, those are
12 three examples of the kind of mechanisms.

13 Verizon, it's a little harder. I mean,
14 I think, when Verizon is gone, they're gone. And, I
15 think that's fair. And, I think, with respect to
16 Verizon, it's pretty much the case that trying to sort
17 of keep them on the hook for these things is troubling
18 to me, because they're not vis-a-vis this Commission or
19 vis-a-vis the businesses and residents or customers
20 what they used to be. So, with respect to Verizon, I
21 think whatever they need to do, they need to do it now.

22 Q. And, I believe Staff Exhibit 26 was the Vermont
23 Department of Public Service Staff brief in the Vermont
24 proceeding. And, some of those conditions raised

1 issues related to Vermont ensuring that things are
2 taken care of there before money leaves the state. I
3 think that's kind of a rough way to say it. And, I
4 wanted to ask your reaction to that. And, also, if you
5 could talk a little about the idea of "ring fencing",
6 and if you think that's something that's worth pursuing
7 in this case?

8 A. In a way, what Vermont is doing is ring fencing. But
9 my problem with -- I don't want to say "Vermont", there
10 are a lot of people besides the Department of Public
11 Service in Vermont. What the Department is doing is
12 ring fencing of a sort. But it's ring fencing that
13 doesn't just keep the Vermont utility separate from the
14 parent, it also unfortunately, very unfortunately,
15 keeps it separate from what's left of Verizon Northern
16 New England, which is Maine and New Hampshire. Apart
17 from what I think the lenders are likely to do if this
18 happens, let me tell you what I don't like about it.

19 The way the brief is structured, what is
20 being requested is the ability to say that, until every
21 dollar of commitment made in Vermont is spent, no money
22 can go either up to the parent to pay the debt, which
23 will support what's happening here, too, moreover, if
24 the common organization is left in Maine and New

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1 Hampshire, I don't -- there is also going to have to be
2 a transfer of dollars over from Vermont to that group,
3 to that entity, in order to pay their share of the
4 common costs, which are very substantial.

5 So, not only am I worried about the debt
6 being unable to be paid until Vermont gets everything
7 it asks for, I'm worried about whether or not what I
8 see coming out of Vermont is even an agreement that
9 their share of the common expenses are going to get
10 paid. And, to be really blunt, here's what it comes
11 down to: Specific commitments are going to be
12 necessary for Vermont and Maine and New Hampshire.

13 And, to the extent that those commitments all cannot be
14 met before the debt gets paid and the common expenses
15 get paid, it seems to me all three states need to share
16 in that cut a little bit. The last thing I want to see
17 is, in order to pay the common expenses and the
18 debtors, Vermont gets 100 percent of its broadband and
19 its network improvement and all that, and Maine and New
20 Hampshire are left only with enough money to get
21 90 percent of theirs. Or, having to go through some --
22 drag FairPoint in here and say "why aren't you doing
23 what you promised here?"

24 It's not good. The risk is not

1 acceptable. Moreover, it seems to me, and maybe Randy
2 Vickroy can comment on this more, I can't understand
3 how the banks will go for it either. Because there's
4 at least two separate entities who can stop dividends
5 from flowing up to the parent to pay the debt.

6 Q. So, how else would you propose each state or even the
7 states working together could come up with a solution
8 that makes each state feel protected that those
9 commitments are actually going to happen, but without
10 running into those risks?

11 A. We could all do what the Department wants, and then we
12 could all sit here and horde our share, or we can go
13 all-for-one and one-for-all. And, I don't see how
14 there's any realistic solution except the latter. And,
15 that's counting both what I see as what I think is the
16 way the business has been structured and run, the way
17 it really needs to be run, before you start carving it
18 up into pieces that don't make much sense to me
19 anymore. I also think, in my opinion, that's what it's
20 going to take to keep the banks from telling FairPoint
21 that there's been a material adverse change in the
22 circumstances under which the banks issued their
23 letters. And, that -- And, that then means that
24 FairPoint has got to go back to the table and get those

1 loans at all, if they can, and I don't know what extra
2 rate or what extra interest costs it's going to be, if
3 the banks will even agree to it.

4 Q. I think this is my last question. And, that is that
5 you talked about the ratios in your proposed Solution
6 Number 1. And, my question is, in order to meet the
7 ratios that you've discussed that you set out there,
8 does the purchase price in this transaction need to be
9 reduced or do you think those ratios can be met without
10 that type of change?

11 A. The debt needs to be brought down somehow. The options
12 are more equity, consistent with the limits under which
13 the Reverse Morris Trust arrangement will work. If we
14 kill the Reverse Morris Trust aspect of this, we kill
15 the deal, it seems to me. So, we have to, if we want
16 FairPoint here, we have to live with that. And, the
17 other way is to reduce the debt. And, I think Mr. Del
18 Vecchio's client is the source for that, if that's the
19 route we take. I don't know how else you would do
20 that. More equity from FairPoint shareowners or less
21 debt the courtesy of Verizon.

22 MS. HATFIELD: Thank you very much.
23 That concludes my questions.

24 CHAIRMAN GETZ: Okay. Let's see.

1 FairPoint has about how much cross-examination?

2 MR. MCHUGH: Not sure yet, Mr. Chairman.

3 CHAIRMAN GETZ: Well, I think it's a
4 good time to break regardless, to change court reporters.
5 And, I think it will be in the nature of ten minutes,
6 which means that we're going to reverse course or modify
7 course once again. I had -- Earlier today, we said we
8 would deal with procedural issues when we came back from
9 the morning break. I suggest that we now do that when we
10 come back from the lunch recess. So, let's take ten
11 minutes to change reporters, and then we will hear from
12 FairPoint.

13 (Recess taken at 11:42 a.m.)

14 (Hearing reconvened at 11:50 a.m.)

15 CHAIRMAN GETZ: We're back on the record
16 in DT 07-011 with the examination of Mr. Antonuk.

17 Mr. Coolbroth or Mr. McHugh?

18 MR. COOLBROTH: No questions,

19 Mr. Chairman.

20 **EXAMINATION**

21 BY COMMISSIONER BELOW:

22 Q. Good morning, Mr. Antonuk. When you were responding to
23 a question from Ms. Hatfield concerning Page 2 of your
24 supplemental testimony for conditions to be made

1 enforceable as a consequence for not achieving and
2 meeting a commitment, you gave three examples and
3 talked about it as a mechanism. But I sort of heard
4 the description of the problem in two cases, sort of
5 metrics for broadband deployment and the CAPEX, but not
6 a suggestion on the mechanism that would be enforceable
7 with consequence. The third one was Verizon. And your
8 simple point was that any commitments they make maybe
9 should be completed before they depart regulatory
10 oversight of the Commission. So could you describe
11 what kind of mechanism you actually have in mind that
12 could result in an enforceable consequence?

13 A. Yes. First of all, if I say "Senator" in response to
14 your question, it will be a recollection of the last
15 time you questioned me.

16 Service-quality standards at the retail
17 level. Let's suppose there's a standard that says you
18 have to have a certain number of orders completed
19 within seven days. You could have a measure that says,
20 if there's a failure to meet at least 90 percent, or
21 some percent -- these numbers are not etched in stone,
22 they're just hypothetical -- that FairPoint has to pay
23 a certain amount of money. You could say at the
24 individual customer level, for example, if a service

1 appointment is missed more than on two consecutive
2 occasions, that customer will receive a bill credit.
3 That would be one example at that level.

4 On CAPEX, you could say that -- let's
5 say that if there's a minimum level of expenditure
6 required for every dollar below that, \$2 have to be put
7 into a fund to support infrastructure development in
8 the state. So there really are a lot of ways to do it.
9 And I guess at this point I'd like to let you let me
10 off the hook by saying a lot of those are still under
11 active consideration.

12 Q. Okay. Thank you.

13 **EXAMINATION**

14 BY CHAIRMAN GETZ:

15 Q. Good morning, Mr. Antonuk. I have one follow-up with a
16 question from Mr. Mandl, and it goes to the notion of
17 the proposal for an independent third party who would,
18 as I understand it, give some clearance for FairPoint
19 to make the irrevocable notice of readiness. Is that
20 correct?

21 A. The consultant -- although, I guess I keep talking
22 about this consultant in the third person, but in the
23 first person it's us -- would be in a position to
24 review realtime what's going on and express views back

1 to the three staffs of the states about what was
2 happening, but also expressing those views to
3 FairPoint. To the extent FairPoint agreed, if the
4 consultant recommended changes, then that would all be
5 reported to the staff. And presumably things would go
6 ahead unless the staffs decided there was some
7 crossroads that they hit that just required them, you
8 know, to get back to their Commission and raise a fuss
9 about it. So it's not so much that the consultant
10 becomes the one who says it's okay, go ahead. The
11 consultant looks at what's happening, expresses
12 reservations, concerns, makes recommendations.
13 FairPoint does or doesn't go along with them. And then
14 all of that is reported to the state staff so that they
15 have an exposure to basically all of the things the
16 consultant has said to FairPoint, all the
17 recommendations made, and what FairPoint's response to
18 them is.

19 Q. But I think part of the direction I thought Mr. Mandl
20 was going in asking, and the direction that concerned
21 me, and it goes to this issue: It seems like it's not
22 fully developed in your proposal, in terms of who would
23 get the information; what form it would take; what the
24 commissions would do with it, in terms of having

1 hearings, sign-offs; the structural issues around a
2 mechanism like this. I take it, unless I missed
3 something, that that's not fully developed; is that
4 correct?

5 A. That's correct. Although, I think I can report that
6 among the three states' staff participating, I think as
7 late as this morning, it appears that we're together
8 with them. FairPoint, I don't believe -- subject to
9 check -- I don't think FairPoint has seen that
10 agreement yet. So I believe we're at a point where,
11 assuming, you know, there's not still some closure with
12 FairPoint and the three state staffs, that at least
13 some of and maybe most of what you are seeking will be
14 imminently available.

15 CHAIRMAN GETZ: All right. Redirect,
16 Ms. Fabrizio?

17 MS. FABRIZIO: Staff has no redirect.

18 CHAIRMAN GETZ: Mr. Mandl?

19 MR. MANDL: Yes. I'd just like to raise
20 a point in light of the responses to your most recent
21 questions. At one of the earlier conferences we had, my
22 clients had expressed concern about the availability of
23 any three states' staff agreement for review by other
24 parties. We obviously are not privy to those discussions,

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1 don't know the status of that agreement, but it sounds as
2 if it's fairly far along. And our concern is that there
3 may be matters in that agreement that overlap with issues
4 in this proceeding -- you know, namely, the cutover
5 readiness process -- and your point, a need to see details
6 on how this whole matter would be addressed by regulators.
7 We had made the request that if agreement were reached,
8 that it be something that was made public, made available
9 to the parties, so that -- because it does have an effect
10 on the issue in this case. I think it's apparent from our
11 cross-examination that we don't regard system testing as
12 the sole criteria for cutover readiness, that there are
13 operational readiness matters that need to be addressed
14 and that --

15 CHAIRMAN GETZ: Well, let me say this --
16 I think I know where you're going and I understand your
17 point. And I would just suggest that you talk to the
18 parties during the lunch recess or at the end of the day
19 to see if there's agreement or not agreement on how to
20 deal with the -- deal with what may be some proposal from
21 the three states. And we can hear later the positions of
22 all the parties. And if there's a joint proposal or
23 argument about what to do, we'll deal with that later.

24 MR. MANDL: I believe we did get

1 testimony from Mr. Haga that he expected that any such
2 agreement would be filed, and we would support that.

3 CHAIRMAN GETZ: Okay. All right. Thank
4 you.

5 WITNESS ANTONUK: And for the good of
6 the cause, Mr. King is scheduled to testify next week.
7 We're certainly happy to have whatever discussions that
8 the parties want with us, and then Mr. King can get beat
9 up if he needs to next week, 'cause he knows this in much
10 better detail than I do.

11 CHAIRMAN GETZ: All right. Is there
12 anything else for this witness?

13 (No verbal response)

14 Hearing nothing, then you're excused.
15 Thank you, Mr. Antonuk.

16 Ms. Fabrizio, is Mr. Vickroy available?

17 MS. FABRIZIO: Yes, Mr. Chairman.

18 Can the witness be sworn in, please?

19 **RANDALL E. VICKROY, SWORN**

20 **DIRECT EXAMINATION**

21 BY MS. FABRIZIO:

22 Q. Good afternoon, Mr. Vickroy. Could you please state
23 your full name for the record.

24 A. Yes. Randall E. Vickroy.

1 Q. By whom are you employed?

2 A. Liberty Consulting Group.

3 Q. And what is your business address?

4 A. 65 Main Street, Quentin, Pennsylvania.

5 Q. Now, are you the same Randall E. Vickroy who filed the
6 direct testimony on behalf of staff on August 1st in
7 this proceeding?

8 A. Yes, I am.

9 MS. FABRIZIO: I would note that Mr.
10 Vickroy's testimony is marked as Exhibit 2, Staff
11 Exhibit 2. And as I'd like to also note, Staff Exhibits
12 39 through 41 has been submitted this morning. These are
13 source documents referenced directly in Mr. Vickroy's
14 testimony.

15 BY MS. FABRIZIO:

16 Q. Mr. Vickroy, do you have any changes to your testimony
17 today?

18 A. Yes, I'd like to note some changes, in particular, some
19 differences between the FairPoint forecasted financial
20 information, which was included in my prefiled
21 testimony. Similar information was presented by
22 Mr. Walter Leach of the company, of FairPoint, in his
23 rebuttal testimony. And there were some differences in
24 those two. Since the filing of my prefiled testimony,

1 we have had several discussions with the company and
2 exchanges of information with regard to the financial
3 model, and particularly with regard to the calculation
4 of the financial covenant ratios, which were kind of
5 the points of difference between our two testimonies.
6 And we've come to a revised understanding on how some
7 of these calculations are made. Mr. Leach's testimony
8 provides an explanation of what those differences are.
9 And basically, those are in his rebuttal testimony.
10 I'm in agreement with his calculation of the dividend
11 payout ratios, the other credit ratios on Pages 17, 18
12 and 68 of Mr. Leach's testimony. And, in fact, we have
13 consistently used this set of Mr. Leach's testimony, of
14 his numbers, in our cross-examination of him on Tuesday
15 and in other examples that we have made. So we'd also
16 like to note that by adopting the same methods in
17 calculating ratios as Mr. Leach, we're not changing our
18 opinions of FairPoint's financial projections or our
19 conclusions regarding their base case or their MAC
20 case. But we would just like to point out that we are
21 in agreement with their calculations and would go with
22 those in our examples.

23 Q. Okay. So if I understand correctly, you're letting the
24 Commission know that, although the numbers may have

1 changed slightly in the course of discussions and in
2 this proceeding this week, that your conclusions and
3 opinion have not changed; and therefore, you're not
4 actually changing the text of your testimony; is that
5 correct?

6 A. That's correct.

7 MS. FABRIZIO: Thank you. The witness
8 is available for cross.

9 CHAIRMAN GETZ: And Ms. Hollenberg? Ms.
10 Hatfield?

11 MS. HATFIELD: The OCA does not have any
12 cross-examination.

13 CHAIRMAN GETZ: And Mr. McHugh? Mr.
14 Coolbroth?

15 MR. COOLBROTH: No questions, Mr.
16 Chairman.

17 CHAIRMAN GETZ: Well, that's the
18 lightest load anyone's had in this proceeding.

19 WITNESS VICKROY: So disappointed.

20 CHAIRMAN GETZ: I assume there's no
21 redirect, so the witness is excused.

22 Thank you, Mr. Vickroy.

23 WITNESS VICKROY: Thank you. I enjoyed
24 it thoroughly.

1 CHAIRMAN GETZ: Is Mr. Skrivan
2 available?

3 MR. McHUGH: He is, Mr. Chairman.

4 **MICHAEL T. SKRIVAN, PREVIOUSLY SWORN**

5 MR. McHUGH: Mr. Chairman, I believe Mr.
6 Skrivan has already been qualified as a witness and sworn
7 in and is therefore available for cross-examination.

8 Mr. Skrivan, I just want to remind you
9 that you're still under oath, sir.

10 WITNESS SKRIVAN: Yes. Thank you.

11 CHAIRMAN GETZ: And Mr. Price? Is he
12 back there?

13 MR. PRICE: Yes. Thank you, Mr.
14 Chairman.

15 **CROSS-EXAMINATION**

16 BY MR. PRICE:

17 Q. Good afternoon, Mr. Skrivan.

18 A. Good afternoon.

19 Q. Could I ask you to turn to Page 8 of your rebuttal
20 testimony.

21 A. Yes, I'm there.

22 Q. In Lines 15 to 16 you say that, quote, ...parties are
23 asking FairPoint to agree to conditions that have not
24 been found to be in the public interest by the FCC or

1 by the New Hampshire PUC; is that correct?

2 A. Yes.

3 Q. Can you tell me if -- are you saying that certain
4 parties are asking for conditions that have
5 affirmatively been found not to be in the public
6 interest by the FCC and this Commission?

7 A. That may be the case. But what I'm really trying to
8 say is that what FairPoint is trying to do -- I think
9 we've used the term, "We want to step into the shoes of
10 Verizon." And what we really mean by that is that
11 there are many, many complex issues in the telecom
12 industry. Many of them have been litigated
13 extensively, arbitration proceedings, access charges,
14 interconnection rules, et cetera. And in many cases,
15 these have resulted in a certain regulatory environment
16 which has been based on research by all the parties and
17 filings and based on decisions by various state
18 commissions, as well as the FCC, maybe courts in some
19 circumstances. And so our position is that we want to
20 essentially rely on all of those as a starting point
21 and not have to go back and try and argue about a
22 number of issues which have either been found against
23 other parties or really haven't even been litigated one
24 way or the other in the past, and just let us start

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1 with where Verizon is, which is based on, in many
2 cases, an extensive public record, and then we can move
3 forward from there.

4 Now, as you know, we've also offered up
5 certain conditions or certain processes that we think,
6 you know, will give certain assurances to parties, in
7 terms of, for example, extending interconnection
8 agreements with the CLECs and agreeing not to raise
9 rates for a year. And so we've added to that a little
10 bit. But basically, we're just trying to start with
11 the current environment. Give us a chance to get
12 started, and then we can, if necessary, take these
13 other issues up one at a time in a more thoughtful and
14 detailed manner.

15 Q. But until the Commission's ruled on this transaction,
16 you can't say that they've said that these conditions
17 are not in the public interest; isn't that right?

18 A. I think that's fair.

19 Q. Okay. You're familiar with Section 271 of the
20 Communications Act?

21 A. Yes, I am.

22 Q. Would you characterize that as a market-opening
23 provision that required Bell operating companies, or
24 BOCs, to open their markets for local competition in

1 return for their ability to provide in-region,
2 long-distance services?

3 A. I think that's a fair characterization, yes.

4 Q. And am I correct that it's FairPoint's position that if
5 the transaction is consummated, if this transaction is
6 consummated, that FairPoint will not be the successor
7 or assign of a BOC, and that Section 271 would not
8 apply to FairPoint? Is that correct?

9 A. Yes, that is our position.

10 Q. Could I ask you to turn to Page 19 of your rebuttal
11 testimony.

12 A. Okay.

13 Q. In Lines 10 through 17 you cite examples of
14 transactions where non-BOC telephone companies
15 purchased certain exchanges from BOCs and were not
16 subsequently treated as BOCs as a result of those
17 purchases; is that correct?

18 A. Yes.

19 Q. Do any of the transactions you cite here involve the
20 purchase of a BOC's entire ILEC business in three or
21 more contiguous states?

22 A. No, they don't.

23 Q. Do any of them involve the purchase of a BOC's ILEC
24 business in one state? Entire ILEC business in one

1 state?

2 A. No.

3 Q. The transactions you cite involve the purchase of
4 particular BOC exchanges; correct?

5 A. Yes.

6 Q. To your knowledge, was Qwest a BOC before it purchased
7 U.S. West?

8 A. I suppose that's a legal issue. But I think the answer
9 is probably yes.

10 Q. Before Qwest purchased U.S. West, Qwest was a BOC?

11 A. I'm sorry. I misunderstood. Thank you for reiterating
12 that. No, Qwest was not a BOC.

13 Q. And now is Qwest a BOC after it purchased U.S. West?

14 A. Qwest operations that came from U.S. West are, to my
15 knowledge, considered to be a BOC.

16 Q. Can you please turn to Page 18 of your testimony?

17 A. Yes.

18 Q. In Lines 16 and 17 you say that the issue of whether
19 FairPoint should be treated as a BOC has been fully
20 briefed before the FCC; correct?

21 A. Yes.

22 Q. Does that mean that the FCC is guaranteed to rule on
23 that issue in this proceeding, in the proceeding that
24 it's conducting concerning this transaction?

1 A. I don't know the answer to that.

2 Q. So it's possible, you acknowledge, that the FCC will
3 not rule on the issue?

4 A. It's possible. I really don't know the process.

5 Q. All right. Thank you. Now, Verizon has gone through
6 the process of receiving Section 271 approval to
7 provide in-region, long-distance services in New
8 Hampshire; correct?

9 A. Yes, it has.

10 Q. And as part of that process, the evaluation was
11 conducted to determine whether Verizon provides
12 services to CLECs that meet the 271 checklist; correct?

13 A. To my knowledge, yes.

14 Q. And did the New Hampshire PUC participate in that
15 process when Verizon was going through its application
16 for 271 authority?

17 A. I don't have a great deal of knowledge regarding the
18 271 process in particular. But it's my understanding
19 that the state commissions participate in that process.

20 Q. Thank you. Please turn to Page 18 of your rebuttal
21 testimony.

22 A. Okay.

23 Q. In Lines 4 through 6 you state that, quote, FairPoint
24 will agree to provide anything that Verizon currently

1 provides under the 14-point competitive checklist set
2 forth in Section 271(c)(2)(B) of the act, end of quote.
3 You go on to say in Line 10 that, quote, FairPoint is
4 not seeking to pick and choose which Verizon
5 obligations it assumes. Am I quoting you correctly?

6 A. Yes.

7 Q. What is your understanding of the Section 271 checklist
8 elements that Verizon is currently providing and that
9 FairPoint will continue to provide as a result of the
10 commitment you make here?

11 A. My understanding of those items are that they include
12 circuit switching, and they include SS7 and the
13 associated databases that are required for call
14 completion.

15 Q. The competitive checklist, however, because it's a
16 14-point checklist, includes other things, too, doesn't
17 it?

18 A. Yes.

19 Q. Okay. And some of those things are network elements
20 that ILECs -- or excuse me -- that BOCs were required
21 to provide under Section 251 of the act but
22 subsequently were, quote, de-listed, unquote, by the
23 FCC. Are you familiar with the FCC's triennial review
24 remand order?

1 A. Yes, I am.

2 Q. And am I correct that in that order, the FCC said that
3 there is a separate obligation to provide de-listed
4 elements that have been de-listed under Section 251
5 under the 271 competitive checklist? Correct?

6 A. I don't know. I'd have to look at the section to see
7 exactly the context of that.

8 Q. But as a general matter, are you aware that the FCC has
9 said that 271 has independently required the unbundling
10 of network elements?

11 A. Yes.

12 Q. In the joint stipulation that FairPoint has entered
13 into with three CLEC intervenors in this proceeding,
14 FairPoint, in Section 2 of the joint stipulation -- let
15 me be more specific -- Section 2.a, commits to
16 providing -- let me just get the exact language here.
17 I'm going to read from Section 2a. "FairPoint will
18 cause telco to provide as, quote, settlement items,
19 unquote, all Section 271(c)(2)(B) competitive checklist
20 network elements and services, to the extent that the
21 FCC rules or has ruled that BOCs in general are
22 required to provide such elements and services, now or
23 in the future." And it goes on.

24 My understanding is that CLECs that are

1 not parties to this joint stipulation, according to Mr.
2 Lippold's testimony, will be able to receive these 271
3 settlement items from FairPoint; is that correct?

4 A. Yes, that's correct.

5 Q. Let me draw your attention to Section 2c of the joint
6 stipulation. Under Section 2c, the CLECs that are
7 parties to this document may have this requirement that
8 FairPoint provide 271 settlement items, that they may
9 go to state commissions to enforce that requirement; is
10 that correct?

11 A. Yes, that's correct.

12 Q. Under Section 2c.

13 A. Yes, under 2c.

14 Q. But am I also correct that CLECs not a party to the
15 joint stipulation will not have the benefit of being
16 able to go to state commissions to enforce this,
17 according to Mr. Lippold's testimony?

18 A. Yes, that is correct.

19 Q. So, if at the end of this proceeding FairPoint is not
20 regulated as a BOC, it's not considered a BOC, and so
21 there's no requirement under 271 that FairPoint provide
22 271 elements, how will CLECs that are not a party to
23 this stipulation enforce the obligation that FairPoint
24 is committing to, to provide 271 elements to all CLECs?

1 A. Our position on this is that we are agreeing to provide
2 those Section 271 elements. And we're also suggesting
3 that, to the extent FairPoint, you know, would -- this
4 wouldn't happen -- but the possibility that FairPoint
5 would back up and say, no, we're not going to do that,
6 we're suggesting that the Commission, the State
7 Commission would have the authority to say to
8 FairPoint, yes, you will provide those. So that's
9 basically something that we would propose as part of
10 this arrangement.

11 With respect to the pricing of those
12 services, which is really what this section goes to,
13 the pricing is done under Section 201(b) and 202(a) of
14 the Telecom Act. And FairPoint is subject to those
15 sections of the Telecom Act. So, to the extent
16 FairPoint agrees to provide those services, and a CLEC
17 has a complaint or concern about the pricing of those
18 services, then, under 201 and 202 of the Telecom Act it
19 would be able to take those pricing concerns to the
20 FCC.

21 Q. So let me try to summarize what you just said so I
22 understand it. A CLEC that is not a party to the joint
23 stipulation would be able to go to the Commission -- to
24 a state commission, and enforce the obligation that

1 certain settlement items be provided, certain 271-like
2 settlement items be provided, but that if a question
3 arose concerning the pricing for those systems, that
4 that CLEC would need to go to the FCC to make a ruling
5 on whether they were just unreasonable under the
6 Communications Act.

7 A. Yes, that's my understanding.

8 Q. Why are the CLECs that are party of the joint
9 stipulation given the ability to go to a state
10 commission to make that ruling and CLECs that are not a
11 party to it are not given that ability?

12 A. Well, I think the simple answer is this was an
13 agreement with give and take to it, and that was part
14 of the give and take that was involved in the
15 stipulation and the negotiation with the CLECs.

16 Q. Can I ask that you to turn to Page 18 of your rebuttal
17 testimony.

18 A. Okay.

19 Q. In Lines 19 through 21 you say, quote, The only reason
20 to classify FairPoint as a BOC would be to trigger the
21 Section 271 requirements, unquote; is that correct?

22 A. Yes.

23 Q. Are you familiar with 272 of the Communications Act?

24 A. Yes, I am.

1 Q. Are you aware of the non-discrimination requirements
2 and separate affiliate requirements in Section 272(e)
3 that have not and do not sunset?

4 A. Can you say that again?

5 Q. Are you aware of the non-discrimination requirements
6 and separate affiliate requirements in Section 272(e)
7 that have not and do not sunset?

8 A. I'd have to look at the language. It's my
9 understanding that there's non-discrimination
10 provisions in that section, but not separate affiliate
11 requirements in that section.

12 Q. Well, I think -- okay. We can check that. But you at
13 least acknowledge that there are requirements in
14 Section 272(e), and you acknowledge that Verizon is
15 currently subject to these requirements by virtue of it
16 being a BOC.

17 A. Yes.

18 Q. Will FairPoint agree to be subject to these
19 Section 272(e) requirements?

20 A. No. We don't think it's necessary to be subject to
21 those because there are provisions that apply to
22 independent telephone companies and apply to all local
23 exchange carriers which essentially cover the same
24 ground.

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1 Q. And what are those?

2 A. Well, we'd have to go through them one at a time. But
3 if you want to go through those, I can respond and tell
4 you what the FCC rule is that applies to each one of
5 those provisions.

6 MR. PRICE: Can I make a data request
7 for that, Mr. Chairman?

8 CHAIRMAN GETZ: Prepared to answer in
9 the form of a record response?

10 MR. MCHUGH: I would like the exact form
11 of what the response is before we -- I'm not sure what
12 he's asking us to do.

13 CHAIRMAN GETZ: I do have a question of
14 how extensive --

15 MR. MCHUGH: Yeah, that's --

16 CHAIRMAN GETZ: -- this request is.

17 MR. PRICE: My question was, will
18 FairPoint agree to being subject to Section 272(e) of the
19 Communications Act? And the response was -- the witness'
20 response was that it's not necessary because there are
21 other legal provisions that would apply to FairPoint that
22 impose the same obligations. And I want to know -- I
23 think the data request would be: What are those legal
24 provisions that supply those obligations?

1 MR. McHUGH: I think that's fine.

2 CHAIRMAN GETZ: And we are up to
3 exhibit?

4 MS. O'MARRA: Fifty.

5 CHAIRMAN GETZ: Fifty.

6 BY MR. PRICE:

7 Q. Thank you. In the joint stipulation, FairPoint agrees
8 to -- or the parties to the joint stipulation agree
9 that the PAP will be suspended for a period of one
10 month following the cutover; correct?

11 A. Yes, that's correct.

12 Q. But is it FairPoint's position that, for other parties
13 that are not parties to the joint stipulation, that the
14 PAP should be suspended for two months after the
15 cutover?

16 A. Yes, that's correct.

17 Q. Can you explain why FairPoint would need to have the
18 PAP suspended for only one month for these three CLECs
19 and for two months for everyone else?

20 A. I think I would answer similar to the prior question on
21 the stipulation, is that the terms in here were the
22 result of the parties' give and take, and this was just
23 one of the terms that was negotiated.

24 Q. Thank you. My last question is has to do with

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1 Section 4c of the joint stipulation. Can you just --
2 Mr. Lippold may have answered this already, but can you
3 refresh my memory? Does Section 4c -- is that an
4 obligation that all CLECs may enforce, or is that one
5 of the ones that only the parties to the joint
6 stipulation can enforce?

7 A. My understanding of the way this applies is that
8 FairPoint has essentially agreed to provide this
9 provision to all CLECs for one year, and that by
10 including it in this agreement, in conjunction with a
11 and b above it, for the CLECs who have signed this --
12 and for anybody else who wants to, it's open to them --
13 that this would be extended to the three years covered
14 in a and b.

15 MR. MCHUGH: I'm sorry, Mr. Chairman.

16 Mr. Price, did you want him to address
17 Section 4c or 4b?

18 MR. PRICE: It was 4c. Did I say 4b?

19 MR. MCHUGH: I'm not sure. But I think
20 Mr. Skrivan was at least addressing 4b, and that's why I
21 was --

22 MR. PRICE: Right. It's 4c. 4c is the
23 provision --

24 MR. MCHUGH: Volume discounts.

1 MR. PRICE: Right, where FairPoint
2 agrees to pro rate agreements that include volume
3 discounts in the three states.

4 A. Pardon me while I read through it again.

5 (Witness reviews document.)

6 A. Okay. You know, I think I stand by what I said. C
7 refers to volume pricing in b above; and b is
8 essentially the three-year term. And so I understand c
9 to be read consistent with a and b and, therefore,
10 would apply for a longer period for the carriers that
11 have signed this stipulation.

12 Q. So, for carriers with agreements that -- with wholesale
13 agreements -- carriers that have wholesale agreements
14 with Verizon right now that include services in the
15 three northern New England states, as well as services
16 in other states, FairPoint will come in and assume the
17 agreements for the three northern New England states;
18 but for CLECs not a party to this joint stipulation, it
19 will not commit to pro rating those?

20 A. Well, we have said all along that we'll commit to pro
21 rating those for the first year. And I think the
22 question here is how long that term applies, how long
23 that proration applies.

24 Q. So when you say pro rating them for the first year, you

1 mean you're referring then to FairPoint's commitment to
2 extend the agreements for one year and that -- so
3 therefore, you're saying that the proration only
4 occurs -- only is good for a year and then you
5 renegotiate the agreement?

6 A. I think that's a fair summary, yes.

7 Q. Okay. Thank you. No further questions.

8 CHAIRMAN GETZ: Mr. Mandl.

9 **CROSS-EXAMINATION**

10 BY MR. MANDL:

11 Q. Good afternoon, Mr. Skrivan.

12 A. Good afternoon.

13 Q. Am I correct that you have previously testified in the
14 proposed transaction proceedings in Vermont and Maine?

15 A. Yes, that's correct.

16 Q. With regard to your background, have you been involved
17 in any revenue requirements proceedings for the
18 companies by whom you were employed?

19 A. Well, broadly speaking, yes. I'm not sure what you
20 mean by "revenue requirement proceeding." But I've
21 been involved in revenue requirements and various types
22 of activities within the company, yes. And that would
23 include NECA studies, for example.

24 Q. Would it include any rate-setting proceedings?

1 A. I'm trying to think back. I've been involved in
2 setting rates through interconnection agreement
3 proceedings and I've probably been involved in some
4 others. I can't think, off the top of my head, what
5 those might be.

6 Q. All right. In your position with FairPoint, will your
7 responsibilities include retail revenue requirements
8 proceedings?

9 A. We haven't determined who exactly will be responsible
10 for that. Right now, I'm sort of wearing two hats.
11 One hat is working with the systems development on the
12 accounting side specifically having to do with
13 regulatory accounting and reporting, and then the other
14 hat is participating in these proceedings.

15 Q. Understood. Under the organizational structure that
16 FairPoint proposes to adopt, would personnel who handle
17 retail rate-setting proceedings report to you?

18 A. You'll have to talk to Mr. Nixon about the organization
19 for the regulatory group.

20 Q. All right. Fair enough. In preparing for these
21 proceedings in the three states, did you familiarize
22 yourself in any way with the rate-setting practices of
23 those states?

24 A. Yes.

1 Q. All right. And from that process, would you agree that
2 Verizon's retail rates are regulated by the New
3 Hampshire Commission, the Maine Commission and the
4 Vermont Public Service Board?

5 A. Yes.

6 Q. And you'd agree that each state is generally free to
7 establish a specific method of rate regulation?

8 A. I don't know the answer to that.

9 Q. Okay. Your understanding, though, is that in a couple
10 of the states -- Verizon has alternative regulation --
11 an alternative form of rate regulation, as opposed to
12 what we would refer to as cost-of-service-based
13 regulation?

14 A. Yes, I'm familiar with that.

15 Q. All right. And after closing, am I correct that
16 FairPoint's retail rates as an ILEC would also be
17 subject to rate regulation by the three state
18 commissions?

19 A. Yes.

20 Q. Okay. Did you familiarize yourself with the
21 alternative rate regulation plan in Vermont?

22 A. To some extent, yes.

23 Q. Okay. And is it your understanding that the current
24 plan in Vermont extends through December 31st, 2010?

1 A. Yes, that's my understanding.

2 Q. Is it also your understanding that that plan could
3 terminate earlier if Verizon, or post-closing
4 FairPoint, fail to comply with broadband build-out
5 commitments that are included in that plan?

6 A. I'm not specifically familiar with those provisions.
7 That sounds right, but I can't speak authoritatively on
8 that.

9 Q. All right. Would you agree that in the Vermont Public
10 Service Board proceeding, Docket 7270, FairPoint
11 originally proposed a one-year extension of
12 interconnection agreements, similar to your proposal in
13 New Hampshire in your rebuttal testimony?

14 A. Yes, that's correct.

15 Q. And would you also agree that on brief, FairPoint
16 agreed to a three-year extension of existing
17 interconnection agreements, as well as a three-year
18 extension of expired agreements from the date of merger
19 closing?

20 A. Yes, that's correct.

21 Q. Okay. With regard to the -- well, let me withdraw that
22 question.

23 Let me -- you have the CLEC settlement
24 that you discussed with Mr. Price?

1 A. Yes, I do.

2 Q. I'd like to refer you to, as soon as I find it,
3 Section 4 of the term sheet, and specifically on
4 Page 6, Section 4f.

5 A. Okay.

6 Q. Under Section 4f, it's provided that FairPoint shall
7 adopt the Vermont SGAT in effect as of the merger
8 closing and that the SGAT will remain -- the Vermont
9 SGAT, that is -- will remain in place with rates capped
10 at current levels for three years following the merger
11 closing date. A couple questions on that.

12 First is, are the parties to this
13 settlement asking the New Hampshire Commission to
14 approve a provision relating to the Vermont SGAT?

15 A. I don't know the answer to that.

16 Q. Was it the intention of FairPoint that Part 4f apply to
17 all CLECs or just the three that signed this settlement
18 agreement?

19 A. I can't necessarily speak to the intent. But the
20 practical outcome is that it would apply to all of the
21 CLECs, because if the SGAT remains in place and it
22 applies to all CLECs, then effectively it would benefit
23 any CLEC in the state of Vermont.

24 Q. All right. Would you agree that the Vermont SGAT is

1 not covered by the alternative regulation plan in
2 Vermont?

3 A. I understand that there's a question whether or not
4 it's covered by that. So I think that was one of the
5 reasons that we went ahead and included this provision,
6 just to clarify whether or not those rates would be
7 capped for the three-year period.

8 Q. Is it your understanding that the SGAT in Vermont is
9 not considered a tariff?

10 A. I guess that's a technical definition. And again, I
11 understand that it's like a tariff. But I don't think
12 it's exactly a tariff. And that may give rise to the
13 unsureness as to whether or not the AFOR in Vermont
14 would apply to the SGAT.

15 Q. With regard to the commitment made by FairPoint in
16 Vermont regarding extensions of interconnection
17 agreements, including those in effect on a
18 month-to-month basis, am I correct that FairPoint also
19 agreed to keep existing wholesale rates and terms in
20 place during that three-year period?

21 A. Yes.

22 Q. In regard to the CLEC settlement, we were told by Mr.
23 Lippold that Sections 4a and 4b dealing with the
24 extension of interconnection agreements would apply

1 only to the three CLECs that signed the settlement
2 agreement. Is that your understanding as well?

3 A. Yes, that's my understanding.

4 Q. Would you agree that the New Hampshire Commission could
5 adopt a merger condition that would apply those same
6 provisions to all interconnecting carriers?

7 MR. McHUGH: Mr. Chairman, I object to
8 Mr. Skrivan and the questions, to the extent as to what
9 the Commission's authority is or is not. That's certainly
10 up to the Commission to decide, but not for Mr. Skrivan.

11 MR. MANDL: I'll withdraw the question.

12 MR. McHUGH: Thank you.

13 BY MR. MANDL:

14 Q. Just a point of clarification again in Section 4 of the
15 CLEC settlement. Section 4e does deal with wholesale
16 tariff rates in New Hampshire and refers to Tariff 84
17 and Tariff 86. Do you see that?

18 A. Yes, I do.

19 Q. Okay. And that provision applies to all wholesale
20 parties, not merely the three who signed the settlement
21 agreement?

22 A. Yes, it does.

23 Q. Is Section 4f regarding the Vermont SGAT in some ways
24 analogous to Section 4e? Is it basically a Vermont

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1 equivalent of what you provide under 4e for New
2 Hampshire?

3 A. I think that that's a reasonable -- it is so, yes.

4 Q. Thank you. I'd like to refer you to Section 8 of the
5 CLEC settlement terms.

6 A. Okay.

7 Q. Section 8a provides for some mutual obligations to file
8 briefs in Vermont Docket 7270 in which the settling
9 parties -- that is, FairPoint and the three CLECs --
10 would indicate their support for approval of the
11 merger, subject to the CLEC settlement conditions. Do
12 you see that?

13 A. Yes.

14 Q. Wouldn't that provision conflict with the position that
15 FairPoint has taken in the Vermont proceedings, that it
16 will accept interconnection agreement extensions for
17 three years for all wholesale carriers?

18 A. I don't understand the question.

19 Q. Well, in this -- according to Mr. Lippold, Sections 4a
20 and 4b of the CLEC settlement terms which involve
21 interconnection agreement extensions apply only to the
22 three CLECs that signed this CLEC settlement agreement;
23 whereas, in Vermont, FairPoint has already on brief
24 committed to extending interconnection agreements for

1 all wholesale interconnecting parties for three years
2 from the date of closing.

3 A. Okay.

4 Q. So what I'm asking is whether Section 8a conflicts with
5 the commitment that FairPoint has already made on brief
6 in Vermont Docket 7270.

7 MR. McHUGH: Mr. Chairman, again, I
8 object to this question. First of all, the Vermont brief
9 that's on file on behalf of FairPoint is quite extensive.
10 If Mr. Mandl wants to point to some specific provisions
11 and show the witness and ask if there's somehow
12 inconsistency, which I don't think there is, between the
13 brief and this Section 8, that's one thing. But to try
14 and say uniformly that something done in Vermont in a very
15 extensive brief somehow conflicts without -- first of all,
16 he hasn't even established the witness saw the Vermont
17 brief. That's the first matter. But getting beyond that,
18 I mean, if there's a specific request as to some document
19 might be conflicting, that perhaps is a different story
20 and we can get that. But we're not there yet.

21 MR. MANDL: If I can respond to that.
22 NECTA/Comcast had marked for identification Exhibit 83P,
23 which is an excerpt from the Vermont brief which I used in
24 discussions with Mr. Lippold. It does contain FairPoint's

1 commitment to extend interconnection agreement terms by
2 three years for existing agreements and then agreements
3 that remain in effect on a month-to-month basis. And this
4 witness, Mr. Skrivan, indicated it was -- that was his
5 understanding of the position taken by the company in
6 Vermont. What I have asked him here is, in light of
7 FairPoint's interpretation of this CLEC settlement
8 agreement, whereby it seeks to --

9 CHAIRMAN GETZ: I'm sorry. Say that
10 again. In light of --

11 MR. MANDL: In light of FairPoint's
12 explanation of the three CLECs' settlement agreement, what
13 it is saying to this Commission is that, for CLECs that
14 did not sign this agreement, you get a one-year extension.
15 They've already said in Vermont we get a three-year
16 extension. Now they're going to, through Section 8a,
17 indicate support for these settlement conditions in
18 Vermont. To me, that seems to be a conflict when it comes
19 to -- or conflicting positions when it comes to who gets
20 three-year interconnection agreement extensions. And
21 that's the question I put to the witness.

22 MR. MCHUGH: Mr. Chairman, if I may.
23 First of all, if there's some sort of conflict with a
24 Vermont brief that we have small excerpts of, which is 101

1 pages at least -- it's more than that, frankly, but at
2 least as provided here -- first of all, that's not
3 relevant to these proceedings. Second of all, I can't
4 believe, seriously, we're trying to get a legal conclusion
5 out of Mr. Skrivan, who is not a lawyer, as to what --
6 this phrase may or may not conflict in a brief that is
7 well in excess of a hundred pages. And I don't think it
8 should be the subject of these proceedings.

9 MR. MANDL: Well, I find it interesting
10 that another party to this proceeding introduced the
11 entire brief of the Vermont Department of Public Service.
12 We would be quite happy to introduce FairPoint's entire
13 brief in this proceeding if that's what FairPoint desires.

14 CHAIRMAN GETZ: Well, let me step back
15 to this recurring argument between asking for legal
16 conclusions from witnesses who are not lawyers. I take it
17 you're not asking for a legal conclusion --

18 MR. MANDL: No.

19 CHAIRMAN GETZ: -- whether there's
20 conflict. But if generally you ask the question, is he
21 aware that this Section 8a is in any way inconsistent with
22 other positions that -- subject to his expertise and his
23 experience in this case -- that are inconsistent, then
24 I'll allow that question.

1 MR. MANDL: That's essentially what I
2 was attempting to ask. Thank you.

3 WITNESS SKRIVAN: I'm not aware of any
4 inconsistency.

5 MR. MANDL: All right.

6 MR. McHUGH: Thank you, Mr. Chairman.

7 CHAIRMAN GETZ: Sometimes it takes
8 awhile to get there.

9 MR. MANDL: Interesting answer.

10 MR. McHUGH: I ask that that be stricken
11 from the record, please. There was no need for that
12 commentary.

13 MR. MANDL: Pardon me.

14 BY MR. MANDL:

15 Q. Now, is it your understanding that in this proceeding
16 the Commission Staff has recommended a three-year rate
17 freeze for FairPoint's retail rates?

18 A. I don't recall that specifically. That sounds right,
19 subject to check.

20 Q. Okay. Also subject to check, is it your understanding
21 that the Office of Consumer Advocate has recommended a
22 rate freeze through 2012?

23 A. Yes.

24 Q. In your testimony, you indicate that you've

1 participated in interconnection agreement negotiations
2 and arbitrations; is that correct?

3 A. Yes, it is.

4 Q. And would you agree that those are costly and
5 time-consuming proceedings for both the ILEC and the
6 wholesale customer?

7 A. Yes.

8 Q. And that those types of proceedings take up substantial
9 Commission resources or the resources of an arbitrator?

10 A. Yes.

11 Q. Is it your understanding that interconnection
12 agreements arise from federal law -- that is, you know,
13 Sections 251 and 252 of the Telecommunications Act?

14 A. Yes.

15 Q. Would you agree that competition can be adversely
16 affected by factors other than market concentration?

17 A. Can you say that again?

18 Q. Would you agree that competition can be adversely
19 affected by factors other than market concentration?

20 A. Yes.

21 Q. One final area. I believe in both the CLEC settlement
22 and in your rebuttal testimony, starting at Page 13,
23 you discuss FairPoint's reservation of rights to seek
24 rate recognition for the capitalized portion of the

1 Capgemini costs in a future rate proceeding; is that
2 correct?

3 A. Yes.

4 Q. Assuming approval of your position, would FairPoint
5 agree to defer seeking rate recognition of those costs
6 from wholesale customers in advance of seeking rate
7 recognition from retail customers?

8 A. No, we would not.

9 Q. And could you explain why not?

10 A. I guess we don't see the two as connected. They're
11 separate proceedings. And in the event either a retail
12 proceeding came up or a wholesale proceeding came up,
13 FairPoint would argue -- would present arguments based
14 on its estimate of the cost to provide various
15 services.

16 In a retail proceeding, if it was under
17 rate-of-return regulation, then there would be some
18 sort of test period, and we would develop a revenue
19 requirement and we would argue for the assumptions that
20 went into that.

21 If it was a wholesale proceeding in
22 terms of an interconnection agreement, then, rather
23 than a rate-of-return proceeding, it would be based on
24 TELRIC standard and be forward-looking in nature. And

1 we would expect to put together our forward-looking
2 costs, including costs associated with OSS. And we
3 would expect to put our costs together and propose that
4 those costs be used in the proceeding.

5 Q. If the retail rates and the wholesale rates were
6 stabilized at the Verizon levels for the same period of
7 time, wouldn't it be possible to implement the rate
8 recognition of these capitalized Capgemini costs at the
9 same time for both wholesale and retail?

10 A. I think you're asking me that if... I think what you're
11 asking me is, if we waited to have a TELRIC proceeding
12 until we had a retail proceeding, then in the TELRIC
13 proceeding we could argue the forward-looking cost, and
14 in the rate-of-return proceeding we could argue the
15 actual cost, I guess that's what would happen. I just
16 don't see how those are connected in any way.

17 Q. With regard to the capitalized Capgemini costs, is it
18 your expectation that some portion of those costs would
19 be allocated to unregulated operations that benefit
20 from the underlying systems that Capgemini is working
21 to assemble?

22 A. Yes.

23 Q. Would it also be your expectation that those same
24 capitalized costs would be allocated between Maine, New

1 Hampshire and Vermont?

2 A. Yes.

3 Q. And if the underlying systems were used by the rural
4 systems of FairPoint within the New England states, or
5 used by the FairPoint systems outside of New England,
6 would you expect that a portion of those costs would be
7 allocated to those systems and jurisdictions?

8 A. Yes.

9 MR. MANDL: Thank you. I have no
10 further questions.

11 CHAIRMAN GETZ: Okay. This is a good
12 time to take the lunch recess. Let me confirm before we
13 do. Ms. Hollenberg, will there be questions for Mr.
14 Skrivan?

15 MS. HOLLENBERG: Yes.

16 CHAIRMAN GETZ: And from Staff as well?

17 MS. FABRIZIO: Yeah.

18 CHAIRMAN GETZ: Okay. Then let's break
19 until 2:15.

20 (Lunch recess taken at 12:55 p.m.)

21 (Hearing reconvened at 2:20 p.m.)

22 CHAIRMAN GETZ: Good afternoon. We're
23 back on the record in Docket DT 07-011. I guess, why
24 don't we complete the examination of Mr. Skrivan, and then

1 we'll deal with all of the remaining procedural issues
2 after we are finished with his examination. So we will
3 turn to Ms. Hollenberg.

4 MS. HOLLENBERG: Thank you.

5 **CROSS-EXAMINATION**

6 BY MS. HOLLENBERG:

7 Q. Good afternoon.

8 A. Hello.

9 Q. I just want to say at the outset that I hadn't intended
10 to ask you very many questions. But Mr. Leach deferred
11 some to you, so you can blame him.

12 A. Yes, I'm aware of that.

13 Q. You responded to some data requests in this docket; did
14 you not?

15 A. Yes, I did.

16 Q. And are your responses up to date?

17 A. To my knowledge, they're up to date, yes.

18 Q. Thank you. You should have a packet -- actually, if
19 you don't have a packet before you of exhibits, they
20 were passed out on Monday and so they may not be before
21 you. So let me get you another copy.

22 MS. HOLLENBERG: If I could approach the
23 witness, please? Thank you.

24 BY MS. HOLLENBERG:

1 Q. And I'm actually going to see if I can find the Leach
2 exhibits as well, because I may refer to some of these.

3 A. Okay.

4 Q. Did you join FairPoint sometime after April 2007?

5 A. Yes, I did.

6 Q. And when did you join FairPoint?

7 A. June 4th of 2007.

8 Q. And have you ever worked in New Hampshire before?

9 A. No.

10 Q. How about Vermont or Maine?

11 A. I've worked in Vermont.

12 Q. Thank you. If you could look at the first of the OCA
13 exhibits, which is -- let me just get my copy out --
14 labeled OCA Exhibit Skrivan P10. And would you agree
15 that this is your response on behalf of FairPoint to
16 OCA R-105?

17 A. Yes.

18 Q. Would you agree that the TSA costs are a transaction
19 cost?

20 A. Yes.

21 Q. And that FairPoint will not seek to recover these costs
22 from ratepayers?

23 A. Yes.

24 Q. Would you also agree that most of the Capgemini costs

1 are not being considered by FairPoint as transaction
2 costs?

3 A. Yes, I would agree.

4 Q. And that, in fact, most of these costs are being
5 capitalized?

6 A. Yes, I would agree.

7 Q. If FairPoint were not purchasing the northern New
8 England properties from Verizon, do you agree that the
9 ratepayers of New Hampshire would not have to pay any
10 of these capitalized costs associated with Capgemini's
11 work?

12 A. Yes, I would agree they would not have to pay the costs
13 associated with Capgemini. But they would be required
14 to pay similar costs for -- I can't say similar costs.
15 They would be required to pay costs for similar
16 services that are being provided by Verizon today. I
17 can't say whether the costs would be the same or not.

18 Q. Thank you. If I could ask you to turn to the next of
19 the exhibits for the OCA, labeled OCA Exhibit
20 Skrivan P11. Would you agree that this is your
21 response on behalf of FairPoint to OCA R-106?

22 A. Yes.

23 Q. Thank you. And just directing you to -- this is
24 inquiring about whether or not FairPoint is going to

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1 impute the directory revenues associated with the
2 Commission's order in the Verizon Yellow Pages
3 document. Are you familiar with that?

4 A. Yes.

5 Q. And your answer is, basically, FairPoint does not
6 believe the Verizon directory business has anything to
7 do with FairPoint or this transition [sic].

8 A. Yes.

9 Q. Okay. Thank you. If I could ask you to look at your
10 rebuttal testimony at Page 5, please.

11 A. Okay. I'm there.

12 Q. Thank you. At Lines 10 to 11, you see that it says,
13 "FairPoint has already agreed" -- "already committed to
14 adopting Verizon's rights and obligations under state
15 regulation in New Hampshire"?

16 A. Yes.

17 Q. Yet, in a future rate case, FairPoint will not impute
18 any of the approximately \$23 million associated with
19 the Verizon Yellow Pages order; is that correct?

20 A. Yes, that's our position.

21 Q. So FairPoint is not committed to adopting that
22 obligation of Verizon's.

23 MR. MCHUGH: I object, in the sense that
24 we're not here for a Verizon rate case. And I don't know

1 what the Verizon position would be in a Verizon rate case
2 at some point in the future.

3 MS. HOLLENBERG: I'm merely just asking
4 the witness whether or not this is an obligation of
5 Verizon's which currently exists that they are not -- that
6 FairPoint is not adopting. And it is contrary to what his
7 testimony says.

8 CHAIRMAN GETZ: Then I guess that raises
9 the issue that I believe has been spoken to a couple of
10 times, is what is the nature of the underlying obligation
11 by Verizon. And I guess to the extent that you're asking
12 the witness to accept your premise that there is an
13 obligation, which I -- is that what you're objecting to,
14 Mr. McHugh?

15 MR. McHUGH: Well, that's part of it, if
16 it's going to be phrased in terms of that hypothetical.
17 But I don't know what Verizon's obligations would be in a
18 future, unspecified Verizon rate case. There's no point
19 in time, in terms of reference, a whole litany of things
20 that might come up in a Verizon rate case at some
21 unspecified point in the future. That is not part of the
22 basis of the question.

23 MS. HOLLENBERG: Okay. Verizon is
24 currently obligated to impute \$23 million in revenues, and

1 they are doing that. And that has been something that's
2 shown on the record. And I guess I would like to know if
3 this witness -- the day after the closure of this case, if
4 FairPoint is not accepting that obligation of Verizon.

5 CHAIRMAN GETZ: Do you have an answer to
6 that, Mr. Skrivan?

7 WITNESS SKRIVAN: Yeah. I don't know
8 whether it's an obligation of Verizon. I understand
9 there's an order. I don't know what position Verizon
10 would take in a rate case. I strongly suspect they would
11 oppose that. And we are reserving the right to oppose
12 that imputation.

13 BY MS. HOLLENBERG:

14 Q. All right. And what is the basis for your opinion that
15 Verizon would oppose an order that's been affirmed by
16 the New Hampshire Supreme Court?

17 A. I don't know on what basis they would. I just suspect
18 they would.

19 Q. Thank you. If you could look at the next exhibit for
20 the OCA, OCA Exhibit Skrivan P12, which is, if you
21 would agree, your response on behalf of FairPoint to
22 OCA R-109?

23 A. Yes, I have it.

24 Q. Thank you.

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1 CHAIRMAN GETZ: Can you hold on one
2 second, Ms. Hollenberg? I thought we had those exhibits,
3 but I'm not sure.

4 MS. HOLLENBERG: I have plenty of extra
5 copies if you need them.

6 CHAIRMAN GETZ: Yeah. Could we get
7 that, 'cause I'm not seeing it.

8 MS. HOLLENBERG: Actually, I stand
9 corrected. I don't think it was passed in, 'cause he was
10 sworn in and we didn't proceed.

11 MR. MCHUGH: Do you have an extra copy?

12 MS. HOLLENBERG: Absolutely. Anyone
13 else?

14 MR. MCHUGH: Do you have a copy of --

15 MS. HOLLENBERG: Yes.

16 MR. MCHUGH: Oh, this is it.

17 MS. HOLLENBERG: Anyone else?

18 The exhibits are stapled together.
19 There are only four of them, public exhibits. Although, I
20 will say I do have at least one confidential question
21 which was deferred from Mr. Leach the other day.

22 BY MS. HOLLENBERG:

23 Q. And if I could have you next look at the next OCA
24 exhibit, which is your response on behalf of FairPoint

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1 to OCA R-112. Do you agree with that?

2 A. Yes, I have it.

3 Q. And you stated in your rebuttal on Page 12, and it's
4 Lines 7 through 8 -- actually, one moment, please. So
5 you talked about that FairPoint -- basically, the
6 position that you're taking is FairPoint should not be
7 subject to more stringent requirements than apply to
8 Verizon currently. Do you agree with that?

9 A. Yes.

10 Q. Okay. And that you make an additional point at Page 3
11 of your rebuttal, a similar point, although additional,
12 Lines 11 through 14, that basically FairPoint -- I'll
13 just read. "...FairPoint does not believe that as a
14 result of approval of the transaction it should
15 relinquish any legal rights available to Verizon's New
16 Hampshire ILEC today or to take on additional
17 regulatory obligations that have not previously been
18 imposed on Verizon's New Hampshire ILEC operations."
19 Did I read this correctly?

20 A. Yes.

21 Q. Thank you. You agree that you made this statement at
22 Page 8, Lines 8 to 9 --

23 A. Yes.

24 Q. -- that FairPoint believes it's premature and

1 potentially harmful to add regulatory conditions
2 applicable to Verizon New Hampshire's operations at
3 closing. Did I read that correctly?

4 A. Yes.

5 Q. Thank you. Is it your testimony that FairPoint would
6 reject approval by the PUC if such approval included
7 conditions which imposed additional regulatory
8 obligations?

9 MR. MCHUGH: Well, I object to the form
10 of that, Mr. Chairman. This witness is not authorized to
11 say whether or not FairPoint would reject the transaction
12 depending upon this Commission's approval. That is
13 something that is for senior management and the board of
14 directors to decide, not for Mr. Skrivan to decide.

15 MS. HOLLENBERG: And my response would
16 be that this witness has testified a couple of times in
17 their testimony about how this Commission should approve
18 this transaction. And it's my --

19 CHAIRMAN GETZ: Let's phrase it this
20 way: Is the witness aware whether FairPoint would -- how
21 FairPoint would react to additional conditions imposed?

22 WITNESS SKRIVAN: Yes. Generally,
23 FairPoint would take those conditions and consider those
24 at the executive level and make a decision accordingly.

1 BY MS. HOLLENBERG:

2 Q. And who do you report to?

3 A. I report to Pat Hogan.

4 Q. Okay. And would he participate in that decision-making
5 process?

6 A. I don't know. He's the comptroller. He might.

7 Q. Do you know who would participate in that
8 decision-making process?

9 A. I know some of the people who would participate in
10 that. Peter Nixon would be one of those.

11 Q. Okay. Thank you. If I could have you look at Page 5
12 of your testimony, please, your rebuttal testimony.

13 A. Yes.

14 Q. And at Lines 13 to 14 --

15 A. Yes.

16 Q. -- you state here, "Therefore, it is not necessary for
17 the Commission to adopt conditions on its approval."
18 Did I read that correctly.

19 A. Yes.

20 Q. Is it your testimony that the Commission should trust
21 FairPoint's offers of undertakings in this proposed
22 transaction?

23 A. Well, that's a tough question. I think they should. I
24 certainly understand the Commission has to satisfy

1 itself of a number of conditions or a number of -- I
2 should say it this way: The Commission should satisfy
3 itself that FairPoint has the financial strength, the
4 managerial capability and the technical capability to
5 take on the job. And to the extent that the Commission
6 believes there ought to be conditions associated with
7 that, then, you know, then they should pursue that. In
8 my opinion, generally speaking, FairPoint has
9 demonstrated that. And I would also say, for many of
10 the conditions which have been proposed by some of the
11 parties, it would be -- seem reasonable to me that the
12 Commission could wait and see how things are going.
13 And if FairPoint is hitting on all cylinders, then
14 everything's fine. And if FairPoint were to drop the
15 ball on an issue, then we could get together and figure
16 out what we need to do about that.

17 Q. Would you agree with the statement that the Commission
18 does not have authority to enforce voluntary
19 undertakings?

20 A. I don't know.

21 Q. Do you agree that it's possible that regulators in New
22 Hampshire, Maine and Vermont would impose different
23 conditions upon approval?

24 A. Yes, that's possible.

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1 Q. And it's possible that those conditions could conflict?

2 A. I hadn't really thought about that. I suppose it's
3 possible that there could be conflicting conditions, as
4 well as conditions which just might simply be
5 different. Yes.

6 Q. And it's possible that conflicting conditions could
7 relate to the financial terms of the proposed
8 transaction?

9 A. Yes.

10 Q. I'd like to just give you an example and ask you what
11 would happen if this scenario occurred. Suppose the
12 New Hampshire Commission conditioned its approval upon
13 a certain level of state-specific capital expenditures
14 and that Maine and Vermont did also. If the total of
15 these three state-specific conditions exceeded what
16 FairPoint was able to spend on total capital
17 expenditures, such that FairPoint could not comply with
18 all three conditions in total, what would happen?

19 A. Well, I'm certain we'd have to -- I'm assuming from the
20 question that this is something we could determine
21 ahead of time before closing and would be in the forum
22 of us taking a look at this and saying this is just
23 more than FairPoint could do, based on the orders. And
24 if it was more than FairPoint -- than what FairPoint

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1 could do, and it determined in its own mind that it was
2 more than it could do, then it wouldn't take that on.

3 Q. So, are you suggesting that there's a possible further
4 regulatory process that might occur if that happened?

5 A. I don't know what type of process would happen there.

6 Q. But also, it could involve FairPoint not going through
7 with the proposed transaction if it couldn't meet all
8 conditions?

9 A. I think that's something that FairPoint would have to
10 consider, yes.

11 Q. In your New Hampshire rebuttal at Page 20, Lines 10 to
12 11 -- do you see that?

13 A. Yes.

14 Q. It appears that you're objecting to the adoption of
15 state-specific conditions imposed by other state
16 commissions. Is that correct?

17 A. Yes.

18 Q. So, is it your position that the Commission could adopt
19 non-state-specific conditions imposed by other state
20 commissions?

21 A. I'm not sure. I'm not really sure what that would be.
22 I think my testimony was intended to convey that the
23 evidence in each state might produce the need for a
24 particular condition to be placed on FairPoint, or the

1 Commission's determination that they felt that should
2 happen, and that the conditions are going to be
3 different in each of the states, and that it doesn't
4 make sense to me to apply evidence from another state
5 which has a very different or can have very a different
6 regulatory environment, depending on the issue, and
7 simply apply it because it was a finding in a different
8 state.

9 Q. So, by saying "state-specific," you really mean all
10 conditions imposed by the other states.

11 A. That's what I intended to mean, yes.

12 Q. Okay. Thank you. I'd like to propose another scenario
13 for you to consider. What if both Maine and Vermont
14 adopted conditions that precluded FairPoint from
15 increasing rates in those states, and New Hampshire did
16 not? If FairPoint later decides it needs more money,
17 and it's precluded from going to Vermont or Maine for
18 the more money, do you agree the likelihood and
19 pressure of a rate increase in New Hampshire increases,
20 all things being equal?

21 A. I would say yes, that all other things being equal, if
22 there's only one state where we had the opportunity to
23 file for a rate case, that would be where we would
24 look.

1 I'd like to point out that revenue
2 shortfalls or cost overruns in a different state would
3 not be part of any such process that, in the event --
4 and there's nothing planned at this point -- but in the
5 event FairPoint were to come in to New Hampshire with a
6 rate case or other type of rate relief request, that it
7 would be based on its operations in New Hampshire. It
8 would not be based on loss of revenues or expenses in
9 other states.

10 Q. But it's likely that there would be a New Hampshire
11 rate case if there couldn't be a -- or more likely if
12 there couldn't be one in Maine and Vermont.

13 A. I don't know that that's the case. I think that each
14 state would stand on its own and that we would evaluate
15 New Hampshire based on the market conditions and the
16 regulatory environment and the competitive environment
17 in terms of any decisions that were made.

18 Q. I guess I'm a little confused, because I thought that
19 you answered affirmatively to my first question, which
20 was, if FairPoint later decides it needs more money and
21 is precluded from going to those two states, that the
22 likelihood of pressure for a rate increase in New
23 Hampshire increases. And what I thought I heard you
24 say was "yes" to that question.

1 A. Let me just describe how -- it's maybe not a big
2 difference. But if we needed more revenue, and there's
3 only one place we could go, we would go to New
4 Hampshire. But I really think that, regardless of
5 what's going on in the other states, the decision in
6 New Hampshire would be based on New Hampshire
7 conditions, pretty much on a stand-alone basis.

8 Q. Thank you. I understand your answer. Thank you.

9 Would you agree, though, that that's an
10 example of a state-specific condition that New
11 Hampshire should adopt to prevent this kind of
12 circumstance?

13 A. Are you speaking of a --

14 Q. In that example that I gave you. I mean, you testified
15 that state-specific conditions -- and basically what
16 you meant were all conditions adopted in other states
17 were not appropriate for adoption in New Hampshire.
18 And what I'm asking you is, after considering that last
19 example, whether or not there may be circumstances
20 where it would be appropriate for the New Hampshire
21 Commission to adopt conditions imposed by either or
22 both of the states, Maine and Vermont.

23 A. Well, I think in that condition which we're speaking
24 specifically about, if the other states were to impose

1 three-year rate caps or something like that, should New
2 Hampshire do it as well to essentially preempt
3 FairPoint from deciding this was the only place it
4 could raise rates -- and the situation in each state is
5 really different. In Vermont, there's already a
6 three-year AFOR condition where we're not able to raise
7 rates until the end of 2010, in the event we're
8 approved for the merger. And there's a lot of other
9 things that go along with that AFOR case. It's not
10 simply a proceeding that decided that we would have
11 rates that stayed the same until that date at the end
12 of 2010. So there's issues about whether there's
13 mutuality on staying out. There's issues that relate
14 to lots of other things, such as service quality and
15 investment. And so I think that each state is so
16 different, that it's hard to pick one condition that
17 was imposed in another state and say, well, let's bring
18 it in here.

19 Q. Would you -- would FairPoint agree to generally treat
20 the states equally overall?

21 A. That's such a general question. I certainly want to
22 say we have the same respect for New Hampshire as we
23 have for the other states.

24 Q. But?

- 1 A. And that each -- I don't say "but," I say "and" -- and
2 each situation is different, and we have to deal with
3 each situation as it stands.
- 4 Q. And I don't know if you recall your Vermont testimony,
5 your live testimony, 'cause it happened quite a while
6 ago, relatively speaking at this particular time. But
7 I think you mentioned there that, if the proposed deal
8 is rejected in New Hampshire and Maine, that you'd be
9 willing to come back to the Vermont PUC -- or the
10 Vermont Board and discuss what that means regarding
11 going forward. Do you recall that?
- 12 A. Yes, I do.
- 13 Q. And is it your position that FairPoint would agree to
14 do something similar to that in New Hampshire as well?
- 15 A. Sure.
- 16 Q. And do you also recall when you testified in Vermont,
17 that you testified that there will be some temporary
18 disruptions in service quality during the cutover
19 period?
- 20 A. I don't remember that I used those exact words. I
21 remember the -- I remember that discussion, yes.
- 22 Q. Do you agree with that?
- 23 A. That there will be what?
- 24 Q. Temporary disruptions in service quality.

1 A. Well, I mean, there will be approximately a five-day
2 period where we won't be able to take orders on an
3 automated basis. So I think that sort of answers the
4 question in terms of whether there will be a
5 disruption.

6 Q. So the answer is "yes"?

7 A. Yes.

8 Q. And just to go back to the discussion about whether or
9 not -- I mean, generally, FairPoint is opposed to
10 conditions on approval. And you mentioned something
11 about if things aren't going well after approval, we
12 can -- and I'm paraphrasing because I don't remember
13 your precise words -- but we could get together and
14 talk about how to do things differently. Is that the
15 general flavor of what you said earlier?

16 A. Yes.

17 Q. And I guess, recognizing that you're not an attorney,
18 and I'm not asking for a legal opinion, but how do you
19 see that occurring? The approval will have already
20 occurred, and there really will not be anything, any
21 venue -- or do you see a venue for the Commission to
22 consider imposing conditions after approval?

23 A. I would say that it would depend on the issue. And if,
24 for example, there were ongoing service-quality issues

1 that weren't getting fixed, then we could have
2 discussions. The Commission can open a docket to
3 review and figure out what needs to happen. And they
4 could, in that process, impose conditions.

5 Q. Do you know who would have the burden of proof in such
6 a process? And if you don't, that's fine. I just --

7 A. No, I don't.

8 Q. Thank you. You talked a little bit with Mr. Mandl
9 about some commitments that are being made in the
10 Vermont case. And his concern was the wholesale
11 customers, and rightly so. I am concerned about the
12 retail customers. And I was wondering if you know
13 anything about the specific commitments related to
14 retail rates in the two different states of Vermont and
15 Maine.

16 A. Yes, I do. In Vermont, by adopting the AFOR, we're
17 agreeing to not increase retail rates for a three-year
18 period. In Maine, we are also adopting the AFOR that
19 applies to Verizon. And the situation is a little
20 different there because, in Maine, the AFOR has
21 essentially been in process between Verizon and the
22 Maine Commission, with the Maine Commission proposing
23 rate reductions and a temporary -- I don't know if
24 that's the correct legal term. But a temporary order

1 of some sort was put into place under which Verizon
2 agreed to invest more money in broadband. And the
3 Commission essentially agreed to put off any further
4 decision in the AFOR proceeding until after the
5 conclusion of the merger, whether or not it goes --
6 whether it goes through or not. And so what we have
7 proposed to do in Maine is to cap retail rates for one
8 year.

9 Q. And I guess you just confirmed that you are aware
10 there's an AFOR in Maine, obviously.

11 A. Yes.

12 Q. And it is your understanding that the Vermont
13 Commission agreed with the proposal for DSL build-out
14 in lieu of the decrease in rates?

15 A. Do you mean the Maine Commission?

16 Q. The Maine Commission. I'm sorry.

17 A. That's my understanding, yes.

18 Q. Is it possible that there have been further
19 developments since you last knew about that
20 understanding or --

21 A. I don't know.

22 Q. I thought I had a different understanding, but I could
23 be wrong. That's the only reason I ask.

24 Mr. Leach testified the other day, and

1 he indicated that FairPoint has not specified the
2 details of how it will allocate costs between regulated
3 and unregulated operations in New England.

4 A. Yes.

5 Q. Do you agree with that?

6 A. I agree that we haven't specified in detail how those
7 cost allocations are going to work, yes.

8 Q. Thank you. And you also agree, as testified by Mr.
9 Leach, that FairPoint has not specified the details of
10 how it will allocate cost between FairPoint affiliates,
11 including northern New England?

12 A. Yes.

13 Q. You testified at Page 20 of your rebuttal -- if you
14 could turn there, please?

15 A. Okay.

16 Q. Lines 14 to 18.

17 A. Yes, I see that.

18 Q. And you're talking here about the fact that as a
19 midsize ILEC, FairPoint will not have to file as many
20 ARMIS reports as Verizon New England. Do you agree
21 with that?

22 A. Yes.

23 Q. And that FairPoint will not specifically have to file
24 ARMIS reports 43-02, 43-03 and 43-04?

1 A. Yes.

2 Q. And that FairPoint will only be required to file the
3 summary of report, which is 43-01, and the
4 service-quality reports, which are 43-05 and 43-08?

5 A. Yes, that's correct.

6 Q. What does FairPoint intend to submit to the PUC
7 regarding cost assignment?

8 A. Can you be more specific? Are you talking about a
9 cost-allocation manual or the cost assignment of the
10 actual costs as they occur?

11 Q. I guess both.

12 A. Okay. On the cost-allocation manual, we're not
13 proposing to submit a cost-allocation manual. But
14 we're proposing to develop and have a cost-allocation
15 manual that would be available for review or
16 certainly -- we heard earlier about audits. I wouldn't
17 look forward to that, but I understand those things can
18 happen. And if I might, can I talk a little bit about
19 the cost-allocation manual and what would be in it?

20 Q. Sure.

21 A. Okay. The FCC has a number of rules, some of which
22 have been developed in conjunction with state boards,
23 that address accounting issues and cost-allocation
24 manual. And the FCC has a uniform system of accounts

1 which is in Part 32. And Part 32 has a section dealing
2 with affiliate transactions. And the affiliate
3 transactions, I'd like to summarize it as essentially
4 resulting in a requirement that the ILEC enter into
5 arm's-length transactions with their affiliates. And
6 essentially what the rules do in Part 32 is they say,
7 if the ILEC has a tariff, then you use that tariff.
8 Pure and simple. You don't get to use anything else.
9 So if an ILEC, for example, is selling switched access
10 to a long-distance affiliate, the long-distance
11 affiliate pays the switched-access tariff for the
12 services it uses. If there's not a tariff, then the
13 next hierarchy of cost allocation between affiliates is
14 to use any interconnection agreements or statement of
15 SGAT that might be available. And that would occur if
16 the affiliate was, you know, operating as a competitive
17 local exchange carrier. In the event that that doesn't
18 exist, if the ILEC is providing something at a
19 prevailing rate that is in the market, then that is
20 used.

21 Sort of going down the hierarchy here.
22 And then at the next level, if none of those things
23 exist, and the ILEC is providing a service that doesn't
24 meet any of those other needs, then it's to provide the

1 service to its affiliate at the higher of cost or
2 market. And what that does is, that prevents the ILEC
3 from selling services to an affiliate at below market
4 cost -- in essence, allowing the ILEC to subsidize the
5 operations of the affiliate. And in terms of that same
6 transaction that would go from the affiliate back to
7 the ILEC, instead of it being the higher of cost or
8 market, it's the lower of cost or market.

9 And I hate to go into this depth.
10 There's just one exception to that which might come up
11 later, based on my review of the questions that was
12 asked of Mr. Leach; and that is, if there's an
13 organization within the ILEC family -- and I'll just
14 call it a centralized service organization -- that's
15 providing services to all of the affiliates, and it
16 exists solely to serve the family of affiliates and
17 it's not selling services to third parties, then the
18 rules allow for that service to be provided simply at
19 fully distributed cost and you don't have to do a
20 market test on that. So that's sort of an overview of
21 what's in the affiliate transactions.

22 Well, you might think I'm done talking
23 about cost, but I'm not quite done yet. There's a --

24 CHAIRMAN GETZ: You gave your clearance

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1 for this, Ms. Hollenberg. But I'm trying to understand
2 the relationship to the underlying question about PUC
3 reporting in light of the lesser obligation to file all of
4 the normal ARMIS reports that Verizon currently files.

5 WITNESS SKRIVAN: Well, she then asked a
6 question about -- I forget exactly what it was. But it
7 led me --

8 MS. HOLLENBERG: Pretty much that.

9 WITNESS SKRIVAN: -- to cost
10 allocations. Oh, the question was what would we file
11 regarding cost allocations with the state commission. And
12 so that sort of leads me to two different areas. One area
13 is there's a cost-allocation manual that the company is
14 going to adopt and use to allocate cost between affiliates
15 and between regulated and de-regulated operations.

16 And while I didn't want to go into too
17 much detail, I wanted to make sure that the Commission
18 understands there's very precise rules that we're required
19 to operate under that apply to all ILECs, including
20 FairPoint, and we will operate under those.

21 The other part is, there is a
22 requirement in the state rules that we file separated
23 results of operations with the state commission. And by
24 separated, I mean separated between state and interstate

1 operations -- or in this case, what Verizon has been
2 filing, which we will also file in the same format, is a
3 financial statement showing total New Hampshire
4 operations, or what I call unseparated, which means it has
5 the state and interstate operations, and then next to that
6 it has the portion of those which are assigned to state
7 operations.

8 BY MS. HOLLENBERG:

9 Q. Thank you. So if you could -- I don't know if you can
10 find the packet of the Leach exhibits before you, but
11 there was a Leach OCA Exhibit Leach 45P.

12 A. Yes.

13 Q. And that is Mr. Leach's response to OCA R-31. Are
14 you -- did you just discuss the -- if you look at the
15 bottom, it says, "FairPoint will comply with all FCC
16 rules and New Hampshire guidelines when making such
17 assignments." Is that what you just discussed?

18 A. No, actually, it's not.

19 Q. What did you mean by that? What did you mean by "all
20 FCC rules"?

21 A. Okay. Certainly, we will comply with the Part 32
22 affiliate transaction rules. There's also Part 64
23 rules which apply to allocations within an ILEC,
24 between its regulated and de-regulated operations.

1 In this case -- again, this gets sort of
2 complex. So if I might have a little leeway to explain
3 some of the background, that will help me explain the
4 answer to what we're doing with broadband. And that
5 is, again in the FCC rules, there's a section called
6 Part 36, which again was developed in conjunction with
7 the states. And Part 36 allocates cost between the
8 state and the interstate jurisdiction under the general
9 theory that a company shouldn't get 75 percent of its
10 cost in the state jurisdiction and 50 percent of its
11 cost in the interstate jurisdiction, that it ought to
12 add up to 100 percent and not 125 percent. Similarly,
13 they shouldn't be able to get 75 percent of their cost
14 in the state jurisdiction and only 10 percent in the
15 interstate jurisdiction, meaning they're only covering
16 85 percent of their cost. So that's really the purpose
17 of the jurisdictional separations, is to establish for
18 the state commission and the FCC what portion of the
19 company's costs are subject to their authority and
20 control.

21 In the case of broadband services, the
22 broadband services which are specifically DSL-type
23 services, or pretty much any broadband services, are
24 considered interstate services. And so when we have a

1 plant which is being used to solely support broadband
2 services, then the separations process categorizes that
3 in such a way that it's allocated to the interstate
4 jurisdiction, and then its up to the FCC exactly how to
5 recover those costs.

6 And what the FCC has done with broadband
7 about two years ago, they issued an order which
8 de-regulated that. But they kept the rules in place
9 which said that you continue to allocate it to the
10 interstate jurisdiction. And because of the way price
11 caps work for Verizon and other price-cap carriers, the
12 process of de-regulating it doesn't allow the price-cap
13 carriers to move it into other rate elements for
14 recovery. It basically is in what's called a price-cap
15 basket that isn't allowed to be moved to other rate
16 elements. So Verizon or other price-cap carriers can't
17 de-regulate that and then move the cost over to special
18 access or switched access to recover from
19 inter-exchange carriers.

20 So, you know, back to this, in terms of
21 the investment that we're going to make in the
22 broadband plant, the infrastructure investment, the
23 answer sort of depends on what's put into service and
24 how is it being used. For example, in separations, a

1 loop, if it's used for interstate private line, then
2 it's assigned to interstate. That same loop could be
3 used next year for a joint message service and fall
4 into what's called the common-line category. So it
5 depends on how the loop's actually being used. The
6 same would be here with the broadband plant. If we put
7 the broadband plant infrastructure in place, which is
8 there just to provide broadband service, then the
9 jurisdictional separations takes and assigns that to
10 the interstate jurisdiction. And we don't have any
11 plans to change that. That's just how separations
12 works.

13 If, on the other hand, let's say that
14 something we had to do -- let's say there's a community
15 who can't get broadband service because they're out
16 beyond 20,000 feet, and so we have to go reinforce the
17 cable plant -- and that benefits voice as well as
18 broadband -- then a portion of that investment would be
19 assigned to a common-line category, and appropriately
20 so, because it would be there to support voice as well
21 as broadband. And then the jurisdictional rules would
22 assign some of that to interstate, and some of that
23 would stay in the state jurisdiction.

24 Q. But all revenues will be assigned to -- will not be

1 attributed to the intrastate regulated operations; is
2 that correct, from DSL?

3 A. From DSL, all revenues will be attributed to
4 interstate.

5 Q. And I'm a little bit worried about asking you this
6 question. But what New Hampshire guidelines were you
7 referring to?

8 A. I apologize. I probably should have said New Hampshire
9 guidelines, if any.

10 Q. Okay.

11 A. And really, after thinking through it, since the
12 broadband is being assigned to the interstate
13 jurisdiction, and it's not subject to -- it won't be in
14 the state jurisdiction, then there really aren't -- I
15 should not have included that.

16 Q. Well, not all broadband, I think, based on your answer
17 a moment ago, is going to be assigned to interstate. I
18 think you said if it benefits voice, it will be
19 assigned intrastate.

20 A. Well, if it benefits -- if it's there for the voice
21 network, then it's not broadband. For example, let's
22 say we put a new fiber cable out to this community I
23 referenced earlier which was too far out to get DSL
24 service, and then we put a digital loop carrier, an

1 MSAM or something out there to provide the service,
2 part of that fiber optic cable would be dedicated to
3 broadband service and would be allocated to the
4 interstate jurisdiction. Part of that fiber optic
5 cable would be there to reinforce the voice and would
6 be appropriately considered part of the common-line
7 revenue requirement, and part of that goes to the state
8 jurisdiction.

9 Q. Okay. Could you look at the attachment to -- or
10 actually, it's OCA Exhibit Leach 46, which is a highly
11 confidential exhibit. So we'll both be mindful of not
12 saying the numbers.

13 A. Yes, I have it.

14 Q. Otherwise, your attorney will get upset.

15 Just firstly, do you recognize this
16 document?

17 A. No.

18 Q. Okay. Mr. Leach testified the other day that it was a
19 detailed -- details from FairPoint's financial model.
20 And what I'd like you to do is look about halfway down
21 the page. There's a bolded heading on the left-hand
22 side that says "ISP COGS." Then the next line says
23 "DSL line-sharing." And the line after that says "COGS
24 per DSL." Are you familiar with the initials COGS?

1 A. Yes.

2 Q. Okay. Good. And you agree that that means cost of
3 goods sold per DSL?

4 A. Yes.

5 Q. Okay. And if you look to the right under each of the
6 columns for 2008 to 2015, there's a number which we're
7 not going to say. And Mr. Leach testified that that
8 was a monthly per-line number. And I asked if there
9 was actually a commitment that the DSL subsidiary
10 actually pay this amount. And I think my recollection
11 is that Mr. Leach said, in light of the fact that
12 there's a common parent, there's really no transaction
13 that occurs. Do you agree with that?

14 A. I have to say yes and no. And let me explain why I
15 agree and don't agree. From the standpoint of
16 regulated accounting, that transaction occurs and will
17 happen. The telephone company is providing a wholesale
18 service to an affiliate, and it will bill that. And on
19 the regulated books that we submit to regulators, that
20 will show up as a revenue on the ILEC. For purposes of
21 financial reporting, that's considered a -- I'm not
22 sure of the term. But it's an inter-company
23 transaction, which for financial reporting purposes you
24 eliminate that for reporting, because you don't want to

- 1 bill your affiliate for services and report that as
2 revenue in the financial reporting world. They're not
3 interested in what you're transferring between
4 affiliates. They're interested in what revenue you're
5 bringing into the entity. Regulators have a different
6 view on the ILEC. They're wanting to know what
7 regulated revenue is coming in. And to the extent an
8 affiliate is paying revenue into the ILEC, it has to be
9 recorded.
- 10 Q. Would you agree with the characterization of "paper
11 transaction"?
- 12 A. I guess I would. I'm not really sure how the treasurer
13 operations are going to work, if we're going to have a
14 separate bank account for an ILEC compared to its
15 affiliate. But the cash is all going to be in the
16 organization, regardless of where the cash shows up.
17 But from the standpoint of regulatory oversight, it's
18 not a paper transaction, it's a real transaction.
- 19 Q. And Mr. Leach deferred the question to you of how
20 FairPoint determined that figure.
- 21 A. The one that's in the model?
- 22 Q. Yes.
- 23 A. I don't know.
- 24 Q. Do you know who would know the answer to that question?

1 A. No.

2 MS. HOLLENBERG: I would like to make a
3 record request, then, for the company to identify who and
4 how that figure was determined, please.

5 MR. MCHUGH: Certainly. I mean, I think
6 it was the subject of a lot of testimony by Mr. Smith last
7 night on how we came up with -- we're happy, I guess, to
8 take an oral DR and confirm it.

9 CHAIRMAN GETZ: Well, let me see where
10 we're going with this. Is there some -- are you looking
11 for some other witness to answer the question? You're
12 looking for just the background for the number? What are
13 you looking for?

14 MS. HOLLENBERG: I would like the
15 background for the number. My understanding from Mr.
16 Leach was that Mr. Skrivan would be able to tell me,
17 despite the fact that he hadn't been involved in creating
18 the financial model. But now, Mr. Skrivan has testified
19 that he did not, does not know the basis for this number.
20 So I'd like this information. If there's a witness I can
21 ask about that, I would happy to ask the witness.

22 MR. MCHUGH: We'll take the oral data
23 request and see what we can do. I don't recall
24 Mr. Leach's testimony, sitting here today, about exactly

1 how he deferred the question, but --

2 CHAIRMAN GETZ: Well, let's at this
3 point reserve Exhibit 51 for the record response.

4 MR. McHUGH: Sure.

5 MS. HOLLENBERG: Thank you.

6 BY MS. HOLLENBERG:

7 Q. Will any of the investment in broadband support basic
8 service?

9 A. That's hard to answer, because it depends on what you
10 mean by "investment in broadband support." If you mean
11 it broadly, will all of the investment that we're
12 putting in to make sure customers can get broadband
13 service, and you would include in that reinforcements
14 for copper and extending fiber out to communities, then
15 a portion of that will -- I'm sorry -- I lost track of
16 the exact question. I don't want to answer the wrong
17 question.

18 Q. Will it be -- will it support basic service?

19 A. Yes, it will support basic service.

20 Q. So, basically the amount that FairPoint has said it's
21 going to spend on broadband includes investment in
22 basic service.

23 A. I don't know exactly what numbers have been provided or
24 how that would split out between broadband and more

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1 basic investments which would benefit -- I just don't
2 know that. I haven't looked at that.

3 Q. And would any of the investment in broadband, as you've
4 just responded, be a part of the common
5 telecommunications network?

6 A. On the premises that I made -- did you use the phrase
7 "common telephone network"?

8 Q. Common telecommunications network.

9 A. Okay. And I don't want to quibble. That's not really
10 a term that I've seen in the separations manual or
11 anything. And so let me just change it a little bit so
12 that I can answer it affirmatively, which is, yes,
13 based on the assumptions that I've given to you as to
14 what type of investments might be included, some of it
15 would be assigned to what's called the common-line
16 category in separations.

17 Q. Okay. Thank you. And it doesn't surprise me that I
18 don't know the separations terminology, because I don't
19 know very much about telephone. You know much more
20 than I do.

21 Could you tell me who at FairPoint is
22 responsible for assigning and allocating broadband
23 costs?

24 A. Is this FairPoint as it exists today or going forward?

- 1 Q. I'm sorry. If the transaction is approved.
- 2 A. I don't know who that will be. But I expect there to
3 be an individual or department that's responsible to
4 handle cost-related issues, including separations
5 categorization.
- 6 Q. Do you know if you'll be a part of that department?
- 7 A. I don't know that.
- 8 Q. Do you know if Pat Hogan will be a part of that
9 department?
- 10 A. I don't expect Pat Hogan will be part of that
11 department.
- 12 Q. Do you know if there is any portion of the investment
13 in broadband that FairPoint would be willing to commit
14 to not seeking recovery for?
- 15 A. I'll just say yes, the portion that's assigned to
16 interstate jurisdiction, which would be anything which
17 is used solely for broadband service, we would not
18 expect to seek recovery for that through a state
19 proceeding.
- 20 Q. Do you have a sense of how much of the broadband
21 investment would correspond to that portion of
22 investment for interstate broadband services?
- 23 A. No, I don't.
- 24 Q. Does FairPoint expect revenues associated with its

1 broadband investment to cover costs?

2 A. I would say we do. I think as Mr. Leach said, in the
3 long run we do expect that to happen. I do know that
4 incrementally, it could be hard to prove that the
5 incremental cost that FairPoint has agreed to put out
6 there would be covered by the incremental revenues,
7 considering that the further out in rural areas you go,
8 the more it costs to reach fewer subscribers.

9 Q. Would you agree, then, if FairPoint does cover -- if
10 the costs of this new investment are covered by the
11 revenues associated with DSL or broadband, that it
12 will -- that FairPoint will not need to come in for a
13 rate case for intrastate services?

14 MR. MCHUGH: Again, Mr. Chairman, I
15 object about what this witness is authorized to do and
16 commit FairPoint without consultation with the president
17 and the board of directors for a rate case.

18 CHAIRMAN GETZ: Well, see if he can
19 answer that question, probably with the same words that
20 you're using at this point. I think we've gone over this
21 a number of times with respect to what he knows and what
22 he's capable of responding to. But we'll allow the
23 question.

24 MS. HOLLENBERG: Thank you.

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1 CHAIRMAN GETZ: Can you answer the
2 question, Mr. Skrivan?

3 WITNESS SKRIVAN: Yes. I can't answer
4 necessarily for sure what the executives would do. I can
5 tell you what my recommendation or approach would be, if
6 that's fair.

7 BY MS. HOLLENBERG:

8 Q. Would be that it's not -- that it would not -- it would
9 obviate the need for a rate case for intrastate
10 services?

11 A. No, I don't see it that way. I see that DSL service is
12 a competitive service which is priced based on the DSL
13 market. And the voice and retail services are based on
14 a set of regulatory rules and obligations that are
15 completely separate from the DSL service, apart from
16 the connection that exists where the telephone company
17 provides under -- on a wholesale basis services to its
18 DSL affiliate.

19 Q. So is your testimony that, if revenues do not cover
20 costs, FairPoint will not come in for a rate case?

21 A. If DSL revenues do not cover DSL costs, based on my
22 understanding of jurisdictional separations and rate
23 proceedings, those have nothing to do with each other.
24 So I guess I didn't really answer. The answer is, no,

1 we wouldn't come in.

2 Q. Okay. Thank you. Do you agree that the cost of
3 broadband deployment will be capitalized?

4 A. Generally, I think most of it will be capitalized.

5 Q. And that these costs will be included in the rate base
6 in future rate cases?

7 A. I think we're circling back to the same question in
8 another form that I've answered; and that is, it
9 depends on the nature of the investment. And it
10 depends on how that investment is actually being used.

11 Q. Okay. So the investment that is assigned to the
12 intrastate operations will be included in rate base and
13 future rate cases?

14 A. Yes.

15 Q. Thank you. Mr. Leach testified that FairPoint -- on
16 cross-examination, I believe it was with Comcast's
17 attorney and Mr. Mandl -- that FairPoint has not ruled
18 out seeking an AFOR or alternative form of regulation
19 in the next year -- next five years. And I was
20 wondering if -- and he deferred to you the question of
21 will FairPoint agree to undergo a full rate case before
22 switching to an alternative form of regulation.

23 A. The answer is no. And basically, FairPoint will do
24 whatever the law says. It's just not clear to me

1 whether the law requires that we do that. If the law
2 doesn't require that we submit to a full rate case,
3 then we're not going to agree in advance to do that.

4 Q. Do you know when Verizon last had a rate case?

5 A. Only in very general terms. I've been -- I don't know
6 because I haven't seen it. I was just told in general
7 terms that in the early '90s was the last rate case.

8 Q. And is it your understanding that that case involved
9 retail rates?

10 A. Yes.

11 MS. HOLLENBERG: If I could just have
12 one moment? I do have a confidential question, and I
13 believe it's only one. But I want to just check. One
14 moment, please.

15 CHAIRMAN GETZ: Ms. Fabrizio, will you
16 have confidential questions?

17 MS. FABRIZIO: No. No, I will not.

18 MS. HOLLENBERG: I just have a couple
19 more questions.

20 BY MS. HOLLENBERG:

21 Q. Has the FCC approved the proposed transaction?

22 A. Not the last I heard, no.

23 Q. Okay. And if the -- if there are AFORs in Vermont and
24 Maine, but not New Hampshire, how are the Capgemini

1 costs going to be allocated between the three states?

2 A. To my way of thinking, the regulatory status of a
3 company has nothing to do with cost allocation. The
4 costs of Capgemini are there to develop our back-office
5 systems, including accounting, billing, trouble, plant,
6 purchasing, human resources. I'm probably missing a
7 few. But it's those type of things which will be done
8 on a centralized basis for each of the state's
9 regulated operations as well as the de-regulated
10 affiliates. So we would expect the cost of those to be
11 allocated among all of the users of that service on a
12 reasonable and consistent basis, based on some rational
13 way to allocate those costs, depending what the costs
14 are.

15 Q. How do you recover those costs in Vermont and Maine if
16 their rates are frozen for a certain period of time
17 into the future, more than New Hampshire's?

18 A. I guess the short answer is, you don't recover those,
19 or you cover those through the existing stream of
20 revenue that's in the existing rates.

21 Q. Thank you. Mr. Haga was asked the other day by
22 Commissioner Below whether -- I guess, can FairPoint
23 include new systems being developed in a rate base in
24 each state. And he deferred to you on that question.

1 A. And it goes back to what I was just talking about. The
2 systems that are being developed as I described, the
3 accounting systems and such, per very strict accounting
4 rules, a portion of that is expensed and a portion of
5 that is capitalized. The portion of it which is
6 expensed is written off immediately against our
7 operations. And we've said we won't ever attempt to
8 recover that expense portion through any type of rate
9 proceeding. The portion that's capitalized results in
10 us having an asset, which is a functioning software
11 system of some sort which will reside in the
12 centralized service organization. And so we will take
13 the cost of operating and some depreciation associated
14 with that and some allowable authorized rate of return
15 on that to develop a cost which is allocated to the
16 various companies using that system. Does that answer
17 your question? I'm sorry.

18 Q. Sure. And actually, if it doesn't answer Commissioner
19 Below's question, I'm sure he'll follow up with you
20 when he has a chance. But your answer was yes. So I'm
21 wondering how you track the various costs and whether
22 the system's supporting regulatory or non-regulatory
23 activities.

24 A. Right. The systems that we're building are pretty much

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1 on an integrated basis that are going to support of all
2 our operations. For example, the billing system is
3 being set up so that a person, a customer rep can enter
4 a service order for local service, long-distance, DSL.
5 All that's going to use the same system, and it's going
6 to then go into the billing system. And we're going to
7 do accounting for the revenues all on integrated
8 systems. And so in the development of these systems,
9 there really isn't any way to say this system or this
10 portion of this system is just going to be used for a
11 regulated or de-regulated service. We're not
12 developing a billing system for long-distance and a
13 separate one for local. It's all together. And so
14 what that results in then is, we would have a billing
15 system -- let's say our billing system, just to pick a
16 number, cost \$20 million a year, and we need to
17 allocate that. We're going to allocate that on some
18 reasonable basis that is reasonable with the way --
19 with what the billing system is doing to our regulated
20 and de-regulated operations. And then if we were to
21 pick up billing for class -- for our classic FairPoint,
22 our existing operations, that same \$20 million would
23 get allocated to a wider variety of companies --
24 meaning that it's the same \$20 million. You know, we

1 don't just allocate or recover more money in the
2 centralized organization because we're allocating to
3 more companies. And that was part of the reason I went
4 through this sort of detailed description of the
5 cost-allocation rules, is to indicate this is a type of
6 asset which would sit in the centralized service
7 organization and would be recovered from the ILECs at
8 fully distributed costs and no more.

9 Q. But as you said earlier, it may not be recovered until
10 you're able to raise rates in Vermont and Maine; right?

11 A. Okay. That's a good point. When I say recovered, I
12 mean that the ILEC is going to pay the centralized
13 service organization its share of, in my example, the
14 \$20 million. But whether the ILEC can pass that
15 immediately through, of course, is going to be subject
16 to, you know, the regulatory processes, which means you
17 don't just pass through those costs.

18 And I also want to point out, I just
19 don't want anybody to forget that while we're putting
20 these costs in, there's other costs coming out. And
21 generally speaking, you know, we've said that there's
22 going to be a reduction in the overall cost associated
23 with operating these companies. And most of that cost,
24 if not all of it, is in the centralized organization.

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1 So we don't expect the cost of these systems to simply
2 go in on top of all the costs that have been going in,
3 'cause you have to remember the existing Verizon
4 allocations are going to come out of the process.

5 Q. And you would agree, related to the cost that FairPoint
6 claims it will be saving, that there is some dispute
7 about that in this case; would you not?

8 A. Yes.

9 Q. In fact, Mr. Antonuk and Mr. Brevitz testified today
10 about whether or not those cost-savings estimates are
11 actually real. Were you here for that?

12 A. I was here for part of that, yes.

13 Q. Thank you. Is FairPoint developing systems to ensure
14 that the new entity is ready to comply with all
15 regulations and orders of all three states at the time
16 of close?

17 A. Is it developing systems? It's developing processes to
18 make sure that it's in compliance with every known FCC
19 and state regulation and reporting requirement.

20 Q. And will you be providing information to the individual
21 commissions about the processes that you've developed
22 before close?

23 A. We're happy to do that. You know, basically what
24 you're getting today you're going to keep getting. And

1 where there are -- for example, on the FCC side,
2 there's compliance issues, like CPNI, like CALEA, like
3 telemarketing practices. And we understand those.
4 FairPoint, even before I joined, was an ILEC. And it's
5 been operating in accordance with those. And, you
6 know, we intend to fully implement those through the
7 new systems and make sure that everybody continues to
8 be in compliance with those. And to the extent we have
9 state reporting requirements, you should see the same
10 type of reports that you've been getting from Verizon
11 in each of the states.

12 Q. And in terms of compliance with regulatory orders, what
13 we've been getting we'll be getting, except for the
14 Verizon Yellow Pages.

15 A. I would say except where there's a dispute, you'll be
16 getting what you've been getting, yes.

17 And if I may point out, on the Yellow
18 Pages, that doesn't mean the rates change on close.
19 The rates which are in effect will stay in effect until
20 something happens.

21 Q. One more public question, and then I'm ready to go to
22 the confidential question. A number of times -- and I
23 could be hearing wrong -- but a number of times it
24 seemed as though you were unsure as to what your

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1 responsibilities are going to be after this transaction
2 is approved. Would you agree with that?

3 A. Yes.

4 Q. Okay.

5 A. Would you like me to expand on that a little bit just
6 to give you a little bit of comfort?

7 Q. No, thank you.

8 A. Okay.

9 Q. Your counsel can ask you that question if he thinks
10 it's appropriate.

11 A. All right.

12 Q. I'm ready to go to the confidential question.

13 CHAIRMAN GETZ: Well, I think the time
14 is ripe to change reporters. I would suggest when we come
15 back that we -- Ms. Fabrizio, how much cross do you have,
16 approximately?

17 MS. FABRIZIO: I'd guess about 20
18 minutes.

19 CHAIRMAN GETZ: Okay. Then we would go
20 to your cross and then move to the confidential question.
21 But let's take 15 minutes right now.

22 (Recess taken at 3:30 p.m.)

23 (Hearing reconvened at 3:48 p.m.)

24 CHAIRMAN GETZ: Please be seated.

1 Okay. We're back on the record with the
2 examination of Mr. Skrivan and turning to Ms. Fabrizio.

3 MS. FABRIZIO: Thank you, Mr. Chairman.

4 **CROSS EXAMINATION**

5 BY MS. FABRIZIO:

6 Q. Good afternoon, Mr. Skrivan.

7 A. Hello.

8 Q. Now, Mr. Skrivan, your current position with FairPoint
9 is senior director of regulatory affairs; is that
10 correct?

11 A. That's correct.

12 Q. And you've stated in your testimony that you were hired
13 specifically to assist FairPoint with regulatory
14 requirements associated with the acquisition of
15 Verizon's land-line operations in Vermont, New
16 Hampshire and Maine; is that correct?

17 A. Yes.

18 Q. And if this transaction is approved, FairPoint will be
19 substantially continuing Verizon's land-line operations
20 in those states; is that correct?

21 A. Yes.

22 Q. In the course of your work for FairPoint in this
23 transaction, have you reviewed the statutes and
24 regulations pertaining to land-line operations in each

1 of those states?

2 A. Not extensively, no.

3 Q. But generally?

4 A. Generally, yes.

5 Q. You have before you Staff Exhibit 12, which was
6 distributed on Monday.

7 A. Yes.

8 Q. Would you identify that document for the record please?

9 A. Yes. It's Title 34, Public Utilities, Chapter 378,
10 Rates and Charges, Schedules, et cetera, Generally,
11 Section 378:1.

12 Q. Thank you. Could you please read the first phrase
13 beginning at "Every public utility" and ending at the
14 semicolon?

15 A. "Every public utility shall file with the public
16 utilities commission, and shall print and keep open to
17 public inspection, schedules showing the rates, fares,
18 charges and prices for any service rendered or to be
19 rendered in accordance with the rules adopted by the
20 commission pursuant to RSA 541-A."

21 Q. Thank you. And will FairPoint comply with that statute
22 when it comes to New Hampshire?

23 A. Yes.

24 Q. Thanks. On page 12 of your rebuttal testimony, at line

1 -- about line 2 -- you argue that 271 services are
2 under the FCC's jurisdiction and that FairPoint should
3 not be required to tariff Verizon's 271 wholesale
4 obligations because Verizon is not required to do so;
5 is that correct?

6 A. Yes.

7 Q. And on page 18, again, of your rebuttal, line 15, you
8 state that you do not believe FairPoint should be
9 considered a BOC; is that correct?

10 A. Yes.

11 Q. And if FairPoint is not a BOC, what binds FairPoint to
12 provide the 271 checklist obligations that Verizon is
13 currently obligated to provide in New Hampshire?

14 A. What we propose is that we'll provide those and that
15 the New Hampshire commission would have the authority
16 to ensure that we do, in fact, provide those services.

17 Q. Under what authority would the Commission have?

18 A. As a condition of the approval of the merger. That's
19 our proposal.

20 Q. Thanks. Now, if FairPoint is not a BOC, what gives the
21 FCC jurisdiction to ensure that FairPoint complies with
22 271 checklist obligations that FairPoint is agreeing to
23 assume here?

24 A. Well, I'm not saying the FCC has the right to ensure

1 that we comply with them. That's why we propose that
2 the state commission would have the authority as a
3 condition of the approval of the merger.

4 Q. Great. Thank you. Now, let's turn to page 10 (sic) of
5 your rebuttal. And I think you might have read this
6 sentence for Ms. Hollenberg, but could you please read,
7 once again, the sentence beginning on line 10?

8 A. What page was this?

9 Q. I'm sorry. Page 5.

10 A. "FairPoint is already committed to adopting Verizon's
11 rights and obligations under state regulation in New
12 Hampshire.

13 Q. Thank you. And if -- but FairPoint here is not
14 committed to adopting those obligations under state
15 regulation outside of the merger condition; is that
16 right? It's the merger condition that ---

17 A. Yes.

18 Q. --- you see as governing.

19 A. Yes. For that particular one, that's the way we've
20 envisioned it would work.

21 Q. Mm-hmm. And are there any other Verizon obligations
22 that FairPoint is adopting over which state regulation
23 actually has no enforcement authority outside of the
24 merger condition?

- 1 A. I'm not sure I can give you a complete inventory. I
2 know that we're proposing to cap retail and wholesale
3 rates for a year.
- 4 Q. Okay. Thanks. Could you turn to page 18 of your
5 rebuttal? Could you please read the first question at
6 the top of the page, beginning at line 1?
- 7 A. "Several witnesses claim that FairPoint will not comply
8 with Verizon's obligations under Section 271 of the
9 federal Communications Act. Is FairPoint refusing to
10 perform any significant 271-type wholesale
11 obligations?"
- 12 Q. And why did you use the word "significant" in this
13 question?
- 14 A. I don't know. I think, at the time, I wasn't sure
15 exactly how extensive that was and, since then, we've
16 -- you know, we've narrowed that down pretty closely.
17 So I think I know exactly what the 271 obligations are
18 today.
- 19 Q. Okay. And in your mind, does this include all 271
20 obligations or...?
- 21 A. Let me see what I said here.
- 22 What we're agreeing is to provide
23 anything that Verizon currently provides under the
24 14-point competitive checklist in 271 (c) (2) (B).

1 Q. Okay. Thank you. On the same page, beginning at line
2 21, you say that FairPoint has agreed to provide the
3 substantive checklist obligations required under
4 Section 271.

5 A. Yes.

6 Q. And the use of the word "substantive" here, is there a
7 particular meaning?

8 A. If there's -- not really. I mean, if there's 271
9 obligations which are not substantive, then -- and I
10 guess, you know, I maybe didn't know. I was just
11 trying to be careful not to be overreaching in my
12 statement.

13 Q. Great. Thanks. Okay. Let's see. Still on page 18,
14 starting at line 10, you've stated that FairPoint is
15 not seeking to pick and choose which Verizon
16 obligations it assumes, so there is no need to impose
17 conditions on FairPoint requiring that it comply with
18 Section 271.

19 A. Yes.

20 Q. And you've stated that the company's vision is to abide
21 by a merger condition actually memorializing that
22 commitment; is that correct?

23 A. Yes.

24 Q. On page 19, let's see, on lines 3 to 5 at the top, you

1 confirm, again, that FairPoint agrees to provide
2 anything required under the checklist to the -- and to
3 the extent the requirements evolve over time for the
4 BOCs, that FairPoint's obligations will likewise
5 evolve; is that correct?

6 A. Yes, it is.

7 Q. Will that affect the merger condition -- compliance
8 with the merger condition?

9 A. You mean the wording? I'm not sure what you're asking.

10 Q. Well, you've suggested that your obligations will
11 evolve as -- as requirements evolve under Section 271
12 for BOCs.

13 A. I would expect that to be part of it.

14 Q. Part of the condition?

15 A. Yes.

16 Q. Okay. And, let's see, you end the paragraph on lines 6
17 to 7 with the statement that "FairPoint understands
18 that the Commission may rely on its statements and
19 agreements." What does that mean, exactly?

20 A. Well, I think that what I meant by that was that there
21 didn't need to be a condition, but I think, as a
22 practical matter, we recognize that the Commission is
23 going to want to adopt a condition with respect to this
24 item.

1 Q. Great. Thank you. Okay. And if you'll turn to the
2 CLEC settlement stipulation, do you have that before
3 you?

4 A. Yes, I do.

5 Q. In paragraph 4E of the settlement -- I think you
6 discussed this with Mr. Mandl earlier today -- you
7 agree to extend tariff 84 rates and terms for three
8 years; is that correct?

9 A. Yes.

10 Q. And are you aware that CLECs in New Hampshire are
11 allowed to purchase services directly from tariff 84
12 without negotiating an interconnection agreement?

13 A. Yes.

14 Q. So FairPoint will not require CLECs in New Hampshire to
15 negotiate such agreements in order to purchase
16 wholesale services from the tariff; is that correct?

17 A. Yes. That would be my understanding.

18 Q. Okay. I know you're looking forward to going back to a
19 discussion of ARMIS reports. On page 20 of your
20 rebuttal -- and you covered this as well with
21 Ms. Hollenberg -- you point out that the FCC does not
22 require mid-size companies like FairPoint to file
23 certain ARMIS reports.

24 A. Yes.

1 Q. And those reports are 43-02, 03 and 04. Do you know
2 what information that carriers such as Verizon provide
3 in those reports?

4 A. I've looked at those. There's actually a number of
5 tables in 43-02 and 3 and 4. It's actually more than
6 just three reports. It's reports with a number of
7 tables that generally address cost-allocation issues,
8 as well as separations and Part 69 allocations.

9 Q. Okay. And 43-02, you would agree that it's a report
10 based on the uniform system of accounts, which is
11 required in New Hampshire, that shows also the basic
12 balance-sheet income statement cash-flow information on
13 a total company basis?

14 A. Yes.

15 Q. Okay. And 03 shows the separated cost between
16 regulated and non-regulated services?

17 A. Yes.

18 Q. And 04 shows separated costs between interstate and
19 intrastate?

20 A. That's my recollection, yes.

21 Q. And are you aware, by chance, that the commission staff
22 here in New Hampshire relies fairly heavily on those
23 ARMIS reports to verify that costs are allocated
24 properly?

1 A. No, I'm not generally aware of that. I can understand
2 that they would like to look at those and see what's in
3 them.

4 Q. And they do. Do you agree that states have authority
5 to require separations reports for purposes of
6 accounting and utility assessment?

7 A. There is -- I know there is a requirement that today
8 Verizon -- or maybe it's generally to large ILECs,
9 let's say, in the state of New Hampshire -- have to
10 provide separated results. And there is a monthly
11 report, outside of the ARMIS reports, which does
12 provide that. And we do intend to keep providing that.

13 Q. Okay. And are you aware, then, that -- you've reviewed
14 some of the Commission rules. Are you aware that the
15 Commission has ruled PUC 414-01 requires all ILECs to
16 maintain accounts and records in conformity with the
17 uniform system of accounts for telecom companies?

18 A. Yes.

19 Q. And are you familiar with the Commission rule PUC
20 415-01B6, which requires a jurisdictional separations
21 report from ILECs with revenues from regulated
22 operations of 100 million or less?

23 A. I'm not specifically -- 100 million or less?

24 Q. Yes. In New Hampshire.

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1 A. Okay. I'm not specifically familiar with that. As I
2 mentioned earlier, I know that Verizon is providing
3 today monthly reports on -- that do show that
4 separations detail for their monthly financial
5 statements.

6 Q. Separate from the ARMIS reports ---

7 A. Yes.

8 Q. --- that FairPoint will be ---

9 A. I believe it's the ILEC 22 or 23 report. It's one of
10 those two.

11 Q. Okay. Referring back to the Rule 415-01, will
12 FairPoint's revenue from regulated New Hampshire
13 operations be less than \$100 million in New Hampshire?

14 A. I wouldn't think so. I'm not sure.

15 Q. I think you're right.

16 A. I'm not sure.

17 Q. There appears to be a gap between what the FCC requires
18 on these reports -- that it releases the mid-size
19 companies, such as FairPoint ---

20 A. I see.

21 Q. --- and the New Hampshire rule.

22 A. Okay.

23 Q. And it seems that, perhaps, the New Hampshire rules did
24 not contemplate the mid-size ILECs, such as FairPoint,

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1 at the time they were written.

2 A. I understand.

3 Q. Hold one minute, please.

4 I apologize for that. I think I'm
5 fortunate that I, myself, am not immersed in the work
6 of ARMIS reports.

7 My understanding is that the reports
8 that Verizon provides, that you've been referring to,
9 do not actually show how separations are derived.

10 A. Yeah. That's my understanding, too.

11 Q. Okay.

12 A. They show the results. They don't show all the steps
13 that get you there.

14 Q. Okay. And that's -- that's why Staff turns to the
15 ARMIS reports that it receives from Verizon.

16 A. Okay. I just want to -- with respect to ARMIS, I know
17 a couple years ago the FCC took a look at ARMIS and
18 some other obligations of mid-size carriers. You know,
19 looked at the burden and said, you know, "It seems to
20 us that these reports are a lot of burden and we're not
21 seeing that there's a lot of demand for them."

22 Now, I hear you saying that that's not
23 the case in New Hampshire. And so, you know, while
24 we've been relieved of that, based on my understanding

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1 of the FCC rules, I think I can say if you have
2 specific requirements let us know what those are and,
3 you know, we'll get back to you and work with you on
4 those.

5 Q. Okay. Great. Because if FairPoint does not file the
6 USOA baseline information and separation reports via
7 the ARMIS reports, Staff still needs to see from
8 FairPoint a demonstration that costs and expenses have
9 been properly separated out and allocated to New
10 Hampshire intrastate operations.

11 So until this apparent gap in the rules
12 is resolved, are you saying that FairPoint would agree
13 to report the data that Verizon currently provides
14 through the ARMIS reports ---

15 A I don't know that I can make that commitment. I do
16 know that we're open to that and, you know, we'll talk
17 about that. And if you could -- I guess, if you can
18 tell us specifically what you want, then we'll talk
19 about that and we'll respond.

20 MS. FABRIZIO: Terrific. Thank you.
21 That actually concludes my questions.

22 WITNESS SKRIVAN: Okay.

23 MS. FABRIZIO: Thank you.

24 CHAIRMAN GETZ: This may be a good time

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1 to hear the confidential question that Ms. Hollenberg
2 would like to pursue. So this is a confidential as
3 opposed to a highly confidential?

4 MS. HOLLENBERG: Yes.

5 CHAIRMAN GETZ: Okay. So I'd ask that
6 the folks who aren't subject to a confidentiality
7 agreement or do not have a statutory place in this
8 proceeding, if they could please leave the room. Thank
9 you.

10 (PUBLIC HEARING RESUMES AT PAGE 201)

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1 (PUBLIC HEARING RESUMES FROM PAGE 194)

2 CHAIRMAN GETZ: Okay. We'll turn now to
3 Commissioner Below.

4 **EXAMINATION BY CMSR. BELOW**

5 BY CMSR. BELOW:

6 Q. Well, I think my general questions have sort of been
7 addressed, but just to clarify a few points.

8 Is it your general expectation that the
9 assets of Verizon that are being transferred through
10 the merger that are related to unregulated activities
11 will all be located within the Newco subsidiary of
12 Spinco which gets merged into FairPoint Communications?

13 A. I'm not sure I understand exactly where all that --
14 about Spinco and Newco. Maybe I can say what I do know
15 and see if the answer's there.

16 Q. Okay.

17 A. I do know that the deregulated operations that we're
18 getting from Verizon, which are coming in to FairPoint,
19 we expect to put in a separate affiliate from the ILEC
20 which would hold those assets and be a deregulated
21 operation.

22 Now, that's not a -- that's not
23 universal. For example, there's some minor deregulated
24 services that the telephone company provides, such as

1 inside wiring, that would go in the ILEC and be part of
2 the ILEC. And there's cost-allocation rules to make
3 sure that that's all handled properly. But the large
4 deregulated businesses, we expect to be in a separate
5 -- a separate company.

6 Q. Right. And then, those assets that are used for
7 regulated services or sometimes a mixture of regulated
8 and unregulated end up probably generally in the telco
9 ILEC subsidiary.

10 A. Yes, I agree with that.

11 Q. And what you're saying is that you expect, at this
12 point, that the capitalized costs of acquiring,
13 developing and implementing the systems that replace
14 the Verizon systems that you're not acquiring will
15 probably be in a service-company affiliate that will be
16 separate from either the Telco or the Newco, but come
17 from the current expenditures of FairPoint
18 Communications and probably go into a central service
19 affiliate; is that correct?

20 A. Yes, that is correct.

21 Q. Okay. And at this point, is there any effort to track
22 or account for cost of development or acquiring those
23 systems that might be specifically for parts of the
24 system that might only be for either unregulated or

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1 regulated services as opposed to the probably majority
2 of them that are potentially for both?

3 A. I'll say no, but let me say this: In the future, let's
4 say there's a particular system that would only be
5 used, for whatever reason -- and I don't know what that
6 would be. But if there was a system that was only used
7 for deregulated services and we're allocating the cost
8 of that system, then we would allocate it to
9 deregulated services.

10 If later, that same system were to
11 provide services to regulated as well as non-regulated
12 services, then there would be a cost allocation to the
13 services that were actually, you know, benefiting from
14 the use of that system.

15 Q. So at this point, you haven't tried to evaluate the
16 several-hundred functions that these systems are going
17 to support as to whether any of them are just for
18 either regulated or unregulated activities?

19 A. No, we haven't done that.

20 Q. Okay. But you might, after the fact, if that could be
21 distinguished.

22 A. Well, yes. And, you know, as I -- to the extent any
23 system was to be used just for regulated or non-
24 regulated, then I would expect our allocation

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1 procedures to put it that direction, even though we're
2 not trying to capture that as we're building the
3 systems.

4 Q. Do you expect to have adequate information from
5 Capgemini that might allow you to do that or are you
6 getting sort of just one billed number?

7 A. Well, I guess the way I envision it, we've not getting
8 just one billed number. I know we are getting a
9 breakdown by, I don't know, maybe ten or 12 different
10 categories of the systems. And what I envision, then,
11 is once we have the categories of the systems, we'll
12 see how they're being used and allocate them based on
13 their actual usage.

14 CMSR. BELOW: Okay. Thank you.

15 CHAIRMAN GETZ: Redirect?

16 MR. McHUGH: Just the one.

17 **REDIRECT EXAMINATION**

18 BY MR. McHUGH:

19 Q. Could you address, Mr. Skrivan, what it is you may or
20 may not be doing post-closing for FairPoint?

21 A. Yes. And to do that, I'm just going to have to back up
22 a little bit. I mentioned that I joined the company
23 June 4th. I was with another mid-size carrier that got
24 bought up by a larger mid-size carrier. So, you know,

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1 I found myself sort of mobile. And there were a lot of
2 opportunities, but the FairPoint opportunity was just
3 so intriguing because it's -- you know, it's a mid-size
4 company trying to be a larger mid-size company and take
5 on a lot of really interesting, in my mind -- and
6 you've heard me talk about what some of my interests
7 are -- some very interesting -- some very interesting
8 regulatory opportunities.

9 And so, you know, we're early in this
10 process and we're still sort of on the critical path.
11 So I basically came in to FairPoint and said, you know,
12 "What do we need to do?" Well, the critical path says
13 we need to develop our regulatory accounting and
14 reporting system, along with our financial accounting
15 reporting system, and we need to be working on our
16 approvals. And so that's what I've been tasked to do.
17 And, you know, we're working on where that goes next,
18 but I have sold my house in North Carolina and moved to
19 Portland, Maine, and taken up residence in Portland and
20 report to our South Portland office every day -- every
21 day that I'm not in New Hampshire or Vermont or Atlanta
22 or Charlotte.

23 MR. MCHUGH: Nothing further,

24 Mr. Chairman.

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1 CHAIRMAN GETZ: Is there anything
2 further for this witness?

3 Hearing nothing, then you're excused.
4 Thank you, Mr. Skrivan.

5 WITNESS SKRIVAN: Thank you.

6 CHAIRMAN GETZ: So at this point, I take
7 it we are going to hear suggestions on what we do over the
8 next -- what we do tomorrow and next week. And, well,
9 Mr. McHugh -- or is there a recommendation from the
10 parties?

11 MR. MCHUGH: We're happy to let Staff
12 make the recommendations. I think we're in agreement, at
13 least Staff and FairPoint.

14 MS. FABRIZIO: Sure. Staff would
15 recommend that we close for today and tomorrow we handle
16 the NHLA MOU and NHTA panel and the Electric testimony
17 oral arguments.

18 CHAIRMAN GETZ: And I assume that means
19 that all of the affected individuals are available for
20 tomorrow, including -- Mr. Linder, you're available
21 tomorrow for this?

22 MR. LINDER: I am available,
23 Mr. Chairman. It's not clear to me what the order of
24 those three presentations would be.

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1 CHAIRMAN GETZ: Is there any preference
2 among the parties?

3 MR. MCHUGH: No. The only thing I would
4 add, I don't think any of them are going to take too long,
5 but I did, I think, generally represent to Mr. Reed, who
6 will be here for NHTA, and Attorney Phillips, counsel to
7 NHTA, that we probably could get them on first so they
8 could be on their way for the day.

9 CHAIRMAN GETZ: To do that, then, go to
10 Mr. -- well, actually, I'm not sure who it will be --
11 Mr. Nixon and then possibly hearing from Mr. Linder on the
12 NHLA and then taking up the oral arguments, which
13 primarily will be Mr. Del Vecchio or Ms. Knowlton and
14 then, I guess, Mr. Eaton.

15 MR. DEL VECCHIO: Yes.

16 CHAIRMAN GETZ: That would constitute
17 the proceedings. Okay. So that sounds like it should
18 work. And then, that means Monday morning we would be
19 starting with the Brown, Harrington, Smee panel, then
20 Mr. Sicker, then Mr. Nixon?

21 MR. MCHUGH: I believe so, yes,
22 Mr. Chairman.

23 CHAIRMAN GETZ: All right. Very well,
24 then. Is there anything else that we should address

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1 today?

2 All right, then. Hearing nothing else,
3 we'll recess for the day and we'll resume tomorrow morning
4 at 10:00.

5 (Hearing adjourned at 4:25 p.m.)

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