

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

(Redacted - Confidential Pages Removed)

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

October 26, 2007 - 9:22 a.m.
Concord, New Hampshire

Day V

NHPUC NOV05'07 PM 3:47

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

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

Jody O'Marra, Clerk

APPEARANCES: Reptg. FairPoint Communications, Inc.:
Frederick J. Coolbroth, Esq. (Devine....)
Patrick McHugh, Esq. (Devine, Millimet..)
Kevin M. Baum, Esq. (Devine, Millimet...)
Melinda Gehris, Esq. (Devine, Millimet..)

Reptg. Verizon New England, et al:
Victor D. Del Vecchio, Esq.
Sarah B. Knowlton, Esq. (McLane, Graf...)

Reptg. New England Cable & Telecomm. Assn.
and Comcast Phone of N.H., LLC:
Alan D. Mandl, Esq. (Smith & Duggan)

Reptg. One Communications:
Ted Price, Esq.

COURT REPORTERS: Steven E. Patnaude, LCR No. 52

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

APPEARANCES: (C o n t i n u e d)

**Reptg. Communication Workers of America,
IBEW Locals 2320, 2326 & 2327, and
IBEW System Council T-6:**
Scott Rubin, Esq.

Reptg. Public Service Co. of New Hampshire:
Gerald M. Eaton, Esq.

Reptg. Unitil Energy Systems:
Gary M. Epler, Esq.

Reptg. Irene Schmitt:
Alan Linder, Esq. (N.H. Legal Assistance)

Reptg. Residential Ratepayers:
Meredith Hatfield, Esq., Consumer Advocate
Rorie Hollenberg, Esq.
Kenneth E. Traum, Asst. Consumer Advocate
Office of Consumer Advocate

Reptg. PUC Staff:
Lynn Fabrizio, Esq.

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

I N D E X

| Witness | DIRECT | CROSS | REDIRECT |
|---|--------------------|--------------|-----------------|
| Panel of Brian Lippold Michael Reed William R. Stafford | | | |
| By Mr. Phillips | 15 (hc) 27 (hc) | | |
| By Mr. Coolbroth | 19 (hc) | | |
| By Ms. Hatfield | | 20 (hc) | |
| By Ms. Fabrizio | | 21 (hc) | |
| By Ms. Bailey | | 30 (hc) | |
| | | | |
| Peter G. Nixon | | | |
| By Mr. Coolbroth | 35 | | |
| By Ms. Hatfield | | 43 | |
| Examination by Cmsr. Below on page 49 | | | |

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

P R O C E E D I N G S

CHAIRMAN GETZ: Okay. Good morning, everyone. We're resuming the hearings in docket DT 07-011. Let's take appearances before we begin to address the three issues we have on deck for today.

MR. COOLBROTH: Good morning, Mr. Chairman. On behalf of FairPoint Communications, Inc., Frederick Coolbroth, Patrick McHugh and Kevin Baum, from the firm of Devine, Millimet & Branch. And, also at counsel table, Peter Nixon, the President of the Company.

CHAIRMAN GETZ: Good morning.

CMSR. MORRISON: Good morning.

CMSR. BELOW: Good morning.

MR. DEL VECCHIO: Good morning, Commissioners. Victor Del Vecchio and Sarah Knowlton, representing Verizon. And, with us this morning is Bob Kenney, Shawn Nestor and Alan Cort.

CHAIRMAN GETZ: Good morning.

CMSR. MORRISON: Good morning.

CMSR. BELOW: Good morning.

MR. MANDL: For the New England Cable and Telecommunications Association and Comcast Phone of Vermont [New Hampshire?], Alan Mandl.

CHAIRMAN GETZ: Good morning.

1 CMSR. MORRISON: Good morning.

2 CMSR. BELOW: Good morning.

3 MR. PRICE: Good morning. Ted Price,
4 for One Communications.

5 CHAIRMAN GETZ: Good morning.

6 CMSR. MORRISON: Good morning.

7 CMSR. BELOW: Good morning.

8 MR. PHILLIPS: Good morning,
9 Commissioners. On behalf of the eight ILEC members of New
10 Hampshire Telephone Association, I'm Paul Phillips, from
11 the law firm of Primmer, Piper, Eggleston and Cramer.
12 And, with me in the hearing room is Mike Reed, from TDS
13 Telecom, Steve Nelson, from Dunbarton, William Stafford
14 from Granite State Telephone, and Chris Rand, from Granite
15 State Telephone.

16 CHAIRMAN GETZ: Good morning.

17 CMSR. MORRISON: Good morning.

18 CMSR. BELOW: Good morning.

19 MR. RUBIN: Good morning. Scott Rubin,
20 representing the Communications Workers of America and the
21 International Brotherhood of Electrical Workers. With me
22 at the table is our consultant Randy Barber, and Robert
23 Erickson, from IBEW.

24 CHAIRMAN GETZ: Good morning.

10/26/07 DAY 5 VERIZON/FAIRPOINT-PUBLIC

1 CMSR. MORRISON: Good morning.

2 CMSR. BELOW: Good morning.

3 MR. LINDER: Good morning, Mr. Chairman.

4 Alan Linder, from New Hampshire Legal Assistance,
5 representing Verizon residential customer Irene Schmitt.

6 CHAIRMAN GETZ: Good morning.

7 CMSR. MORRISON: Good morning.

8 CMSR. BELOW: Good morning.

9 MS. HATFIELD: Good morning,
10 Commissioners. Meredith Hatfield, from the Office of
11 Consumer Advocate, on behalf of residential ratepayers.
12 And, with me is Rorie Hollenberg.

13 CHAIRMAN GETZ: Good morning.

14 CMSR. MORRISON: Good morning.

15 CMSR. BELOW: Good morning.

16 MS. FABRIZIO: Good morning,
17 Commissioners. Lynn Fabrizio, on behalf of Staff. With
18 me today at the table are Kate Bailey, Amanda Noonan, and
19 David Goyette.

20 CHAIRMAN GETZ: Good morning.

21 CMSR. MORRISON: Good morning.

22 CMSR. BELOW: Good morning.

23 CHAIRMAN GETZ: As I recall how we ended
24 yesterday, we determined we would deal with, first, with

1 the New Hampshire Telecom Association MOUs, and then we
2 would turn to the New Hampshire Legal Assistance MOU, and
3 then address the oral argument on the motion submitted by
4 Verizon to exclude certain testimony from the electric
5 distribution companies in this proceeding.

6 So, turning to the first issue, of the
7 NHTA MOU, and reviewing all the documents again last
8 night, I'm a little concerned whether, in my eagerness to
9 make progress here, might have gotten a little bit ahead
10 of myself, with the -- given how these agreements are
11 implicated by the Motion for Partial Reconsideration filed
12 by FairPoint on the 22nd, for which we set a deadline of
13 objections by close of business today. I think, and I
14 want to hear from the parties on this, it seems to me that
15 part of the argument there at least is who should be privy
16 to hearing about these agreements? And, I want to make
17 sure I understand, is it a difference, Mr. Coolbroth or
18 Mr. McHugh, whether this, at least for the time being,
19 should be treated as a "highly confidential" document or
20 something more than "highly confidential", such that only
21 the Commission would be reviewing these documents at this
22 point? Can I get some clarification?

23 MR. MCHUGH: At this time, for the NHTA
24 agreements, Mr. Chairman, "highly confidential" is how

10/26/07 DAY 5 VERIZON/FAIRPOINT-PUBLIC

1 they have been designated, and they have been distributed
2 to, at least to my understanding, to those who are on the
3 "highly confidential" list. Attorney Linder has them.

4 CHAIRMAN GETZ: Okay.

5 MR. DEL VECCHIO: And, Attorney Rubin
6 has them, and Staff and OCA.

7 CHAIRMAN GETZ: Okay. All right. So,
8 FairPoint, Verizon, Staff, Labor, and NHLA do have these
9 documents. That's correct?

10 MR. MCHUGH: Yes.

11 CHAIRMAN GETZ: All right. I was
12 concerned that it might even be a smaller universe.
13 Because I would like to at least get on the record today,
14 in the highly confidential record, an understanding of the
15 facts and to hear from FairPoint and the RLECs about this
16 agreement. Maybe I should turn to Mr. Mandl and
17 Mr. Price. Is there an objection to moving forward on
18 those grounds or do you expect, in your objection to the
19 underlying motion for partial reconsideration, that at
20 some point you are going to want to see those agreements,
21 is that correct?

22 MR. MANDL: Speaking for my clients, we
23 did file or are filing today in hard copy form our
24 opposition to FairPoint's motion. That opposition was

1 emailed out yesterday afternoon to the Commission and to
2 the parties. The motion does speak to all of the
3 settlement agreements that FairPoint is seeking to limit
4 to the Commission and Commission Staff. And, I guess what
5 I'm hearing now is that the RLEC settlement documents have
6 been provided to certain other parties who had been
7 entitled to receive highly confidential information. As a
8 practical matter, our main concern is with the settlement
9 agreements filed with other CLECs. And, I don't want to
10 waive any rights that we have in our opposition. By the
11 same token, I don't want to, you know, by consenting to
12 those agreements being treated on a highly confidential
13 basis, and we don't want to delay the hearing in any way.
14 We understand that, until the Commission has acted on
15 FairPoint's request, that the information would be treated
16 in some confidential fashion. But, when it comes to the
17 CLEC agreements, we would definitely object to, you know,
18 any highly confidential treatment of those documents.

19 CHAIRMAN GETZ: Okay.

20 MR. MANDL: And, I guess, with respect
21 to the RLEC documents, we had no questions for the panel
22 dealing with the RLEC documents. And, we also understand
23 that, you know, until there's a ruling by the Commission
24 on FairPoint's motion, under law, the Commission, on its

1 own or through request of a party, could reclassify any
2 material that has thus far been treated as "highly
3 confidential".

4 So, I guess, in a long-winded kind of
5 way, we're not objecting to consideration of the RLEC MOUs
6 on the basis on which they were filed. But we want it
7 clear that we're not waiving any rights by consenting to
8 that. And, we want to reserve all of our rights expressed
9 in our opposition to FairPoint's motion.

10 MR. PRICE: That's One Communication's
11 position as well. Our primary concern is with the CLEC
12 Settlement agreements, that they not be treated as "highly
13 confidential" or subject to this special "in camera"
14 review status that FairPoint has sought.

15 CHAIRMAN GETZ: Okay. And, which, of
16 course, we'll be getting the objections, we'll address the
17 motion and the objections in advance of the hearing on the
18 CLEC matters next week. And, I take it that, to the
19 extent that we make some decision that the RLEC agreements
20 should be made public, then they would be made public at a
21 later date also. But I'm taking it that there's no
22 objection in this, and that we will proceed this morning
23 hearing about the RLEC agreements, and be treated, at
24 least for the time being, in a highly confidential manner.

1 And, then, we'll rule on the underlying motions respecting
2 CLEC and RLEC confidentiality. Does anyone else want to
3 weigh in on that issue?

4 (No verbal response)

5 CHAIRMAN GETZ: Okay. Hearing nothing,
6 then I guess at this point we would go on the highly
7 confidential record. And, would ask that anyone who has
8 not signed a confidentiality agreement or has some
9 statutory basis for being here, to please leave the room.
10 Thank you.

11 (PUBLIC HEARING RESUMES AT PAGE 35)

12
13
14
15
16
17
18
19
20
21
22
23
24

1 (PUBLIC HEARING RESUMES FROM PAGE 11)

2 CHAIRMAN GETZ: Back on the record.

3 What's the plan of procedure here, Mr. Coolbroth?

4 MR. COOLBROTH: Mr. Chairman, FairPoint
5 proposes to offer the testimony of Peter Nixon to present
6 and describe the memorandum of understanding reached with
7 New Hampshire Legal Assistance. We call Peter Nixon.

8 And, Mr. Nixon sponsors other testimony
9 in this proceeding. Our understanding is his appearance
10 today is limited to this memorandum of understanding.
11 And, he is scheduled to testify next week on other
12 matters.

13 (Whereupon **Peter G. Nixon** was duly sworn
14 and cautioned by the Court Reporter.)

15 **PETER G. NIXON, SWORN**

16 **DIRECT EXAMINATION**

17 BY MR. COOLBROTH:

18 Q. Mr. Nixon, could you please state your full name.

19 A. Peter Nixon.

20 Q. And, by whom are you employed and in what capacity?

21 A. FairPoint Communications, President.

22 Q. And, what's your business address?

23 A. 521 East Morehead Street, Charlotte, North Carolina.

24 Q. And, have you come to -- Mr. Nixon, are you familiar

1 with the memorandum of understanding that has been
2 marked as "Schmitt 1" in this proceeding?

3 A. I am.

4 Q. And, I'm wondering if you could generally explain this
5 memorandum for the Commission?

6 A. Certainly. There are essentially four different and
7 discreet components within the memorandum. First, is
8 our continuing support for the Lifeline and Link-up
9 Programs for collaborative discussions, meetings and
10 reports. The second is a process to provide soft
11 disconnects. I'll discuss that more in a minute.
12 Continuation of the Basic Service offerings. And,
13 lastly, a process to continue and to expand actually
14 the public interest payphones.

15 And, if I might for a minute expand on
16 those a little bit. Is that, in the Lifeline and
17 Link-up support, the plan and the process here is to
18 actually expand and increase the participation in these
19 programs. And, we would do that by working
20 collaboratively, not only with the New Hampshire Legal
21 Assistance, but also with New Hampshire's Community
22 Action Program, New Hampshire Department of Health &
23 Human Service, and also New Hampshire Municipal
24 Association, discuss ways that we can expand and get

1 greater participation in the Lifeline and Link-up
2 Programs. And, to do that, it became apparent to us,
3 in our discussions, that additional resources might be
4 necessary to assist with the distribution and the
5 administration of the various documents, pamphlets, and
6 the materials out into the proper offices for
7 distribution. And, through the discussions and to
8 arrive at the memorandum of understanding, we agreed to
9 provide funding in the amount of \$50,000 that could be
10 used to support the clerical assistance to make sure
11 those resources were necessary to effect the increase
12 in participation. And, again, the point here was, it's
13 one thing to say "well, we want to increase and report
14 on increased participation", but we thought it was
15 appropriate to make sure that there were resources,
16 based upon our discussions, that will be sufficient to
17 make sure that we could actually accomplish what we're
18 trying to set out to achieve. So, that was an
19 important element and component of it.

20 We also agreed that, beginning three
21 months after cutover, in which case we'd then have the
22 systems available, the FairPoint systems available,
23 that we'd report on the Lifeline/Link-up participations
24 to the Department. And, again, we want to make sure,

1 as we participate and collaborate with them, that
2 there's an understanding of what that participation
3 level is. And, then, once every six months we would
4 meet with the Commission Staff, the OCA, and NHLA, to
5 discuss the progress, the activities that we're making,
6 and as well as the results being achieved. And,
7 finally, in order to do that effectively, we agreed and
8 believe it's necessary to provide an opportunity for
9 review and comment on the materials and the pamphlets
10 and such that would be distributed, and we'd do that
11 again in such a way as to provide time for comment and
12 review. So, again, it was really to provide a process,
13 a collaborative process, if you will, to review, to
14 meet, to provide resources, and as well as input on the
15 materials.

16 The second comment and the second area
17 was in the area of soft disconnects. And, this is an
18 area where we agreed that, following cutover, that we
19 would provide the opportunity for those customers,
20 those residential customers who have been disconnected
21 for nonpayment, the continued provision of what we call
22 "soft dial tone" for those disconnected customers, so
23 they could continue to dial and reach 911 services,
24 emergency services, and they had the ability to call

1 into our business office so they could make payment
2 arrangements. So, you know, we felt it was important
3 to set a limit, perhaps a 90-day limit. But, again,
4 with our discussions with NHLA, they thought that was a
5 very appropriate amount of time. We agree.

6 And, again, there's some conditions
7 here, only because we can only do that as the network
8 capacity allows, facilities allow, numbering allows.
9 And, finally, this is intended for those customers who
10 do not port away from our service. So, they have to be
11 a customer who has been disconnected from our service
12 and remain -- would remain as our customer.

13 Q. Mr. Nixon, if I could just stop you for a second.

14 A. Yes.

15 Q. What would be the reason why the ported customers would
16 not be included?

17 A. Well, we no longer have a relationship with those
18 customers. They have taken their business and their
19 relationship to another vendor and -- to another
20 provider of service, rather. And, so, the objective
21 here is to make sure that we are continuing service
22 with our customers, and giving them the opportunity to
23 work with us for payment arrangements and allow them to
24 access 911 services.

1 Q. So, that the theory is that those customers have phone
2 service from somebody else?

3 A. Exactly. If they are able to make accommodations or
4 reach accommodations with a wireless provider or a
5 different provider, then they have already made those
6 arrangements and they have that access to those
7 services that we are trying to make sure they have.
8 So, the intent isn't to make sure they have two, three
9 or four different types of access, but rather that this
10 is the provider that, if we are their provider, that we
11 would make sure they had that access.

12 The third area then is the continuation
13 for a minimum of three years of the basic service
14 offerings. And, that's, as I understand it, a separate
15 stand-alone service to those customers who wish this
16 particular product and service and our continuing
17 commitment to do that. Again, I'm probably not the
18 person that has the in-depth knowledge of all the
19 details behind this, except to say it's once again our
20 commitment to make sure that the residents of the state
21 have access to the service, and that this is a
22 continuing commitment.

23 And, finally, we recognize that there is
24 a lot of interest in public interest payphones. And

1 certainly, we recognize that there's a statute that has
2 different requirements, in terms of notification, that
3 the statute would prevail. What we're trying to do
4 here is ensure that there is proper notification,
5 number one. And, then, number two, that we'd go so far
6 as to say that we would install, maintain, and
7 continuing to fund additional public interest
8 payphones, and that we would do that, again, following
9 cutover.

10 Finally, to make sure that this document
11 is something that is appropriately filed, would ask
12 that this be made part and parcel of the agreement,
13 with the Merger Agreement. And, again, that
14 summarizes, I believe, the memorandum, and happy to
15 take any questions, if there are any.

16 Q. Well, one more for me or a few more from me, Mr. Nixon.

17 A. Okay.

18 Q. The Section 1 related to Lifeline and Link-up support,
19 is there a period of time that that section covers? If
20 I direct your attention to the second sentence in that
21 paragraph?

22 A. Let me --

23 Q. Sorry, I'm not trying to --

24 A. Yes. It is for the first three years, is what the

1 intention is here, I'm sorry.

2 Q. And, then, the \$50,000 amount, is that an annual
3 amount?

4 A. That is an annual amount, that is correct.

5 Q. And, in terms of ratemaking treatment by FairPoint,
6 does FairPoint intend that this would be above-the-line
7 and charged to ratepayers or below-the-line and charged
8 to stockholders?

9 A. No, we feel this -- it be important that this is not to
10 be charged to our customers. That the Company would
11 charge this below the line.

12 MR. COOLBROTH: That concludes my
13 direct. The witness is available for cross-examination.

14 CHAIRMAN GETZ: Thank you. Mr. Del
15 Vecchio?

16 MR. DEL VECCHIO: No questions, Mr.
17 Chairman.

18 CHAIRMAN GETZ: Mr. Linder?

19 MR. LINDER: Mr. Chairman, I have no
20 questions. But, at the conclusion of Mr. Nixon's
21 examination, I would like to make a statement on behalf of
22 Ms. Schmitt.

23 CHAIRMAN GETZ: Thank you. Mr. Rubin?

24 MR. RUBIN: No questions.

1 CHAIRMAN GETZ: Ms. Hatfield?

2 MS. HATFIELD: Thank you, Mr. Chairman.

3 I just had one question.

4 **CROSS-EXAMINATION**

5 BY MS. HATFIELD:

6 Q. Mr. Nixon, when you were discussing the second section
7 on "soft disconnects", you discussed the fact that
8 using a soft disconnect would allow customers to be
9 able to have what you called "soft dial tone", so that
10 they could be able to contact the FairPoint business
11 office. But is there another important service that
12 soft dial tone also provides to customers?

13 A. There is, and that's access to 911 for emergency
14 services.

15 MS. HATFIELD: Thank you.

16 CHAIRMAN GETZ: Ms. Fabrizio?

17 MS. FABRIZIO: Thank you, Mr. Chairman.

18 Good morning, Mr. Nixon.

19 WITNESS NIXON: Good morning.

20 BY MS. FABRIZIO:

21 Q. Mr. Nixon, is FairPoint familiar with legislation
22 passed in June of this year requiring the New Hampshire
23 Department of Health & Human Services to provide
24 individuals -- eligible individuals under certain

1 programs with application forms and information about
2 the Link-up New Hampshire and Lifeline Telephone
3 Assistance Program, and as well as to provide
4 assistance in completing those forms?

5 A. I'm generally familiar with that.

6 Q. Okay. And, the same legislation also imposed similar
7 requirements on public housing authorities and the New
8 Hampshire Housing Finance Authority, and that
9 legislation also required the Office of Energy &
10 Planning to provide similar assistance. Are you
11 familiar with it?

12 A. In general.

13 Q. How is the -- The MOU designates \$50,000 from FairPoint
14 to be paid to social service agencies. How are the
15 activities that that money is intended to fund
16 different from what is required under legislation for
17 those agencies?

18 A. We would probably need to work out the actual logistics
19 on how that would be handled. But, again, what we're
20 trying to do is expand this so that it includes several
21 agencies, several departments. Ours is to make sure
22 the information that's needed is made available to the
23 people and the consumers to increase their
24 participation. So, you know, we'll work out the

10/26/07 DAY 5 VERIZON/FAIRPOINT-PUBLIC

1 logistics, look forward to doing that. I don't have
2 the particular -- those worked out at this time.

3 Q. Okay. Thank you. Now, part 1(d) of the MOU requires
4 semiannual meetings between FairPoint, Commission
5 Staff, the OCA, and NHLA to discuss progress and
6 results of outreach efforts. Do you know who will be
7 responsible for coordinating and conducting those
8 meetings?

9 A. Audrey Prior has been doing that so far. I would
10 expect that she would remain the primary point of
11 contact. If that changes, we'll certainly let you
12 know.

13 Q. Does that mean that FairPoint will actually be doing
14 the coordination and conducting of the meetings?

15 A. We'll certainly work with the agencies, who would like
16 to coordinate and call in, we'll just want to make sure
17 they take place. And, we'll make sure that there is a
18 senior FairPoint person available.

19 Q. Okay. On, let's see, Provision 3, basic service
20 offerings, Ms. Schmitt had provided testimony in this
21 proceeding about the need for FairPoint to continue to
22 provide a low-use measured service option, like the one
23 offered by Verizon. Is Provision 3 of this MOU
24 intended to provide for continuance of that option?

10/26/07 DAY 5 VERIZON/FAIRPOINT-PUBLIC

1 A. Yes, ma'am.

2 Q. And, Part 4(a), let's see, Part 4(a) requires notice of
3 "not less than 30 days advance notice in writing to
4 Commission Staff, the OCA and NHLA of its intent to
5 remove any payphone". Are you familiar with RSA
6 374:22-q pertaining to public interest phones?

7 A. Generally.

8 Q. Okay. I'll put it up, the highlighted portion here,
9 thanks, requires "60 days notice to the Commission"
10 prior to removal of any last payphone in a particular
11 site. Did you intend, in this MOU, to change that
12 requirement?

13 A. No, I apologize. And, as I mentioned, ours was not to
14 try to change the statute or make any -- ours is to
15 amplify the fact that we will follow the statutes as
16 provided, provide the required communication, and a
17 continuing commitment to actually expand the public
18 interest payphones. So, we're not trying to change
19 that.

20 Q. Okay. So, you're really just including OCA and New
21 Hampshire Legal Assistance in your notice of removal of
22 a payphone by this provision?

23 A. Yes, that would be correct.

24 Q. Great. Let's see, in Part 4(b) of the MOU states that

- 1 "Within six months of the cutover, FairPoint will
2 install, fund and maintain five public interest
3 payphones to be determined in consultation with Staff,
4 the OCA, and NHLA." Have those five public interest
5 payphones been identified?
- 6 A. No, we have not done that. Again, it says "within" --
7 post cutover, so we would look forward to working with
8 the agencies following the approval --
- 9 Q. Okay.
- 10 A. -- and close, to identify those locations and work
11 collaboratively with them.
- 12 Q. And would those five include phones at Rumney, New
13 Hampshire and Ackworth, New Hampshire? The Rumney
14 phone is currently pending installation and Ackworth is
15 pending funding, that's my understanding.
- 16 A. Those would be in addition to anything that's currently
17 under consideration.
- 18 Q. So, --
- 19 A. So, those are then installed --
- 20 Q. So, those would be in addition to the five?
- 21 A. That would be correct.
- 22 Q. And, so, presumably, a petition has not been filed with
23 the Commission for designation as a public interest
24 payphone, --

1 A. No.

2 Q. -- that would happen after closing then?

3 A. Again, the effort here is that this would be in
4 addition to those that are either in today or that
5 would be identified and installed prior to close.

6 Q. Right. So, you would submit a petition to the
7 Commission for designation as a "public interest phone"
8 in the future?

9 A. Yes, ma'am.

10 Q. Okay. And, is the intent of the settlement to provide
11 for installation of up to five phones or to require
12 five phones?

13 A. Can you repeat your question?

14 Q. Sure. Is the intent of the settlement to provide for
15 the installation of up to five public interest
16 payphones or to require five public interest payphones?
17 And, this is really getting to how do you know at this
18 point that there are five phones out there that are
19 eligible for "public interest payphone" designation?

20 A. If it was determined that there weren't five that were
21 eligible, we would fund and install those that were
22 eligible. And, for the duration of this MOU, we would
23 be able -- if there were additional open up to the
24 amount we've identified, we would do those at that

1 time.

2 Q. Okay. Great. And, there is a three year cutoff here
3 in the MOU, I believe, right? What happens to the
4 funding of those phones after the end of three years?

5 A. That would, you know, then that would go back to the
6 rules within the statute, in terms of the Company's
7 ability to continue to monitor, to examine, and to meet
8 with the various agencies.

9 Q. Okay. Thanks. And, would the money to fund these
10 phones be recovered through rates or shareholders?

11 A. These are instruments and telephones and services used,
12 I believe, to provide for regulated service and access.
13 And, therefore, they would be recovered.

14 MS. FABRIZIO: Okay. Thank you. That
15 concludes my questions.

16 CMSR. BELOW: Yes. Good morning, Mr.
17 Nixon.

18 WITNESS NIXON: Good morning.

19 BY CMSR. BELOW:

20 Q. With regard to the "soft disconnect", I think you said
21 that that would enable people to call out to 911 or to
22 the business office. Would that include the operator
23 or just the business office number?

24 A. It is to 911 and the local business office.

1 Q. Okay. And, would it allow the local business office to
2 call in?

3 A. I am not sure. Subject to check.

4 Q. Okay. And, would it allow 911 to call in?

5 A. I believe it does. But, again, we have a witness next
6 week who can answer any technical questions like that,
7 but I -- subject to check.

8 Q. Okay. And, also, I don't know to what extent there is
9 automated 911 calling in service for emergency
10 notifications. But, if that capability was developed
11 and it was technically feasible, would you allow
12 automated 911 dialing in for emergency notification
13 purposes?

14 A. We would.

15 CMSR. BELOW: Okay. Thank you.

16 CHAIRMAN GETZ: Okay. Who would --
17 well, I guess, is there any redirect?

18 MR. COOLBROTH: No, Mr. Chairman.

19 CHAIRMAN GETZ: Is anybody, in addition
20 to Mr. Linder, who would like to make a comment or closing
21 statement?

22 (No verbal response)

23 CHAIRMAN GETZ: Then, Mr. Linder,
24 please.

1 MR. LINDER: Thank you, Mr. Chairman.
2 Mr. Chairman, Commissioners, Irene Schmitt has authorized
3 New Hampshire Legal Assistance to make the following
4 statement on her behalf, because she is unable to be here
5 today. Mrs. Schmitt has two items that she would like to
6 offer to the Commission in support of this memorandum of
7 understanding. The first is that, when this case began
8 earlier this year, Ms. Schmitt identified certain issues
9 that she was interested in pursuing. And, she identified
10 these issues in her Petition for Intervention, which was
11 filed in February of this year, and also in her oral
12 preliminary statement of position, which was made at the
13 prehearing conference on February 27th of this year. And,
14 among the issues were included the following four: The
15 first being the expansion of the Lifeline and Link-up
16 Telephone Assistance Programs. And, the second one was
17 implementation of some form of soft dial tone or soft
18 disconnect. The third issue she had identified was
19 preserving basic services. And, the fourth was support
20 for payphones and public interest payphones.

21 These issues that she identified in her
22 preliminary statement of position are issues of high
23 importance to New Hampshire Legal Assistance's low income
24 and elderly and disabled clients. By entering into this

1 memorandum of understanding, FairPoint has committed to
2 undertake certain obligations that Mr. Smith -- or, that
3 Mr. Nixon described in his testimony, with respect to the
4 above issues, as a condition of approval of the proposed
5 transaction. The undertakings, these undertakings by
6 FairPoint, in our view, will significantly benefit
7 FairPoint's low income, elderly and disabled customers.

8 Accordingly, Mrs. Schmitt believes that
9 this memorandum of understanding is for the public good
10 and is in the public interest. And, accordingly, both
11 Ms. Schmitt and New Hampshire Legal Assistance look
12 forward to working with FairPoint in carrying out the
13 items set forth in the memorandum of understanding.

14 The second item is that Ms. Schmitt's
15 preliminary statement of position did not list certain
16 other issues, which are currently before this Commission
17 in this case, such as the financial and transactional
18 issues. And, by entering into this memorandum of
19 understanding, Mrs. Schmitt is not expressing an opinion
20 with respect to these financial and other transactional
21 issues, but defers to the expertise and to the wisdom of
22 the Commission in evaluating these various aspects of the
23 transaction. And, accordingly, Ms. Schmitt supports this
24 proposed merger transaction and supports the approval of

1 this memorandum of understanding.

2 And, lastly, on a more personal note,
3 both Ms. Schmitt and New Hampshire Legal Assistance would
4 like to express their appreciation to Mr. Nixon and to
5 FairPoint in basically stepping up to the plate and
6 addressing these issues of serious concern to the low
7 income community and making them part of this memorandum
8 of understanding. Thank you.

9 CHAIRMAN GETZ: Thank you, Mr. Linder.
10 Is there anything else on this subject?

11 (No verbal response)

12 CHAIRMAN GETZ: Okay. Hearing nothing
13 -- Ms. Hatfield?

14 MS. HATFIELD: Thank you. May I inquire
15 of Attorney Linder briefly?

16 CHAIRMAN GETZ: Sure.

17 MS. HATFIELD: Mr. Linder, I just want
18 to be clear that I think you said that the MOU and
19 Ms. Schmitt don't express any opinion on the overarching
20 issue in the case related to financial and transactional
21 issues, and that you deferred to the Commission on those
22 issues. But, then, I think you said that she "supports
23 the transaction". Can I take from that that she supports
24 the transaction subject to the Commission making a finding

10/26/07 DAY 5 VERIZON/FAIRPOINT-PUBLIC

1 that the overall transaction is in the public interest?

2 MR. LINDER: That's correct. The
3 memorandum of understanding is intended to be part of the
4 Commission's approval process for this transaction.

5 MS. HATFIELD: Thank you.

6 CHAIRMAN GETZ: Thank you. Okay. Then,
7 thank you, Mr. Nixon. You're excused. We'll see you next
8 week.

9 WITNESS NIXON: Thank you.

10 MS. HATFIELD: Actually, Mr. Chairman, I
11 have -- I think this MOU might actually be "Schmitt Number
12 2", if her testimony is "Schmitt Number 1".

13 MR. LINDER: Mr. Chairman?

14 CHAIRMAN GETZ: The list I have only has
15 one entry, and it says the "MOU".

16 MR. LINDER: To clarify, when New
17 Hampshire Legal Assistance filed this MOU, on the cover
18 letter it indicated that we were substituting the
19 memorandum of understanding for the prefiled direct
20 testimony of Ms. Schmitt. And, therefore, it is not --
21 the direct testimony is not being offered in this
22 proceeding, and our only exhibit is this memorandum of
23 understanding, which is marked as "Schmitt Number 1".

24 CHAIRMAN GETZ: Is there any concern

1 about that?

2 MR. LINDER: But we're happy to have the
3 Schmitt direct marked as "Exhibit Number 2", in the event
4 that the Commission would like to have it so marked.

5 MS. HATFIELD: It would certainly be the
6 OCA's preference that Ms. Schmitt's testimony remain in
7 the record, and that the MOU be additional.

8 CHAIRMAN GETZ: And, I guess there's the
9 issue that she's never been sworn and subject to cross.
10 But it seems like the MOU is consistent with the substance
11 of her testimony. Is there any objection to marking both
12 as exhibits in this proceeding, Mr. Coolbroth?

13 MR. COOLBROTH: I think, for
14 Ms. Schmitt's testimony, if it's marked for the purpose of
15 identifying what her initial concerns were, and with the
16 understanding that the memorandum of understanding
17 resolves those concerns, we would not have an objection.

18 CHAIRMAN GETZ: Okay. Any objection to
19 that framing of the issues?

20 (No verbal response)

21 CHAIRMAN GETZ: Okay.

22 MR. LINDER: We're happy to do whatever
23 the Commission would like.

24 CHAIRMAN GETZ: Okay. We'll mark

1 Ms. Schmitt's testimony as "Exhibit Number 2" under NHLA,
2 and take notice of Mr. Coolbroth's description of the
3 situation.

4 (The document, as described, was
5 herewith marked as **Schmitt Exhibit 2** for
6 identification.)

7 MR. LINDER: Mr. Chairman, in view of
8 the fact that it's been marked, would the Commission like
9 additional copies for the reporter and clerk? I can
10 supply those, but --

11 CHAIRMAN GETZ: I think we have all of
12 that. So, we'll take care of that ministerial matter.
13 Thank you, Mr. Linder.

14 MR. LINDER: Thank you very much.

15 CHAIRMAN GETZ: Okay. Then, we're up to
16 Issue Number 3. And, does Staff or anyone know where Mr.
17 Eaton is, and we can hear oral argument?

18 (Short pause.)

19 CHAIRMAN GETZ: Okay. We're back on the
20 record in DT 07-011, moving to hearing oral argument on
21 the motion by Verizon to exclude testimony from Unitil and
22 PSNH about tree-trimming expenses. Let's talk about
23 procedure. I expect that Ms. Knowlton will go first. It
24 appears both Mr. Eaton and Mr. Epler would like to argue

10/26/07 DAY 5 VERIZON/FAIRPOINT-PUBLIC

1 today or what's the pleasure, gentlemen?

2 MR. EATON: I think we'd both like to
3 argue. I don't mind going first.

4 CHAIRMAN GETZ: Okay. Is there anyone
5 else who is seeking to take a position today?

6 MS. HATFIELD: Yes, Mr. Chairman.
7 Actually, Ms. Hollenberg would like to make a statement on
8 behalf of the OCA.

9 CHAIRMAN GETZ: Okay. And, anything
10 from Staff?

11 MS. FABRIZIO: And, I'll have a
12 statement, not necessarily a position.

13 MR. COOLBROTH: And, a brief statement
14 from FairPoint, Mr. Chairman.

15 MR. DEL VECCHIO: And, I would ask, Mr.
16 Chairman, that Verizon have a reasonable opportunity to
17 reply.

18 CHAIRMAN GETZ: Yes. I'm thinking here
19 then it would -- trying to think what's the appropriate
20 order, certainly starting out with Verizon, with Ms.
21 Knowlton, and then I guess I would go to Mr. Coolbroth,
22 then to Ms. Hatfield, then to Ms. Fabrizio, then to Mr.
23 Eaton and Mr. Epler. And, then, the last chance for
24 rebuttal back to Ms. Knowlton. Is there any objection to

1 that process?

2 (No verbal response)

3 CHAIRMAN GETZ: Okay. Ms. Knowlton.

4 MS. KNOWLTON: Thank you, Chairman and
5 Commissioners, for the opportunity to provide the oral
6 argument on Verizon's motion to exclude testimony and
7 dismiss the intervenors' requests that reimbursement for
8 maintenance expenses be imposed as a condition upon
9 approval of the petition. As we've indicated in our
10 motion, the electric utilities essentially have submitted
11 a claim for money damages in this case, and we do not
12 believe that the Commission has jurisdiction over that
13 claim. The first issue that I would like to address is
14 the timeliness of our motion. PSNH claims that the motion
15 is untimely, and that is incorrect. There is no time that
16 was set forth in the procedural schedule in this case for
17 filing motions. There certainly is no statute or rule
18 that governs the time frame or limits the time frame in
19 any way. And, I would indicate that it's certainly
20 appropriate for the Commission to rule on the
21 admissibility of a witness's testimony any time prior to
22 that testimony of that witness. And, in fact, I would
23 note that this week, when we had a witness on the stand,
24 the Office of Consumer Advocate moved to strike a portion

1 of the testimony of a witness that had been prefiled. The
2 Commission considered and ruled on that motion. And, I
3 would ask that the Commission consider this motion and
4 rule on it as well.

5 As I've indicated in this case, the
6 electric utilities filed testimony seeking multiple
7 conditions as part of the transfer. Only last week did
8 the Electrics and FairPoint file two memorandum of
9 understanding resolving all of issues between FairPoint
10 and the Electrics. At the same time, and in that same
11 time frame, the electric utilities' counsel submitted or
12 indicated the amount of time that they sought or would
13 seek for cross-examination on the only issue that remained
14 from their testimony, which is whether their money damages
15 claim should be granted, and indicated that they wanted to
16 spend three and a half hours cross-examining a company --
17 one Verizon witness on this one issue, in effect, turning
18 this proceeding into a mini-trial on money damages. And,
19 I would submit that that is not -- the Commission doesn't
20 have jurisdiction to decide and rule on that money damages
21 claim in the first instance, and that it's entirely
22 appropriate for the Commission to now consider whether or
23 not it should allocate three and a half hours of precious
24 time in the proceeding to something over which it has no

1 jurisdiction.

2 CHAIRMAN GETZ: Well, can we address the
3 jurisdiction issue?

4 MS. KNOWLTON: Sure.

5 CHAIRMAN GETZ: If we don't have
6 jurisdiction, who has jurisdiction?

7 MS. KNOWLTON: The Superior Court has
8 jurisdiction over the claim. And, I think --

9 CHAIRMAN GETZ: And, jurisdiction over
10 that claim because it's a garden variety contract dispute
11 between two independent parties?

12 MS. KNOWLTON: It's a contract dispute
13 between two parties. And, I would note ironically that
14 PSNH itself came before this Commission a couple years ago
15 when it had a dispute with one of its customers, and a
16 customer who sought money damages against the utility.
17 And, this Commission itself found in that case that it
18 didn't have the right to award money damages, that it
19 wasn't going to conduct a trial and, essentially, you
20 know, act as a judge, taking evidence from a plaintiff and
21 hearing defenses asserted by a defendant, and said, you
22 know, "we don't have the jurisdiction to do that and we're
23 not going to do it." And said "go to Superior Court if
24 you have that claim." And, PSNH has that same right here,

1 and Unitil. They can go to Superior Court and they can
2 submit their claim.

3 This is a contract that has never been
4 approved by the Commission, excuse me, two contracts,
5 they're joint ownership agreements that have never been
6 approved by this Commission. It's a question of contract
7 interpretation and whether a party who claims they have
8 been damaged should be awarded money as part of that
9 contract.

10 I would note that PSNH takes the
11 position in its objection that, because the Commission has
12 jurisdiction under RSA 374:30 to consider and approve the
13 transfer of the Verizon assets that are before it, that it
14 can impose any conditions that it wants on the transfer.
15 Our position is, is that, if the Commission doesn't have
16 jurisdiction on the underlying condition that is sought,
17 in the first instance, that RSA 374:30 then doesn't confer
18 upon it the jurisdiction to impose that condition. If the
19 --

20 CHAIRMAN GETZ: Let me return back to
21 jurisdiction please. Do I understand correctly that the
22 underlying dispute arises out of or is incidental to the
23 utility obligation, at least the argument is that it
24 arises out of Verizon's failure to meet its obligations

1 that are jurisdictional?

2 MS. KNOWLTON: The dispute arises under
3 the Joint Ownership Agreement and the IOPs that are
4 attached to it, and whether or not tree-trimming that
5 Unitil and PSNH has conducted, first of all, was agreed to
6 by Verizon, which it was not. And, if not, whether or not
7 -- or, if so, whether or not the electric utilities are
8 entitled to payment for that.

9 CHAIRMAN GETZ: But doesn't that go to
10 the fundamental issue of reliability of service and
11 adequacy of service that the Commission has jurisdiction
12 over?

13 MS. KNOWLTON: I don't believe it's a
14 question of adequacy or reliability of service. It's a
15 question of "whether a private contract between two
16 parties has a place here before this Commission?" It's
17 not a question of "whether Verizon is providing adequate
18 service through its telco lines or Unitil and PSNH are?"
19 It's a question of "whether one party that provided
20 service to another party, pursuant to a private contract,
21 is not before this Commission, never has been before this
22 Commission, whether, you know, a dispute can be heard
23 here?"

24 CHAIRMAN GETZ: There was one statement

1 in your motion I just wanted to clarify and make sure.
2 You talked, on Page 3, in Paragraph 7, about that the
3 "role of the Commission is to safeguard public interest,
4 than rather to resolve contractual disputes between
5 private entities that are better left to the courts."
6 And, when I read that, I was wondering if this -- you were
7 saying this is an issue of possibly concurrent
8 jurisdiction, where it's better to do it one place than
9 the other. But you're taking the position that we have no
10 jurisdiction at all?

11 MS. KNOWLTON: That's correct. You have
12 no jurisdiction over this money damages claim. And, I
13 would note that -- that the public interest issue that is
14 implicated here is implicated between FairPoint and the
15 electric utilities on a prospective basis. And, what I
16 mean by that is, on a going-forward basis, you know, have
17 -- is the relationship that the MOU contemplates between
18 FairPoint and the electric utilities appropriate. But I
19 don't believe that retrospectively the Commission can look
20 back at this private contract and make a determination of
21 the parties' obligations under it. I just don't think
22 that's within the Commission's jurisdiction. And, this is
23 an agency of limited jurisdiction. If the Legislature
24 hasn't granted you jurisdiction either expressly or fairly

1 implied, the Commission doesn't have it. The Supreme
2 Court told us in the *Nelson* case that, just because a
3 utility is a party to a contract, it doesn't mean that the
4 Commission has jurisdiction.

5 You know, and I would note that, you
6 know, if you look at the two MOUs between FairPoint and
7 Unitil and PSNH respectively, they have included language
8 in those MOUs which does confer jurisdiction on the
9 Commission. And, I would ask "why is that necessary to
10 include that, if there was any question about the
11 Commission's jurisdiction or if the Commission's
12 jurisdiction was clear under the Joint Ownership
13 Agreements?"

14 I submit that the Commission doesn't
15 have jurisdiction, which is why they are now saying in
16 these MOUs that it does. We had another example this
17 morning. Less than an hour ago we had MOUs from various
18 telephone companies, you know, we heard testimony on that.
19 Private agreements between two telephone companies, we
20 heard today that no Commission approval is being sought
21 over those agreements. And, if you look at those
22 agreements, there is a provision in there that, in each of
23 those agreements, that states that the parties voluntarily
24 submit those agreements to the Commission's jurisdiction.

10/26/07 DAY 5 VERIZON/FAIRPOINT-PUBLIC

1 If you look at these Joint Ownership Agreements, there's
2 nothing in the agreements themselves that even
3 contemplates the Commission. There's no language in there
4 governing dispute resolution that -- where the parties
5 voluntarily concede jurisdiction. So, our view is that,
6 statutorily, the Commission doesn't have jurisdiction, and
7 there's no voluntary concession of jurisdiction in the
8 agreements. And that, if the Commission were to --

9 CHAIRMAN GETZ: No voluntary concession
10 by?

11 MS. KNOWLTON: By Unitil, PSNH, and
12 Verizon under the Joint Ownership Agreements. There's no
13 provision in the Joint Ownership Agreements, you know,
14 called "dispute resolution" or "venue" or "governing law"
15 that says, you know, "any dispute arising under this
16 agreement is subject to the jurisdiction of the New
17 Hampshire Public Utilities Commission."

18 CHAIRMAN GETZ: Could you get back to
19 the issue of and I think you started to talk about your
20 view of our authority to impose conditions?

21 MS. KNOWLTON: Correct. And, Verizon's
22 position is, is that the Commission can only impose those
23 conditions for which it has jurisdiction in the first
24 instance. So, you know, I'm trying to think of another

10/26/07 DAY 5 VERIZON/FAIRPOINT-PUBLIC

1 example. Certainly, I don't think the Commission could
2 impose a jurisdiction regarding, you know, Mr. Del
3 Vecchio, wireless obligations. Commission doesn't have
4 jurisdiction over wireless, it couldn't impose a condition
5 regarding wireless as part of its consideration of the
6 transfer. So, you have to have that jurisdiction in the
7 first instance over the issue that is the subject matter
8 of the condition. And, I would submit that that doesn't
9 exist here.

10 MR. DEL VECCHIO: If I might also,
11 excuse me, Ms. Knowlton, add, to refresh the Commission's
12 recollection. In the past, Verizon has been a party to
13 other instances where the issue of monetary damages
14 specifically arose in connection with our relationship
15 with other utilities. And, the fact that it was a
16 relationship with a utility does not in and of itself
17 render authority to the Commission. The first example
18 that comes to mind is the Performance Assurance Plan. The
19 penalties associated with that, this Commission ruled in
20 that docket, could not be conditioned. Verizon had to
21 voluntarily agree to that condition in the course of the
22 Section 271 proceeding. That is precedence that is
23 directly applicable in this instance. Another instance --

24 CHAIRMAN GETZ: Is there a difference

1 there between basically compensatory damages and punitive
2 damages?

3 MR. DEL VECCHIO: No, those are
4 compensatory damages. I mean, there are different
5 strategies. But, if you look at the Commission's order in
6 that proceeding, Mr. Chairman, I think you would agree
7 with me that it wasn't a function of whether the damages
8 are extraordinary or not. It was a function of whether
9 it's a monetary damage. And, this Commission squarely
10 held, and they held subsequently, we didn't add all of the
11 cases in which this Commission has held, but I have been
12 before this Commission on a variety of occasions on this
13 very issue, if you don't have the authority, the fact that
14 it has to do with the provision of service between
15 utilities, communications utilities, electric utilities,
16 in itself doesn't provide that authority.

17 The second instance more recently was a
18 dispute that Verizon had with GNAPS. This Commission
19 ruled in that GNAPS order that they're not a court of
20 general jurisdiction. And, the fact that you had a
21 dispute between two telephone utilities regarding
22 interconnection, which is essential to the provision of
23 telephone service as between the customers of those two
24 carriers doesn't in and of itself render authority to this

1 Commission.

2 CHAIRMAN GETZ: We don't have a yellow
3 or red light.

4 MS. KNOWLTON: You should.

5 CHAIRMAN GETZ: We have yellow and red
6 folders, but we'll give you a minute to wrap up.

7 MS. KNOWLTON: Okay. The last point I'd
8 like to make is that PSNH cites to the *Claremont Gas* case,
9 which I don't believe has any relevance here. In that
10 case, the Commission, in the discontinuance of a
11 franchise, had some concerns about safety issues and how
12 some residual gas was going to get out of some pipelines,
13 and imposed a condition regarding that, to ensure that the
14 gas was safely removed from the pipelines. And, I really
15 believe that's very different than what we're considering
16 here. As Mr. Del Vecchio said, this is a, you know, a
17 dispute between two utilities, but that doesn't, by its
18 very nature, subject the dispute to this Commission's
19 jurisdiction.

20 So, we would ask that you grant
21 Verizon's motion, that you exclude the Unitil and PSNH
22 testimony on this issue, and that you decline to impose
23 any condition whatsoever regarding the electric utilities'
24 claim for tree-trimming expenses as part of the approval

10/26/07 DAY 5 VERIZON/FAIRPOINT-PUBLIC

1 of the transfer that's before you.

2 CHAIRMAN GETZ: Thank you.

3 MS. KNOWLTON: Thank you.

4 CHAIRMAN GETZ: Mr. Coolbroth.

5 MR. COOLBROTH: Thank you, Mr. Chairman.

6 Just briefly. FairPoint had extensive discussions with
7 New Hampshire's electric utilities, and did what it could
8 to work out the arrangements regarding mutual handling of
9 joint poles in New Hampshire following the merger. Those
10 are issues over which FairPoint will have control. These
11 claims relate to prior matters associated with the
12 relationship between Verizon and electric utilities, over
13 which -- with which we had no involvement, as to which we
14 have no facts. And, we did not intend, by this memorandum
15 of understanding, to cover those issues at all. We did
16 not intend to cover the merits of the claims, we did not
17 intend to cover where those claims could be asserted,
18 including here.

19 So, we view the memorandum of
20 understanding to be prospective only, and we did not
21 intend by that to have any impact one way or another about
22 whether the electric utilities could assert those claims.

23 CHAIRMAN GETZ: All right. Thank you.

24 Ms. Hatfield. Or, I'm sorry, Ms. Hollenberg.

1 MS. HOLLENBERG: That's okay. Thank
2 you. I just would like to enter a statement on behalf of
3 the OCA. The OCA is concerned about the disputes between
4 Verizon and PSNH and Verizon and Unitil, which are related
5 to their joint ownership of utility poles. To the extent
6 that Verizon owes money to PSNH and Unitil, the electric
7 utilities may seek to recover these amounts through their
8 -- from their ratepayers. And, in fact, in the most
9 recent Unitil and PSNH rate cases, these electric
10 utilities attempted to do just that. The OCA objected to
11 such recovery in those cases, and continue to oppose any
12 recovery of these amounts from PSNH and Unitil's
13 ratepayers, as Verizon ratepayers have already paid these
14 amounts through their rates charged by Verizon.

15 The OCA views the timing of the filing
16 of Verizon's motions as untimely and unfair. And, we
17 support PSNH's and Unitil's attempts to recover these
18 amounts from Verizon. Thank you.

19 CHAIRMAN GETZ: Thank you.
20 Ms. Fabrizio.

21 MS. FABRIZIO: Thank you, Mr. Chairman.
22 Staff disagrees with Verizon's position on jurisdiction.
23 We believe that the joint pole agreements fall squarely
24 within the Commission's jurisdiction under, first, RSA

1 374:1, in which public utilities are obligated to provide
2 safe and adequate service, and then through RSA 374:3, in
3 which the Commission has a mandate to ensure that those
4 obligations are met.

5 That said, while I do not have a
6 position on the substance of the dispute at issue here,
7 Staff was actually asked not to participate in any
8 settlement discussions between the electric companies and
9 the telephone companies in this proceeding. My concern is
10 that the record, at this late stage in this proceeding,
11 may not be adequate for you to fairly adjudicate the
12 issues that have been raised. And, I also have a concern
13 that, because of the timing of this issue, that this whole
14 proceeding not be delayed on this discrete issue. While
15 offering no opinion as to how to resolve that
16 procedurally, I express that concern. Thank you.

17 CHAIRMAN GETZ: Thank you. Mr. Eaton --
18 or, Mr. Epler?

19 MR. EPLER: Is it possible to get a
20 clarification of what that means? I mean, this request
21 that the proceeding "not be unduly delayed", does that
22 mean that you're saying that this issue not be heard in
23 this proceeding? That we not allocate the time to it?

24 CHAIRMAN GETZ: Well, actually, rather

10/26/07 DAY 5 VERIZON/FAIRPOINT-PUBLIC

1 than have cross-argument among the parties that are making
2 oral argument, if you have a concern about that, you can
3 express that when you have your opportunity to speak.

4 MR. EPLER: Yes. Thank you.

5 CHAIRMAN GETZ: Mr. Eaton.

6 MR. EATON: Thank you, Mr. Chairman. As
7 we stated in our objection, we think this objection -- or,
8 the motion was filed too late. Right now, we're in the
9 middle of hearings and we are arguing this motion. We
10 made this clear to the Verizon representatives of what we
11 were going to ask for in our testimony. We asked for it
12 in our testimony. They filed data requests on that issue.
13 We answered those data requests. And, we got this motion
14 on the morning of the first day of the hearings. And,
15 except for the fact that I agreed to monitor that first
16 day for Mr. Epler and Attorney Blackmore of National Grid,
17 we didn't intend to appear that day, because we had no
18 issues. So, I wouldn't have been aware of this, except by
19 an e-mail, and wouldn't have been able to ask the
20 Commission for an opportunity to respond.

21 CMSR. BELOW: So, do --

22 MR. EATON: This hearing could have
23 happened in August, it could have happened in September,
24 the hearing on this motion that we're having right now.

1 But they chose to file it when the hearings began.

2 CMSR. BELOW: Do you think it's unfair
3 out of -- I mean, too late because it's just generally
4 unfair or is there some specific rule or statute that you
5 think is being violated?

6 MR. EATON: I think there's -- I think
7 procedural matters ought to be taken up before the
8 hearings on the merits, and this is a procedural error, a
9 procedural problem that should have been addressed
10 earlier. I don't cite to any statutes in my objection.
11 And, it's a matter of the Commission's discretion to hear
12 it and the discretion -- and the Commission's conduct of
13 its own proceedings.

14 Getting to the merits, we believe that
15 the scope of the proceeding is adequate to impose
16 conditions. This has been done under 378:30. Things such
17 as adding a New Hampshire person to the Board of Directors
18 of Consolidated Edison, when the Northeast Utilities and
19 Consolidated Edison merger was taking place. As far as we
20 know, the way this transaction is handled, the merger
21 involves spinning off Verizon's assets into a separate
22 corporation. And, the results of the merger may mean
23 there are no Verizon assets left in the state. This is --
24 this is common to have consideration of conditions on the

10/26/07 DAY 5 VERIZON/FAIRPOINT-PUBLIC

1 merger, and we think, in good faith, given the ample
2 evidence that you've never seen in the pole docket,
3 there's reason to have Verizon pay these amounts as a
4 condition of approval of the merger.

5 CHAIRMAN GETZ: Well, can I ask you to
6 stop right there, Mr. Eaton? Is there a different -- it
7 appears to me there's at least two different ways to look
8 at that. Either we litigate this and make a decision, and
9 that amount is handled as a condition. Or, was there also
10 the thought that some amount of money be held in escrow,
11 and it be litigated after? Those are the two options that
12 occur to me. Because it gets back to -- I don't want to
13 overburden you with this. The questions that occur to me
14 on this piece is "Is this the right forum? Is this the
15 right time to be handling these discrete issues?"

16 MR. EATON: I suppose the Commission
17 could order that money be escrowed and have this into
18 another proceeding. But we will still have the arguments
19 that there is no jurisdiction from Verizon. I believe our
20 issues are discrete, and we won't need much time to
21 present them, and we will when the Commission schedules
22 our witnesses and the rebuttal testimony from Mr. Nestor.
23 So, I don't think it will unduly delay these proceedings
24 to hear these issues. They certainly relate to the same

1 issues going forward that we agreed with FairPoint to do.
2 And, if you look at those, those MOUs, they mostly involve
3 asking FairPoint to act fairly with PSNH and to abide by
4 the Intercompany Operating Procedures.

5 The reason -- The reason we ask that
6 they agree to the jurisdiction of the Commission, because
7 we think it's so obvious the Commission has jurisdiction
8 over two utilities that have an agreement, the agreement
9 has been approved by the -- has been authorized by the PUC
10 with the orders I attached to my objection. And, that
11 authorization is part of the PUC's statutes. It's the
12 second sentence in RSA 378:28, which says "the Commission
13 may authorize the companies to jointly own poles." That
14 order could be -- could be rescinded, amended or annulled
15 simply by the Commission holding a hearing under 365:28,
16 and say "Wait a minute. We don't think this Joint
17 Ownership Agreement is working well. We think, in the
18 interest of quality service to customers, that that
19 agreement ought to be looked at by the Commission and see
20 if the utilities could do better."

21 CHAIRMAN GETZ: You spoke at one point
22 about the cross-examination of Mr. Nestor. I guess, to
23 the extent that there is an issue about the sufficiency of
24 the record as it stands, as intimated by Ms. Fabrizio, is

1 that how you would seek to be curing that deficiency?

2 That your position is, based on your prefiled and through
3 the cross, then we'll be in a position to have the facts
4 sufficient to make a finding?

5 MR. EATON: Right. Because the amount
6 that PSNH is seeking is the same amount that the
7 settlement agreement in our recent rate case provided that
8 PSNH would not collect. It's the \$506,000 as part of our
9 settlement agreement. There's no detailed analysis of
10 what that amount is. It is what Mr. Mullen of the Staff
11 computed and recommended that the Commission disallow.
12 So, there's no difficult factual matters to decide. And,
13 it will just be the cross-examination and our prefiled
14 testimony.

15 Finally, something I just thought about
16 this morning, which I apologize for not having advised the
17 Commission or Verizon, was the fact that Mr. Coolbroth's
18 client sued Public Service Company in Superior Court, this
19 is Franklin Power.

20 MR. COOLBROTH: I was going to say.

21 MR. EATON: It was your client.
22 Franklin Power, and PSNH was also sued by Pinetree Power
23 and Bridgewater Power in Superior Court regarding our rate
24 orders. And, in those cases, PSNH moved to have the case

1 brought here and filed a petition here to have those
2 cases. And, the court found, in both of those cases, that
3 there was concurrent jurisdiction. However, primary
4 jurisdiction belonged at the Public Utilities Commission.
5 That means that this is the agency with the peculiar
6 expertise to see whether 8 feet of clearance around
7 electric wires is prudent or whether the telephone company
8 has a need for trimming in order to provide reliable
9 telephone service. I don't think a Superior Court judge
10 or a Superior Court jury has nearly the expertise of this
11 agency to decide issues that arise under the Intercompany
12 Operating Procedures. And, that the case that the court
13 relied on in those proceedings was *New Hampshire Division*
14 *of Human Resources versus Allard*, and that's found at 138
15 New Hampshire 604 and the ruling is at 606 to 607. So, I
16 believe --

17 CHAIRMAN GETZ: Say that again? What's
18 the cite again, 1 --

19 MR. EATON: 138 New Hampshire 604, and
20 the specific ruling is at 606 to 607. It's a 1994 case.
21 So that I think the Commission has primary jurisdiction to
22 resolve this matter, and it is uniquely within its
23 expertise.

24 CHAIRMAN GETZ: Thank you.

1 CMSR. BELOW: Wait, Wait. I have a few
2 questions. Do you know if the Joint Ownership Agreement
3 has a governance provision?

4 MR. EATON: No, it does not.

5 CMSR. BELOW: It does not. Who's the
6 counterparty with PSNH in the Joint Ownership Agreement,
7 the precise counterparty?

8 MR. EATON: I'm not sure. I have a
9 portion of it in --

10 CMSR. BELOW: Do we have a copy of the
11 Joint Ownership Agreement as an exhibit or on file
12 anywhere? Could we make a record request of it?

13 CHAIRMAN GETZ: Yes. To the extent we
14 don't have it, let's --

15 MS. FABRIZIO: I think we have copies
16 that were obtained through discovery, which is not yet
17 before the Commission, in the poles docket. But they are
18 not typically filed with the Commission, is my
19 understanding. I think a record request would be --

20 MR. EATON: The latest copy I have,
21 which is attached as "Attachment RTH-9" to Mr. Hybsch's
22 testimony is dated 1994, and it's between Public Service
23 Company of New Hampshire and NYNEX/New England.

24 CMSR. BELOW: And, is it your

1 understanding that Verizon New England is the successor to
2 NYNEX/New England?

3 MR. EATON: Yes.

4 CMSR. BELOW: And, would that also be
5 the other owner of the pole, I mean the other partial
6 owner? The Joint Ownership Agreement is with the other
7 owner, right?

8 MR. EATON: In our service territory,
9 yes.

10 CMSR. BELOW: And, is there an
11 assignability or transfer provision in the agreement?

12 MR. EATON: I do not know.

13 CMSR. BELOW: And, would you have an
14 opinion as to whether RSA 374:30, which specifies that the
15 Commission may, by general order, authorize a public
16 utility to transfer to another public utility a part
17 interest in poles, would that also apply if Verizon New
18 England was going to transfer its part interest to Telco
19 or Spinco, you know, another public utility?

20 MR. EATON: No. I believe the first
21 sentence of 374:30 applies to the transfer of assets, and
22 not a transfer of a joint ownership interest in the poles.
23 I think the second sentence is the authorization for the
24 Commission to allow PSNH and Verizon to -- and PSNH and

1 other telephone utilities to jointly own poles.

2 CMSR. BELOW: Okay.

3 CHAIRMAN GETZ: Yes, let's just make
4 sure we've gotten the full agreements. Ms. Knowlton?

5 MS. KNOWLTON: It's my understanding
6 that the PSNH Joint Ownership Agreement is not fully
7 attached to PSNH's testimony. It's only a partial.

8 MR. EATON: Only Intercompany Operating
9 Procedures were attached to our testimony.

10 MS. KNOWLTON: I would request that the
11 full agreement, if the Commission is interested in this
12 issue, that it look at the full agreement and not just one
13 of the IOPs.

14 CHAIRMAN GETZ: Yes, we'd like to see
15 the full agreement, and we'll reserve whatever your next
16 --

17 MS. O'MARRA: 11, for Verizon.

18 CHAIRMAN GETZ: Well, I was going to say
19 PSNH. Though, it doesn't really matter, I guess.

20 MS. O'MARRA: PSNH would be 5.

21 CHAIRMAN GETZ: And, would the same
22 apply to Unitil? It has its own separate agreement, is
23 that -- that's correct?

24 MR. EPLER: Yes, we do, Commissioner.

1 And, a full copy of that agreement has been attached to
2 the testimony of Tom Meissner. And, I think that's been
3 premarked as "Unitil Exhibit 1", if my memory serves me
4 correctly.

5 MS. O'MARRA: Yes.

6 MR. EPLER: I think that agreement is
7 dated 1996. And, I guess at that time it was still NYNEX?

8 MR. DEL VECCHIO: Yes, '96.

9 MR. EPLER: I believe Verizon New
10 England is the successor to that agreement as well, and we
11 may even have documentation of that.

12 CHAIRMAN GETZ: Okay. I see that in
13 your prefiled testimony. So, if you could begin, Mr.
14 Epler.

15 MR. EPLER: Thank you, Mr. Chairman,
16 Commissioners. Puc Rule 413.01 provides, at subpart (a),
17 "An ILEC shall construct, install, and maintain its plant
18 structures, equipment, and lines in accordance with the
19 National Electric Safety Code, 2002 Edition, and the
20 National Electric Safety Code is adopted by RSA 155-a:1,
21 IV." It also goes on to say, in subsection (c), that "An
22 ILEC shall, at regular intervals, test, inspect, perform
23 preventative maintenance designed to achieve sufficient,
24 safe, adequate, continuous operation of its system", and

1 continues thereafter.

2 Verizon does not have a maintenance
3 trimming program for its jointly owned lines. They rely
4 entirely on the maintenance trimming performed by their
5 partners in ownership of those lines. If those partners,
6 the electric companies, do not perform the maintenance
7 trimming, they have no means to perform, I mean, they
8 don't -- they don't do that. That's what we do as part of
9 maintaining these lines.

10 Verizon makes essentially two arguments
11 in its motion. First, that the disputes between the
12 electric companies and Verizon are wholly irrelevant to
13 the issue that's before you here under 374:30 and as to
14 whether or not the transfer to FairPoint is in the public
15 good. And, second, that the Commission is without
16 jurisdiction to hear or resolve this dispute, and you've
17 heard their arguments. That, basically, that this is a
18 purely private matter regarding the interpretation of
19 contract language, and, further, the Commission has no
20 jurisdiction to fashion a remedy. And, needless to say,
21 Unutil disagrees with this.

22 First, as to the first issue, to suggest
23 that the review that this Commission is giving this
24 transaction is only to look at post transaction I think is

1 an extremely narrow basis for review. The Commission,
2 when it's looking at trying to determine public good, can
3 also look at what the outstanding complaints are or
4 outstanding issues under investigation before it. And, it
5 has -- you have before you, in docket DM 05-172, an
6 outstanding investigation that this trimming dispute is
7 part of. And, it has been before this Commission for over
8 two years. There have been multiple work sessions, there
9 have been multiple rounds of discovery. Unitil initially,
10 after the order of notice was issued, in a prehearing
11 conference raised this issue. We've had this ongoing
12 dispute. And, in your Order 24,587, you made the
13 investigation of trimming expenses part of the
14 investigation of that docket.

15 This issue has a direct impact upon the
16 revenues of the electric companies, both PSNH and Unitil.
17 During the pendency of the inquiry of the poles docket,
18 there have been rate cases filed by both Unitil and PSNH.
19 And, in both those cases, the Staff took the position to
20 not allow the utilities full recovery of their trimming
21 expenses. They didn't take that position because they
22 felt that we were imprudent in our actions or that we
23 hadn't done the trimming, but, essentially, Staff
24 interpreted the Joint Ownership Agreements and the IOPs,

1 and said, "under these, Verizon owes money. And,
2 companies, Unitil, PSNH, you've got to go and pursue
3 Verizon." We're here now before you pursuing that.

4 On the second issue, with regard to
5 jurisdiction, I don't know if there is an issue that is
6 more fundamental to what you regulate. The poles and the
7 wires may not be the most sexy issue before this
8 Commission, but they are the fundamental backbone of
9 utility service. And, it touches upon the safety and
10 reliability of the system. And, this Commission has seen
11 that issue before, when, in the mid '90s, there was at
12 least one and, I believe, several severe ice storms. And,
13 as a result of that, there were inquiries as to -- and,
14 because of the ice storms, there was severe loss of
15 service impacting large sections of this state, and
16 putting into question of safety that a -- a large section
17 of the population. And, as a result of that, this
18 Commission had a number of inquiries and investigations
19 into the trimming practices of the state -- of the
20 utilities. And, as a result of that, the electric
21 utilities upped the maintenance and the trimming that they
22 did on those lines.

23 So, clearly, this is a matter of -- that
24 is of utmost importance to the maintenance of service and

1 safety to the citizens of this state. It is also a matter
2 that touches upon rate equity. Because, essentially, when
3 Verizon doesn't pay, and is essentially saying to the
4 electric companies, you know, "we don't have any need for
5 this trimming", and we have to bear this expense, it
6 impacts our ratepayers. It also then impacts our
7 shareholders, when we come before the Commission in a rate
8 case, we have discussions with Staff, and Staff says "our
9 position is we're not going to allow you to recover your
10 full amounts." So, clearly, this issue touches
11 fundamental issues that are within the jurisdiction of the
12 Commission; safety, reliability, and rate equity.

13 Moreover, we recover in our rates
14 trimming expenses from other attachees, Comcast, other
15 phone companies who are attachees to our poles, because
16 our rates, how they're set before the FCC, include amounts
17 for trimming. So, as a matter of fairness between
18 attachees and between phone companies and in terms of a
19 competition issue, all these other companies are paying in
20 their rates trimming expenses. Verizon is the only one
21 that is not pulling their fair share.

22 CHAIRMAN GETZ: Well, Mr. Epler, let me
23 ask you pretty much the same question that I think I asked
24 Mr. Eaton about. Is this the right forum, the only forum?

1 The right time, the only time? Is there risk of doing it
2 later or elsewhere? Can you respond to those questions?

3 MR. EPLER: I absolutely do think it's
4 the right forum, because, as I said, these are fundamental
5 issues that --

6 CHAIRMAN GETZ: But, I'm sorry, by
7 "right forum", I don't mean "PUC versus Superior Court".
8 But this docket versus a separate docket?

9 MR. EPLER: Well, in this docket, my
10 understanding is that you're deciding about whether or not
11 this transaction is in the public good. As a result of
12 this transaction, Verizon may be leaving the state. I'm
13 not sure what, as a result of this transaction, your
14 jurisdiction over Verizon is going to be. And, one of the
15 issues, as to whether or not this is a good transaction,
16 is "well, how does it deal with all the range of issues
17 that you currently have before you in terms of Verizon?"
18 And, is it fair to transfer assets, where FairPoint is
19 saying "Hey, look, that's past. We have nothing to do
20 with that." And, we're left with a mounting bill, and,
21 you know, where is our recourse? And, we think our
22 recourse is here, because of the fundamental nature of
23 these issues.

24 I would also note, just so it's clear,

1 we have asked for recovery of amounts for 2005, 2006, and
2 2007. But that doesn't mean that Verizon paid in 2004 or
3 2003 or any time earlier. We just decided to take a
4 particular period of time, because, in terms of the hoops
5 that Verizon was asking us to jump through, in terms of
6 billing and providing notice and so on, we feel we have
7 the best documentation for that period. But they weren't
8 paying earlier.

9 But, interestingly, the agreement we
10 have with Verizon also covers our sister affiliate in
11 Massachusetts, Fitch Gas & Electric Light Company. So,
12 under this same Joint Operating Agreement, they were
13 paying maintenance expenses for a period of time, up until
14 we pointed it out to them here, and said "Well, what do
15 mean", you know, we argued with them, "what do you mean
16 you're not going to pay, you've been paying all along in
17 Fitchburg". Lo and behold, as soon as we pointed it out
18 to them that they had been paying in Fitchburg, those
19 payments to Fitchburg stopped.

20 CHAIRMAN GETZ: Okay. Can you
21 summarize?

22 CMSR. BELOW: Sure. Unutil has entered
23 into a settlement agreement with FairPoint Communications,
24 correct?

10/26/07 DAY 5 VERIZON/FAIRPOINT-PUBLIC

1 MR. EPLER: Yes.

2 CMSR. BELOW: And, in that, you've
3 indicated that you would support the transaction, is that
4 correct?

5 MR. EPLER: Yes.

6 CMSR. BELOW: And, the conditions of
7 that support are expressed in that settlement agreement,
8 correct?

9 MR. EPLER: Yes, I can explain, or I
10 would like to explain.

11 CMSR. BELOW: Well, I'll just ask one
12 more question, then you can explain.

13 MR. EPLER: Sure.

14 CMSR. BELOW: Why, if you've agreed to
15 support the settlement agreement through the -- I mean,
16 agreed to support the merger, this transaction, through
17 that settlement agreement, why aren't you estopped from
18 proposing additional conditions?

19 MR. EPLER: Actually, I had a discussion
20 of this with counsel for FairPoint just about a week ago.
21 And, I think he would agree that what was intended by that
22 language in the MOU was that we agree going forward that
23 we have resolved the issues that we raised with respect to
24 FairPoint. And, so, looking at the issues that we raised

1 with respect to prospective ownership, we agree that we've
2 resolved them and we can support the transaction with
3 respect to FairPoint.

4 But we still have these outstanding
5 issues between Unitil and Verizon. And, we intend to
6 raise them here and continue to argue that you need to
7 address them here and resolve them, before you fully
8 resolve this transaction and the transfer.

9 CHAIRMAN GETZ: Okay. Assume the yellow
10 light is on, Mr. Epler.

11 (Laughter.)

12 MR. EPLER: Yes. I'm realizing that, so
13 I am quickly looking to see if there's any particular
14 point. No, I think I've laid out the basis of our
15 argument. And, as we've indicated, we continue to believe
16 this is the appropriate forum. And that, if you're
17 looking at these overall issues as to whether or not this
18 transaction is in the public good, then our issue is one
19 that we believe is essential for you to look at in this.

20 CHAIRMAN GETZ: Thank you.

21 MR. EPLER: Thank you.

22 MS. HOLLENBERG: Excuse me, Mr.
23 Chairman, if I may make two points that one of which I
24 neglected --

1 CHAIRMAN GETZ: Well, Ms. Hollenberg,
2 that's not the procedure we've agreed to here. So, we're
3 turning to --

4 MS. HOLLENBERG: Thank you.

5 CHAIRMAN GETZ: -- Ms. Knowlton or
6 Mr. Del Vecchio.

7 MS. KNOWLTON: Thank you.

8 CHAIRMAN GETZ: But I would like you to
9 address one issue that was raised by Mr. Epler. And, this
10 goes to your Paragraph 12, on Page 5, where you say that
11 "The disputes are wholly irrelevant to whether the
12 transfer of assets to FairPoint is in the public
13 interest." And, when you're talking about "relevance"
14 there, are you talking about that it's not jurisdictional
15 or are you combining those concepts of jurisdictional and
16 relevance? Because what occurs to me, and I think this
17 may be consistent with my questions for Mr. Smith the
18 other day, there's the issue of, is this transaction in
19 the public interest for FairPoint to -- the acquisition be
20 approved so they can do business in New Hampshire? But
21 what about the other side of the coin, whether it's in the
22 public good for Verizon to discontinue service, and how do
23 we deal with obligations and what's -- what does it take
24 for us to conclude that it's in the public good to relieve

1 Verizon of its obligations? Which I take the argument
2 here is this is one form of those kinds of obligations.

3 MS. KNOWLTON: I'll start by responding
4 to that. I mean, we just heard Mr. Epler say that he
5 believes that there are public safety issues that are
6 implicated here. And, I think those public safety issues,
7 to the extent that they exist, which Verizon does not
8 concede, have been addressed with FairPoint in the MOU.
9 To the extent that they have entered into additional
10 provisions, clarified provisions in the Joint Ownership
11 Agreement, those public safety issues, you know, go to the
12 public good and will be -- and are addressed as to the
13 prospective delivery of utility services.

14 The only piece of this that is left, as
15 to Verizon, is a dispute over money. It's not a question
16 about public safety, it's a question about money. And, I
17 don't believe that it's ever too late for this Commission
18 or for a party, to that matter, to a proceeding, to raise
19 whether or not the Commission has subject matter
20 jurisdiction. You know, we learned that recently in the
21 *Alden Greenwood* case, it's never too late. And, there's
22 certainly been no prejudice to any party. I don't believe
23 that this Commission can confer jurisdiction upon itself
24 where it doesn't otherwise exist, for example, by virtue

1 of creating some kind of escrow account. I just don't
2 believe that -- that that would be legally allowable
3 either.

4 You know, I think, if the Commission
5 goes back and looks at this case that Public Service was
6 involved in back in 2001, which is found at 86NH407, that
7 was a case where customers came and complained about
8 voltage fluctuations in their service area. And, they
9 claim that they had been damaged by those voltage
10 fluctuations. And, certainly, one could construe voltage
11 fluctuations as a service quality issue. And, in that
12 case, the Commission could not have been more clear, that
13 it could not provide the relief that those customers were
14 seeking. Just quoting from the Commission's own order in
15 that case, you held that the Commission lacks -- "lacks
16 the authority to award civil damages to a utility customer
17 as a result of service provided by a utility that is of a
18 deficient quality." "The complainants would apparently
19 have us superintend something like a civil lawsuit, in
20 which the contending parties generate competing evidence,
21 a verdict is rendered and the wronged party is made whole.
22 Neither the statutes governing the Commission, nor the
23 Administrative Procedure Act, permit the Commission to
24 provide such a remedy."

1 I think that's exactly the case here.
2 There is -- You know, even if it relates to utility
3 service, it doesn't mean that the Commission has
4 jurisdiction because utility service is at issue, it's the
5 nature of the claim, which is a claim for money.

6 Mr. Eaton and I believe Mr. Epler both
7 indicated that there would be an impact on customers.
8 Certainly, Verizon was not party of the PSNH rate case or
9 any Unitil rate proceeding, and any admissions or
10 agreements made by the electric companies in their rate
11 cases would have no application to Verizon. Verizon has
12 not been here for a rate case and is not recovering or
13 seeking to recover these costs from its customers.

14 The docket that Mr. Epler referenced is
15 currently open, but Verizon has consistently contested the
16 Commission's jurisdiction to award the electric companies
17 money damages as part of that docket. So, I don't think
18 the mere existence of that docket alone gives you
19 jurisdiction to give them the relief that they're now
20 seeking.

21 And, certainly, there is nothing that
22 precludes them from going to court. They're welcome to go
23 over to the Superior Court and file a claim, if they
24 believe they have one. And, they have chosen not to do

1 that. And, I think that is very telling.

2 CHAIRMAN GETZ: Okay. Thank you.

3 MS. KNOWLTON: Thank you.

4 CHAIRMAN GETZ: It occurs to me that
5 there are at least a couple citations to Supreme Court
6 cases and PUC decisions that I don't think were part of
7 the written submissions. And, at the hazardous of getting
8 deluged, and I would hope that there might be some
9 agreement, if there is a list of citations to New
10 Hampshire Supreme Court cases or specific PUC decisions
11 that could be submitted by the close of business today,
12 that would be helpful for our deliberations. So, is that
13 something that the parties think that they could
14 accommodate?

15 MS. KNOWLTON: Are you asking that we
16 jointly file something or --

17 CHAIRMAN GETZ: Well, what I'm trying to
18 do is I don't want to see a list of 700 cases. If I
19 could --

20 MS. KNOWLTON: I mean, we certainly
21 would be glad to do that. Are you asking, though, that to
22 the extent that we referred to cases that are not cited in
23 our motion?

24 CHAIRMAN GETZ: Well, I guess, the cases

10/26/07 DAY 5 VERIZON/FAIRPOINT-PUBLIC

1 that were not cited in the written submissions, that were
2 referenced today, or if there are other New Hampshire
3 Supreme Court cases or PUC decisions that the parties
4 think are relevant, I'd like to see a list of citations
5 submitted by the close of business.

6 MS. KNOWLTON: We'd be glad to do that.

7 CHAIRMAN GETZ: And, hopeful that I'm
8 not reading cases all weekend. Okay. All right. Then,
9 we will I guess close this portion with respect to the
10 oral argument.

11 Is there anything else we need to
12 address today or in advance of returning to the hearings
13 on Monday morning?

14 (No verbal response)

15 CHAIRMAN GETZ: I see -- it's my
16 understanding that we will begin at 9:00 Monday morning
17 with the Brown/Harrington/Smee panel?

18 MR. MCHUGH: Yes, Mr. Chairman.

19 CHAIRMAN GETZ: Okay. All right. Is
20 there anything else? Mr. Eaton?

21 MR. EATON: Are our witnesses still on
22 for Tuesday?

23 CHAIRMAN GETZ: Well, we --

24 MR. DEL VECCHIO: Well, they may still

10/26/07 DAY 5 VERIZON/FAIRPOINT-PUBLIC

1 be on, Mr. Chairman, because I assume they're going to
2 discuss the issue of the MOUs.

3 MR. EATON: That's what I meant.

4 CHAIRMAN GETZ: Oh, the MOUs. Well,
5 this is -- what I'm looking at is the order of witnesses.
6 We have the Brown/Harrington/Smee panel, Mr. Sicker, Mr.
7 Nixon, then Mr. Falcone and Mr. King that we need to
8 reach. I don't know if it's possible to get all of them
9 done on Monday. My expectation is that the electric
10 witnesses would follow Mr. Falcone and King, then we would
11 go to Mr. Nestor. So, I'm not sure if it will be first
12 thing Tuesday, I'm hopeful it's Tuesday that that happens.

13 MR. EATON: I was mostly asking about
14 next week, whether -- my witness is not available after
15 next week.

16 CHAIRMAN GETZ: After next week?

17 MR. EATON: Yes.

18 (Laughter.)

19 MR. MCHUGH: Nobody's available after
20 next week.

21 CHAIRMAN GETZ: All right. Anything
22 else?

23 (No verbal response)

24 CHAIRMAN GETZ: We've answered all the

1 questions? All right. Then, we're recessed until Monday
2 morning. Thank you, everyone.

3 (Hearing adjourned at 12:29 p.m.)
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24