

1 STATE OF NEW HAMPSHIRE

2 PUBLIC UTILITIES COMMISSION

3 (Redacted: Confidential Pages removed)

4 October 30, 2007 - 9:24 a.m.  
Concord, New Hampshire

Day VII

5 NHPUC NOV07'07 PM 1

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

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

Jody O'Marra, Clerk

13 APPEARANCES: Reptg. FairPoint Communications, Inc.:  
14 Frederick J. Coolbroth, Esq. (Devine....)  
15 Patrick McHugh, Esq. (Devine, Millimet..)  
16 Kevin M. Baum, Esq. (Devine, Millimet...)  
17 Reptg. Verizon New England, et al:  
18 Victor D. Del Vecchio, Esq.  
19 Sarah B. Knowlton, Esq. (McLane, Graf...)  
20 Reptg. New England Cable & Telecomm. Assn.  
21 and Comcast Phone of N.H., LLC:  
22 Alan D. Mandl, Esq. (Smith & Duggan)  
23 Reptg. One Communications:  
24 Ted Price, Esq.

COURT REPORTERS: Steven E. Patnaude, LCR No. 52  
Alix M. Godbout, LCR No. 29  
Susan J. Robidas, LCR No. 44

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**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. 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.

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**P R O C E E D I N G S**

1  
2 CHAIRMAN GETZ: Okay. Good morning,  
3 everyone. We'll reopen the hearing in docket DT 07-011.  
4 Well, let's get appearances on the record before we begin.

5 MR. COOLBROTH: Good morning, Mr.  
6 Chairman, Commissioners Morrison and Below. For FairPoint  
7 Communications, Inc., Frederick Coolbroth, Patrick McHugh,  
8 and Kevin Baum, from the firm of Devine, Millimet &  
9 Branch. With us at counsel table is Al Kurtze, from  
10 CapGemini.

11 CHAIRMAN GETZ: Good morning.

12 CMSR. MORRISON: Good morning.

13 CMSR. BELOW: Good morning.

14 MR. DEL VECCHIO: Good morning,  
15 Mr. Chairman, Commissioner Morrison, Commissioner Below.  
16 Victor Del Vecchio and Sarah Knowlton, representing  
17 Verizon. And, with us today is Sheila Gorman, Shawn  
18 Nestor, and Alan Cort.

19 CHAIRMAN GETZ: Good morning.

20 CMSR. MORRISON: Good morning.

21 CMSR. BELOW: Good morning.

22 MR. EATON: Good morning. My name is  
23 Gerald Eaton. I'm here representing Public Service  
24 Company of New Hampshire. Good morning.



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1 CHAIRMAN GETZ: Good morning.

2 CMSR. MORRISON: Good morning.

3 CMSR. BELOW: Good morning.

4 MR. MANDL: Good morning, Commissioners.

5 Alan Mandl, for New England Cable and Telecommunications  
6 Association and Comcast Phone of New Hampshire.

7 CHAIRMAN GETZ: Good morning.

8 CMSR. MORRISON: Good morning.

9 CMSR. BELOW: Good morning.

10 MR. PRICE: Good morning. Ted Price,  
11 representing One Communications.

12 CHAIRMAN GETZ: Good morning.

13 CMSR. MORRISON: Good morning.

14 CMSR. BELOW: Good morning.

15 MR. RUBIN: Good morning. Scott Rubin,  
16 representing the International Brotherhood of Electrical  
17 Workers and the Communications Workers of America. With  
18 me at the table are our consultants, Randy Barber and Dr.  
19 Kenneth Peres.

20 CHAIRMAN GETZ: Good morning.

21 CMSR. MORRISON: Good morning.

22 CMSR. BELOW: Good morning.

23 MR. LINDER: Good morning. Alan Linder,  
24 from New Hampshire Legal Assistance, representing Verizon

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1 residential customer Irene Schmitt.

2 CHAIRMAN GETZ: Good morning.

3 CMSR. MORRISON: Good morning.

4 CMSR. BELOW: Good morning.

5 MS. HATFIELD: Good morning,

6 Commissioners. Meredith Hatfield, from the Office of  
7 Consumer Advocate, and with me Rorie Hollenberg and Susan  
8 Baldwin.

9 CHAIRMAN GETZ: Good morning.

10 CMSR. MORRISON: Good morning.

11 CMSR. BELOW: Good morning.

12 MS. FABRIZIO: Good morning,

13 Commissioners. Lynn Fabrizio, for Staff. With me today  
14 are Kate Bailey, Bob Falcone, Chuck King and John Antonuk.

15 CMSR. BELOW: Good morning.

16 CMSR. MORRISON: Good morning.

17 CHAIRMAN GETZ: Good morning. Let's try

18 to address a couple of procedural issues before we begin.

19 First, is with the Motion for Partial Reconsideration,

20 with respect to the CLEC and RLEC MOUs. As filed, there

21 was a request that the MOUs in question be provided only

22 to Staff and the Commission. We had motions to -- in the

23 opposition from One Communications and from NECTA and

24 Comcast. And, we're going to deny the Motion for Partial

1 Reconsideration, to the extent it would seek to restrict  
2 circulation of the MOUs solely to Staff and the  
3 Commission. My understanding of the way we handled the  
4 RLEC MOU the other day with NHTA, it was treated as  
5 "highly confidential". I think that's an appropriate  
6 treatment for the other CLEC MOUs.

7 At this point, I would intend to hear  
8 from I believe it's Mr. Lippold about these agreements.  
9 During the examination of those agreements, and if it  
10 appears that they should be given a different designation,  
11 whether "public" or "confidential", then we'll make that  
12 decision then. But, for the purposes of reviewing these  
13 other agreements, they will be treated as "highly  
14 confidential".

15 I also want to address scheduling. With  
16 respect to what had been scheduled for October 31st,  
17 initially had set a panel of Mr. Ball, Mr. Thayer, and Mr.  
18 Katz, for segTel, BayRing, Otel; Mr. Pelcovitz for  
19 NECTA/Comcast; Mr. Ambrosi for Paetec; and Mr. Dandly for  
20 DSCI. Did not mention in this earlier that there was --  
21 Mr. Clancy had filed testimony for Covad. With respect to  
22 -- of course, there was a motion to withdraw the testimony  
23 of Mr. Clancy, and there's been various motions either to  
24 withdraw testimony or withdraw motions for intervention

1 with respect to Paetec, DSCI, and COVAD. I think the  
2 position we laid out in an earlier secretarial letter was  
3 essentially that we're not going to require parties to  
4 testify that have filed their testimony. So, do not  
5 expect to hear from Mr. Ambrosi, Mr. Dandly or Mr. Clancy,  
6 or Mr. Ball, there was a motion from BayRing with respect  
7 to Mr. Ball. I do expect that we'll be hearing from  
8 Mr. Pelcovitz when we get to the -- get to the CLEC  
9 issues. With Mr. -- It doesn't appear that there's  
10 anybody here on behalf of BayRing. I guess the same would  
11 apply to Mr. Thayer and Mr. Katz. We don't require their  
12 testimony, inasmuch as I think much of their prefiled  
13 testimony is obviated because they have memorandums of  
14 understanding, and we've already heard testimony and done  
15 review of the MOU with BayRing, *etcetera*. So, I don't see  
16 the need for examination of those witnesses. The  
17 important fact here is to hear from the FairPoint  
18 witnesses why these -- about these agreements and whether  
19 they affect the public interest determinations we have to  
20 make in this case.

21 And, Ms. Fabrizio, if you can  
22 communicate to Mr. -- it's Mr. Sawyer, I believe is the  
23 attorney for BayRing, our ruling and hear what their  
24 pleasure is, that would be helpful to the record.

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1 MS. FABRIZIO: Okay.

2 CHAIRMAN GETZ: Anything that we need to  
3 address with respect to any of these CLEC issues? Okay.  
4 Let's talk about then other -- Mr. Mandl.

5 MR. MANDL: Yes, we respect the  
6 Commission's ruling on the FairPoint motion. We  
7 appreciate at least the willingness to hear what comes out  
8 during Mr. Lippold's examination and the other CLEC  
9 settlements.

10 CHAIRMAN GETZ: I'm sorry, I'm having  
11 trouble --

12 MR. MANDL: Yes, we appreciate the  
13 Commission's willingness to consider reclassification of  
14 information emerging from the examination of Mr. Lippold  
15 regarding the highly confidential CLEC settlements. And,  
16 we do remain concerned that there may be generic  
17 provisions that have a bearing on the positions in this  
18 case, for example, the three-year extension of  
19 interconnection agreements. We know that was made public  
20 in the FairPoint settlement with segTEL, BayRing, and  
21 Otel. And, we certainly urge the Commission that, if it  
22 sees issues like that in the letter agreements or whatever  
23 -- if there are generic provisions that are contained in  
24 those settlements, you know, we agree with One

1 Communications that it may be possible to redact portions  
2 of those settlement agreements, and keep highly  
3 confidential information that we feel should be treated  
4 that way. On the other hand, there may be information  
5 that has a bearing on issues that are already public in  
6 another settlement, and could be treated in the same way,  
7 after you've had a chance to discuss them with Mr.  
8 Lippold. Thank you.

9 CHAIRMAN GETZ: Thank you. Okay. A  
10 hold-over question from yesterday or something else?

11 MR. COOLBROTH: No, a hold-over question  
12 from yesterday, Mr. Chairman.

13 CHAIRMAN GETZ: Please.

14 MR. COOLBROTH: We were asked to look  
15 overnight with regard to a sentence on Page 9 of Mr.  
16 Nixon's prefiled direct testimony from March, Exhibit  
17 FairPoint Exhibit 6. In the time we had, this was the  
18 sentence relating to a "debt-to-earnings ratio" reference  
19 in Mr. Smith's testimony. We were not successful  
20 overnight in running down the history of that sentence.  
21 And, have spoken to the OCA this morning, we are willing  
22 to either do a data response to -- a record request to  
23 follow up on this sentence or take the sentence out as an  
24 errata. The OCA would prefer that we take it out. We're

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1 willing to do that. So, we're willing to file an errata  
2 on Page 9, to delete the sentence that starts on Line 9  
3 and ends on Page 10.

4 CHAIRMAN GETZ: Okay. It sounds like  
5 there's an agreement on that latter approach. That's fine  
6 with us. There was also, I guess, the issue, Ms.  
7 Hatfield, with respect to whether you needed time to  
8 cross-examine Mr. Smee on some of the broadband issues.  
9 Where does that stand?

10 MS. HATFIELD: Thank you, Mr. Chairman.  
11 We tried to review the new broadband plan overnight. And,  
12 we do have several questions. And, what we'd like to do,  
13 if the Commission would allow us, we'd like just a little  
14 more time to discuss with FairPoint whether we think they  
15 can answer those questions in a record request. Our sense  
16 right now is it probably would be most expeditious to just  
17 get the appropriate witness back for 15 or 20 minutes of  
18 questions, to just answer what the differences are between  
19 the two plans. But we do want to just have a further  
20 conversation with FairPoint.

21 CHAIRMAN GETZ: Okay. Well, I expect  
22 we'll be with Mr. Nixon for a little while longer. And,  
23 at the morning recess or at lunch, if we could work that  
24 out, that would be great.

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1 Okay. Anything else, before we return  
2 to Mr. Nixon?

3 MR. MCHUGH: Mr. Chairman, maybe I just  
4 can -- if Mr. Brown comes back, we would need to bring him  
5 back tomorrow morning, that would be the only thing. He's  
6 not here today.

7 CHAIRMAN GETZ: Oh, he's not here today,  
8 okay.

9 MR. MCHUGH: Right. So, I just wanted  
10 to make sure folks understood that.

11 CHAIRMAN GETZ: Okay. And, the schedule  
12 today is Mr. Smee, then the Falcone/King panel?

13 MS. FABRIZIO: Mr. Nixon.

14 MR. MCHUGH: Excuse me, Mr. Chairman.  
15 We don't have Mr. Smee here either. So, after finishing  
16 up Mr. Nixon, I understood it was going to Mr. Falcone and  
17 Mr. King.

18 CHAIRMAN GETZ: Well, I'm sorry. I may  
19 have misspoke. I've got too many things going here. So,  
20 we will finish up with Mr. Nixon, and then turn to Falcone  
21 and King, and then we'll try to work in this broadband  
22 issue. Okay. All right.

23 MS. FABRIZIO: Mr. Chairman, I had --

24 CHAIRMAN GETZ: Mr. Mandl.



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1 MR. MANDL: Yes. I just wanted to  
2 confirm our understanding of cross-examination regarding  
3 the cutover monitoring proposal. We understood that there  
4 could be questions addressed to Mr. Falcone and Mr. King  
5 regarding that document?

6 CHAIRMAN GETZ: Yes.

7 MR. MANDL: And, that there would be a  
8 FairPoint witness available, probably Mr. Nixon, as well?

9 CHAIRMAN GETZ: That was my intent. Any  
10 concern with that approach?

11 MR. COOLBROTH: I hadn't really  
12 anticipated a panel. Do we expect that there will be  
13 questions of Mr. Nixon separately or the panel separate --  
14 the Falcone/King panel separately?

15 CHAIRMAN GETZ: Well, I think Mr. Nixon  
16 needs to be available, however we're going to do this, to  
17 answer questions about the third party agreement. So, we  
18 can do it -- is there, I don't know, maybe it makes more  
19 sense to have Mr. Falcone and Mr. King present the  
20 agreement first, and then have Mr. Nixon available?

21 MR. COOLBROTH: That would be fine.

22 CHAIRMAN GETZ: Any problem with that  
23 approach?

24 MR. MANDL: No. I can foresee some

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1 instances where Mr. Falcone and Mr. King are going to look  
2 across the room to Mr. Nixon and say "ask FairPoint".

3 CHAIRMAN GETZ: Okay. Well, we know  
4 where he is. We'll be able to move him across the room,  
5 if that's necessary.

6 MR. MANDL: Yes. Other than that, NECTA  
7 and Comcast did have some cross-examination for Mr. King  
8 and Mr. Falcone on their testimony, prior to the  
9 submission of the cutover monitoring proposal. So, we  
10 have two areas of cross-examination for those witnesses.

11 CHAIRMAN GETZ: Okay. That's fine.

12 MS. FABRIZIO: Mr. Chairman, on a  
13 related note, I would just like to note for the record  
14 that we have marked for identification "Staff Exhibit 61"  
15 and distributed that. That is the text of the tri-state  
16 agreement on cutover monitoring statements.

17 CHAIRMAN GETZ: Okay. Thank you. All  
18 right. Are we ready for Mr. Nixon?

19 (No verbal response)

20 CHAIRMAN GETZ: Ms. Fabrizio.

21 MS. FABRIZIO: Thank you, Mr. Chairman.  
22 Good morning, Mr. Nixon.

23 WITNESS NIXON: Good morning.

24 **PETER G. NIXON, Previously sworn**

CROSS-EXAMINATION, Resumed

1  
2 BY MS. FABRIZIO:

3 Q. My first series of questions will be about staffing  
4 issues that have been raised in the course of this  
5 proceeding. What functions will Verizon be performing  
6 for FairPoint under the terms of the TSA that will not  
7 be provided through employees that will ultimately be  
8 transferred to FairPoint, and that, as a result,  
9 FairPoint will need to provide through additional  
10 hiring?

11 A. Primarily, those duties would include such things as  
12 the network operations center, a data center and the  
13 appropriate staff to support the data center. It would  
14 include areas in accounting, human relations, legal,  
15 and those would probably be -- marketing. I think  
16 those would be some of the larger work groups.  
17 Collections group. So, those I think would be the ones  
18 that come to mind most quickly.

19 Q. Thank you. FairPoint's witnesses have testified that  
20 the approximate number of new employees you will need  
21 to hire to assume the responsibilities of those  
22 functions that you just listed is about 675?

23 A. It will be at least 675, that's correct.

24 Q. And, approximately how many of those jobs have been

1 filled to date?

2 A. Eighty-five.

3 Q. And, does FairPoint have a staffing plan and time line  
4 for hiring the remainder of those employees?

5 A. We do.

6 Q. And, when, based on that plan, do you plan to complete  
7 the hiring?

8 A. The hiring ramp, if you will, is designed to bring in  
9 the new employees timely for their duties that they  
10 will be assuming. Whether those duties are required on  
11 a pre-close basis, which would be most of the senior  
12 level -- many of the senior level people, director  
13 level people who are necessary to assist with the  
14 selection of the systems, the development of the  
15 methods and procedures, and for business readiness.  
16 And, then, as we push further into close, past close,  
17 we'll be bringing in the remainder of the staff, as we  
18 look at, you know, their particular duties and bring  
19 them on board in a timely fashion to allow for training  
20 intervals.

21 Q. The majority will probably be in place in the first  
22 quarter of 2008, is that safe to say?

23 A. Sorry. I think the current plan would indicate that,  
24 by the -- certainly by the end of the first quarter,

1 the majority will be in place, that would be correct.

2 Q. Thanks. And, will FairPoint need to establish and  
3 equip new work centers for those new employees?

4 A. What we have done is, as we have looked at the -- the  
5 answer is "yes". As we've looked at the various  
6 facilities and buildings that FairPoint will be  
7 acquiring at the time of close, we have entered into  
8 lease arrangements with Verizon to allow us to put our  
9 employees pre-close into the buildings that we'll be  
10 acquiring and taking ownership of on a post close  
11 basis. So, we do not anticipate the need to lease  
12 substantially new facilities, rather use existing  
13 facilities to meet our staffing, housing needs, if you  
14 will.

15 Q. And, when will those facilities be fully operational?

16 A. We are actually in the process right now of completing  
17 the lease arrangements with Verizon, of bringing the  
18 necessary furniture and equipment into the facilities.  
19 And, we'll do that based upon the needs of the hire  
20 ramp. So, for instance, the data center, in  
21 Manchester, that required us to be in place earlier.  
22 So, that's the first site we are in. The data center  
23 is well along towards completion. And, the other  
24 facilities that we have, whether it's in Littleton,

1 Burlington, or the other sites as we've indicated,  
2 those -- we'll be bringing those on as employee needs  
3 are required.

4 Q. Are you also looking at early 2008 then to complete  
5 that?

6 A. Absolutely.

7 Q. Okay. And, does all of the industry expertise that  
8 FairPoint will need to fill those jobs currently exist  
9 among the Northern New England labor pool, to the best  
10 of your knowledge?

11 A. It may or may not. It's certainly our desire to hire  
12 as many people, the first order would be, where  
13 available, we would like to be able to promote from  
14 within. And, "promote from within" would include the  
15 current Verizon employees, as well as -- that will be  
16 coming with the transaction, as well as within the  
17 FairPoint employee base. Second, we look to hire  
18 locally as much as we can. "Locally" would be, you  
19 know, either literally locally within the community, or  
20 within the Northern New England area. And, then,  
21 depending upon the position, we may or may not need to  
22 reach out beyond that. We would expect that the  
23 majority of the positions that we will be hiring will  
24 certainly be within the either northern three states,

1 or perhaps Massachusetts, because of proximity.

2 Q. Thank you. And, will FairPoint need to train those  
3 employees on the use of its new platform of operational  
4 support systems?

5 A. We will.

6 Q. And, because these will be new employees, do you agree  
7 that many will also need to be trained on the general  
8 business requirement of their job functions?

9 A. They will.

10 Q. And, you have stressed, in both your prefiled direct  
11 and rebuttal testimonies, how important the experienced  
12 Verizon workforce will be to your success. What are  
13 you doing to ensure that all those employees who will  
14 transfer at close, given the opportunities, they may  
15 have to bid for other jobs within Verizon, to ensure  
16 that they will actually transfer, given that they have  
17 other opportunities to move to other --

18 A. Can you run that --

19 Q. Sure.

20 A. Make sure that I'm responding to your needs.

21 Q. Apologize. It's early morning. What is FairPoint  
22 doing to ensure that all of the employees who are  
23 targeted for transfer to FairPoint from Verizon at  
24 close will, in fact, transfer, given the opportunities

1 that they may have to bid for other jobs within  
2 Verizon?

3 A. Okay. Thank you. We have worked with Verizon to post  
4 information about the merger on the Verizon website,  
5 continuously updating the information on our website.  
6 We are continuing through our own public relations  
7 effort to reach out to that community to continue to  
8 keep them informed. We have agreed, as part of the  
9 Merger Agreement, to honor the Collective Bargaining  
10 Agreement as it exists today. And, in my testimony,  
11 went so far as to say that we would not reduce the  
12 compensation or benefits in the succeeding contract.  
13 That we would be willing to commit to that.

14 So, the contract expires in August of  
15 2008. We understand and know that it's a high-anxiety  
16 level for the employees. Anybody that's been through a  
17 merger and an acquisition knows it personally, as I do.  
18 And, you know how the employees feel. I think  
19 Dr. Peres's testimony indicated that I think it was  
20 40 percent of the employees, you know, were seriously  
21 considering, and I think that represents that type of  
22 high anxiety, and I respect that. So, ours is how do  
23 you create the environment to take away or mitigate  
24 some of that anxiety? And, one of the ways you can do



1 that is to give comfort that the wages and benefits, to  
2 the best of our ability, will remain unchanged.

3 Second, we look at ways for us to  
4 promote where possible, and retain, whenever possible,  
5 the current supervisory reporting structure. My  
6 personal belief is the most important person in an  
7 employee's life, business life, is their direct  
8 supervisor. And, so, our objective then is to, to the  
9 best of our ability, and as timely as we can to the  
10 actual close, to make sure that we're communicating  
11 with the employees, with the management, and have in  
12 place the management structure that they're used to  
13 reporting in.

14 Q. Great. Thank you. And, sort of along the same line,  
15 do you agree that Verizon is responsible for the post  
16 retirement benefits for the current Verizon employees  
17 who have been identified to transfer to FairPoint, but  
18 choose to retire prior to the close of the transaction?

19 A. That would be correct, if they retired before the  
20 close.

21 Q. And, given this, do you agree that current Verizon  
22 employees who remain with Verizon until January 2008  
23 will be entitled to their 2008 paid vacation time or  
24 some portion thereof?

1 A. That's my understanding.

2 Q. Okay. And, do you agree that getting paid 2008  
3 vacation time from Verizon would be an incentive for  
4 those employees who are considering retirement to stay  
5 with Verizon at the beginning of the year, before  
6 announcing their intention to retire?

7 A. That's pretty speculative. I don't know that it would  
8 be enticing and inducing or not. I think it all  
9 depends upon what the other opportunities for  
10 employment would be within the local area. The current  
11 pay scale is a very good one. It is, and again I don't  
12 have any particular evidence that I could produce today  
13 to show this, I think it's probably some of the higher  
14 pay scale within the communities the employees work.  
15 And, I think that, before an employee takes that leap  
16 that would indicate that they want to leave the  
17 employment, I think they need to very seriously  
18 consider "to where?" That vacation benefit might be  
19 one that would pay them for some short period of time.  
20 However, most prudent people would indicate that you  
21 would hate to have somebody and suggest that people not  
22 make a long-term decision about where they work the  
23 rest of their lives based upon some short amount of  
24 vacation.

1 Our records would indicate that  
2 approximately 77 percent of the Verizon employees, who  
3 are currently indicated coming with FairPoint, are not  
4 eligible for full or partial retirement. So, it is  
5 certainly an area that we are continuing to be  
6 concerned about, and an area that we continue to work  
7 with Verizon on those concerns. And, our effort is to  
8 provide them with as much information as possible to  
9 ensure that they want to remain with the company.

10 Again, our -- as we look at what  
11 FairPoint's bringing to the three states, it's an  
12 opportunity for new technology, it's an opportunity for  
13 growth, personal -- as professional, and within our own  
14 business structure. So, again, we're trying, on a  
15 holistic basis, to do everything we can to entice,  
16 induce and retain those key employees.

17 Q. Thank you. And, for those employees who choose not to  
18 transfer to FairPoint, what are you doing to ensure  
19 that Verizon backfills those employees with employees  
20 of the same level of skills and experience?

21 A. Good question. We meet and talk on, literally, on a  
22 daily basis with the subject matter experts, single  
23 points of contact between Verizon and FairPoint. I  
24 believe that you heard John Smee talk about, you know,

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1 his area of responsibility, his level of involvement.  
2 I believe you'd all agree that he's very engaged in the  
3 process and the people, the understanding of the  
4 business. And, as well, understanding the services  
5 that are being required, indicative is the, again, as  
6 we talk through them, the obligation that Verizon has  
7 to run the business in the normal course. And, as we  
8 look at the performance results or the service results  
9 of the company, if we have any suspicion or any  
10 indication that that business is not being run in the  
11 normal course, to challenge Verizon to replace the  
12 appropriate personnel. So far, you know, we've worked,  
13 you know, they have been extremely cooperative and have  
14 been willing to share information.

15 Q. Thanks. And, although those employees transferring  
16 from Verizon may be experienced employees, you will  
17 need to train them on all the new support facilities  
18 that FairPoint will be developing, is that correct?

19 A. All -- Yes, that would be correct, all the employees  
20 transferring.

21 Q. Uh-huh. And, what plans do you have for training the  
22 approximately 3,000 employees who will either be  
23 transferring from Verizon or who are new hires to  
24 replace those who choose not to transfer?

1 A. We have a comprehensive -- Our preliminary draft of the  
2 comprehensive training plan will be available this  
3 week, and we'll be submitting it to the Staff. And, I  
4 am not sure if it will be done on a confidential or how  
5 we'll be doing that, but it will be submitted this  
6 week. Recognizing, understanding the importance of it,  
7 that the timing of the training, how that be handled  
8 within the various department functions, I'm not the  
9 one who will speak specifically to all the different  
10 permutations of the training. But we do have the  
11 preliminary draft that we'll be submitting this week.

12 Q. Okay. Thank you. Now, earlier in this proceeding,  
13 Mr. Haga and Mr. Kurtze indicated that "FairPoint's  
14 current plan date to terminate the TSA with Verizon is  
15 May 30th, 2008. Is that your understanding?

16 A. Yes, ma'am, that's the correct date.

17 Q. And, Misters Haga and Kurtze also discussed the support  
18 systems that must be operational and tested before  
19 FairPoint can consider itself ready to terminate its  
20 TSA support with Verizon. Do you agree that adequate  
21 staffing of open jobs and training of the new and  
22 transferred employees are critical criteria to  
23 determine whether FairPoint is ready to terminate the  
24 TSA?

1 A. There are a lot of criteria that would indicate  
2 readiness. So, as I think about the different criteria  
3 that's cutover readiness, much of what the CapGemini is  
4 working on -- cutover readiness, I'm sorry. Business  
5 readiness, that the methods and procedures that the  
6 Company has would be ready. Staffing readiness, that  
7 the employees -- have adequate number of employees  
8 fully trained and ready. And, our training partners --  
9 trading partners, if you will, the CLECs and others who  
10 we'll be interfacing with, and the ILECs, that those  
11 systems and functions are ready.

12 Our commitment has been that we will not  
13 -- we will not cutover too early. I would be prepared,  
14 if necessary, to extend the TSA, if I thought that any  
15 of those areas were not ready for conversion. And, we  
16 monitor and evaluate that on an ongoing basis.

17 Q. Okay. Thank you. And, do you agree that -- actually,  
18 I think you've answered my next question -- that  
19 another critical criterion for terminating the TSA  
20 support is that FairPoint's business processes must be  
21 in place and fully operational, both new and  
22 transferred employees?

23 A. Absolutely. A critical component of the cutover is not  
24 just the system readiness, but also the business

1 readiness. So, yes, I absolutely agree with that.

2 Q. Thank you. And, in addition to the -- in addition to  
3 the systems development, the staffing, the training,  
4 the business process development that must be in place  
5 for a successful cutover, do you agree that FairPoint  
6 must also make sure that certain critical functions of  
7 the work centers must be in place and fully operational  
8 before FairPoint can cutover, for example, overall  
9 monitoring of the network, E911 network monitoring,  
10 Tier 2 technical support?

11 A. Yes, ma'am.

12 Q. Thanks. And, Misters Haga and Kurtze, in their  
13 testimony, indicated that, if FairPoint does not cut  
14 over on the currently planned date of May 30th, 2008,  
15 the next available options for cutover are the last  
16 Friday of every odd month thereafter; in other words,  
17 July 25th, September 26th, November 28th, and so on.  
18 Do you agree with that?

19 A. It is the last Friday. I'll take -- I'll, subject to  
20 check, take your dates. I know July 25th is the next  
21 one that was --

22 Q. Okay. Thanks. And, earlier in this proceeding,  
23 Mr. Smith of Verizon testified that the approximate  
24 monthly cost of the TSA is in the range of 14 to 16

1 million per month. So, this would mean, as we  
2 discussed with Mr. Smith, that if FairPoint does not  
3 cutover on May 30th of 2008, the cost of delay to the  
4 next possible date is approximately like 30, 33  
5 million, additional 30 to 33 million for each  
6 subsequent delay, is that your understanding?

7 A. It can -- It is. Let me comment on that. Two points,  
8 if I might. First, I truly believe that a premature  
9 cutover would result in costs that would be significant  
10 and perhaps even reach that level. So, the penalty for  
11 -- the financial and the disruption penalty of an early  
12 conversion perhaps would be more expensive. Second,  
13 that, in our planning process, if we are able and  
14 decide that we need to move the date for cutover from  
15 let's say May 30 to July 25th, the sooner we're able to  
16 make that decision, then the sooner we're able to  
17 effect things like the hiring ramp. And, so, if we're  
18 able to, if you will, if we were to move the date from  
19 May to July, then going with that would be the ability  
20 to move the hire ramp out that same time. So, although  
21 the additional cost would be as you indicate from the  
22 TSA, there would be some avoidable costs that we would  
23 be able to move also.

24 Q. Thanks. And, I think you stated earlier this morning



1 that the current labor contract expires in early August  
2 of 2008, shortly after your next available cutover date  
3 of July 25th, is that correct?

4 A. I believe it's August 2nd.

5 Q. And, given all the obstacles to a successful cutover,  
6 and the high continuing monthly cost of a TSA, and  
7 FairPoint's current aggressive schedule of only four  
8 months after, between close and cutover date, how can  
9 this Commission be assured that FairPoint will not cut  
10 over prematurely, as appeared to be the case in Hawaii,  
11 to the detriment of service quality to the residential  
12 and business customers in New Hampshire?

13 A. Yes, a good question. First of all, I'm not sure I  
14 would agree that four months is an "aggressive  
15 schedule". As has been pointed out by several  
16 witnesses, we have been working on this, the planning  
17 process, the detailed work and development with  
18 CapGemini and with Verizon, has been going on,  
19 actually, with CapGemini, predating the signing of a  
20 contract in January. So, it's been a very long, very  
21 intensive process.

22 However, as I indicated yesterday, we  
23 are absolutely committed to working collaboratively  
24 with the -- and support the third party monitor. We

1 believe that that would give the added comfort and  
2 assurance to the Commissions, to the Boards, to the  
3 businesses and the residents alike, that the cutover  
4 would be performed on a timely basis and, to the  
5 greatest extent possible, to minimize any possible  
6 disruption. So, we absolutely advocate that and  
7 support that third party monitor.

8 Q. Thank you.

9 A. One third party monitor.

10 Q. I think you said yesterday that FairPoint would begin  
11 with an employment complement of about 3,500 people  
12 serving Northern New England, is that correct?

13 A. I think that's roughly with those, I think that's  
14 correct.

15 Q. Did you also mention yesterday that attrition would  
16 range from about four percent to about four and a half  
17 percent?

18 A. You know, we don't -- the model assumes that. That's  
19 certainly not my prediction.

20 Q. Uh-huh.

21 A. And, so, it's very hard for me to sit here today and  
22 try to speculate what I think that might be. That is  
23 based upon a certain set of facts and assumptions. You  
24 know, my objective is to grow the business. And, if I

1 grow the business, and we're able to successfully grow  
2 the business, whether it's adding wireless resale,  
3 whether it's adding IPTV, whether it's adding other  
4 products and services, and driving revenue streams,  
5 then certainly those additional revenue streams would  
6 support additional people. But, again, from a modeling  
7 perspective, I think that's a true statement.

8 Q. Okay. And, if we take those modeling assumptions, if  
9 we apply four and a half percent to a base of 3,500, we  
10 get a reduction of approximately 144 employees a year,  
11 and a five year total of 720 employees lost, would you  
12 agree?

13 A. That would be the right number for the first year, then  
14 it would be declining after that.

15 Q. Okay. And, four percent applied to a base of 3,500  
16 would give us a reduction of 129 employees a year?

17 A. Okay. Subject to check.

18 Q. In the first year, right? And, then, the five year  
19 total again, based on the same assumption, it would be  
20 646 employees lost?

21 A. Over, I'm sorry?

22 Q. Five years.

23 A. Subject to check.

24 Q. Okay. And, do you think it's realistic to project that

1 FairPoint can cut 20 percent of the workforce, based on  
2 these assumptions, in five years, while improving  
3 service, extending broadband, and operations support  
4 systems that it's developing from start?

5 A. Yes, a couple things. First, FairPoint's increase in  
6 the starting point for that, from the base that it is  
7 today of about 2,800 employees we'd expect to come with  
8 the transition, and increasing that base by over 675.  
9 So, if you look back at the last three years, I believe  
10 it is, of the ARMIS reports, and look at the trends in  
11 that population today, it's a five-state trend, not a  
12 three-state trend, I believe it's been running in the  
13 four to four and a half percent area. So, that would  
14 indicate that that would be a trend that's been  
15 relatively consistent. It would tell me that that is,  
16 again, that would be relatively consistent, we could  
17 apply forward-looking for a modeling perspective. It  
18 also would indicate that, again, we want to be careful  
19 when we say it's "attrition", not a company planned  
20 initiative. And, we believe that over time we'll  
21 continue to see efficiencies within the Company,  
22 whether it's technological efficiencies, service  
23 efficiencies, and it also recognizes the fact,  
24 unfortunately, that there will continue to be some

1 access line erosion, access line losses. So, it  
2 recognizes what we believe to be the right balance.  
3 Again, it's hard to sit here and predict, which is not  
4 what we're trying to do. But we do believe that that  
5 is an attainable level.

6 MS. FABRIZIO: Great. Thank you. Mr.  
7 Chairman, could I take one minute?

8 (Atty. Fabrizio conferring with Ms.  
9 Bailey.)

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

11 BY MS. FABRIZIO:

12 Q. Mr. Nixon, you just told us your review of ARMIS report  
13 trends and that the four and a half percent attrition  
14 is a visible trend based on the ARMIS reports, is that  
15 correct?

16 A. I believe that's correct.

17 Q. And, in your review of the New Hampshire landscape or  
18 Northern New England landscape that you will be  
19 inheriting upon close, have you seen similar downward  
20 trends in service quality?

21 A. I think we should do that in a couple different ways.  
22 One would be call center performance, and I'm not aware  
23 of any call center indicators that would tell me, based  
24 upon the testimony and the research, again, that would

1 indicate that those are out of align. Two, we talked  
2 about the service quality from a statewide network  
3 trouble report rate. And, I believe that Verizon's  
4 statewide rate is close to, as testified by Mr. Smee,  
5 close to that statewide objective. And, he also  
6 indicated that there were, however, some wire centers,  
7 and I believe he said "16", that were at surveillance  
8 level, which I believe is 2.5, network trouble reports.  
9 And, so, that would tell us that the staffing level is  
10 an area that we believe need some augmentation.

11 And, Mr. Smee has already indicated that  
12 we will be bringing on some additional splice service  
13 technicians to address the area of "out of service over  
14 24 hours". So, we've already acknowledged that in the  
15 research we've done. He has indicated that we'll use  
16 June 30 as the baseline for that number. So that, if  
17 there is attrition between June 30 and close, that that  
18 augmentation that we add the employees would be based  
19 upon the June 30 number, which means we may have to add  
20 more if there were some losses to that. And, we  
21 acknowledge that we will be needing to add some crews  
22 to meet our obligations for the double pole removal and  
23 the additional new pole sets. So, again, we will be  
24 raising the level of employment through -- in the

1 Northern New England area, by over 675 jobs. So, the  
2 starting point is dramatically higher.

3 Q. Thank you. Now, will FairPoint, from an operations  
4 point of view, integrate FairPoint classic lines in New  
5 Hampshire, Maine and Vermont into the Spinco  
6 operations?

7 A. We will. And, the question becomes "when?" We do not  
8 have any plans today that we would -- of when we will  
9 do that. Again, as I indicated yesterday, our first  
10 order of business has got to be a successful  
11 integration of the systems and cutover to the new  
12 systems, to operate the business today and the Verizon  
13 business today, the Verizon wireline business today,  
14 and have that running smoothly before we contemplate  
15 another conversion. Recognizing, however, that as  
16 FairPoint has their name across the three states, that  
17 there's always the risk of customer confusion, if you  
18 will. So, recognizing there is also a need for us to  
19 bring those -- that customer base into the new systems,  
20 probably two to three years out we would bring them  
21 over into the OSS systems. And, again, I'm speculating  
22 right now a little bit, but I think that would be,  
23 based on what I know today, I think that would be my  
24 area of comfort.

1 Q. Thank you. And, could you please describe for us the  
2 various support functions that FairPoint will be  
3 providing, both to Spinco and to FairPoint classic?

4 A. The regulatory organization will be handling both,  
5 marketing organization will be working with both.  
6 Accounting, the regulatory, and the marketing --  
7 accounting, regulatory, and marketing will be the three  
8 areas that will be responsible for both the classic  
9 operations, as well as the Spinco operations. We will  
10 not be bringing in the call centers into a combined,  
11 nor the operations group, for the reasons I mentioned a  
12 few minutes ago.

13 Q. Okay. Great. And, Mr. Smee indicated yesterday that  
14 all technicians in the New Hampshire that will be  
15 transferred to FairPoint will have at least six to  
16 seven years of experience with Verizon. Is that your  
17 understanding as well?

18 A. I think he said "those that are there today". So, I  
19 don't know about anybody who joins between now and  
20 close.

21 Q. Right.

22 A. I think he said that the employees, as they exist  
23 today, have that experience level.

24 Q. Okay.



1 A. I don't think he was projecting if --

2 Q. Right.

3 A. -- if they would add people that they would.

4 Q. Understood. And, Mr. Smee also said that the  
5 information that Verizon provides to FairPoint  
6 currently does not allow you to tell how many of those  
7 years of service have been as technicians, for example,  
8 is that correct?

9 A. I believe that's correct.

10 Q. So, is it fair to say that, while the overall length of  
11 service with Verizon level of the employees who will  
12 come to FairPoint has stayed the same since announcing  
13 the deal, that the skill levels and experience in the  
14 job perhaps have been declining?

15 A. Again, that's hard to predict. I would offer that any  
16 business today has a, if you will, turnover of  
17 employees. As you bring on new employees, they bring  
18 different attributes in the business. What they may  
19 lack in institutional knowledge and experience, they  
20 may bring in other advantage to the business. So,  
21 before we say that's something that's bad, I'd say  
22 that's something that's normal. In a normal business,  
23 there is an ongoing turnover of the employees. And, so  
24 far, there's nothing that would tell us that it's --

1 would indicate that it's a problem and impacting  
2 service or Verizon's ability to perform.

3 Q. Okay. Thank you. Now, Dr. Sicker testified yesterday  
4 that the network FairPoint is designing is an IP  
5 network. And, my question for you is, does FairPoint  
6 have any plans to migrate voice traffic from a circuit  
7 switched network to an IP network?

8 A. I'd probably answer that if my competitors weren't  
9 sitting in the room.

10 Q. And, --

11 A. I don't mean to be flip with the answer. FairPoint  
12 will always look to find ways that we continue to offer  
13 products and services to the customers to meet their  
14 needs today and into the future. We recognize that the  
15 MPLS network is a dramatic improvement in that  
16 opportunity. And, I would offer that, beyond the  
17 advantage within the broadband realm, significant  
18 advantage within the businesses, as they look to the  
19 ability to run an MPLS network. FairPoint today has a  
20 nationwide MPLS network that we operate with our  
21 companies. And, the advantage of that is that -- that  
22 over time you can put, you know, voice, video, data all  
23 riding over that same network. So, it's a dramatic  
24 change in the network evolution. I think Dr. Sicker

1 suggested that it was an evolutionary approach to  
2 network design. And, this is our ability to do a  
3 quantum change in that network design for Northern New  
4 England, and benefit communities, businesses, and  
5 residents alike.

6 Q. Thank you. And, in your opinion, is there any  
7 difference in the regulatory treatment of voice traffic  
8 carried over a circuit switched network versus over an  
9 IP network?

10 A. I'm probably not the right regulatory person to ask.  
11 My job is to get the customers the services they need,  
12 when they want them, and at competitive prices.

13 Q. Okay. Thank you. If a current Verizon customer has a,  
14 say, a three year service package contract with  
15 Verizon, for which penalties will be imposed for early  
16 cancellation, will FairPoint allow that customer to  
17 cancel the contract without penalty when it assumes  
18 Verizon's operations?

19 A. No, ma'am.

20 Q. Okay. Let's see. I have no end to the questions for  
21 you today. Do you know if FairPoint will acquire any  
22 inventory as part of the transaction?

23 A. We will. As part of the arrangement with Verizon, we  
24 do receive inventory. I'm not -- don't remember off

1 hand what the exact descriptive is, but we do receive  
2 the normal inventory.

3 Q. And, do you know whether Verizon has a warehouse of  
4 spare parts?

5 A. They have several garage locations that they will be --  
6 that exist. They also have a -- I think it's a mid  
7 tier warehouse.

8 Q. And, will FairPoint acquire that warehouse?

9 A. If it's the one I'm thinking of, in Massachusetts, it's  
10 not our intent.

11 Q. Uh-huh. Okay. And, is FairPoint building a new  
12 warehouse?

13 A. We're making arrangements for a warehouse to be  
14 acquired and leased on our behalf.

15 Q. And, where will that be located?

16 A. It has not been identified yet.

17 Q. Is Verizon required to provide a fully stocked  
18 inventory at close with your agreement?

19 A. I would have to refer to the actual Merger Agreement.  
20 I know that there is a specific reference to the  
21 inventory levels. And, we would expect to get the --  
22 I'm going to call it the "normal business", the normal  
23 inventory in the normal course. But, again, that's  
24 subject to check. And, I'd be happy to take a request

1 for it, if you'd like. It's the detailed language. I  
2 just don't have it off the top of my head.

3 Q. And, if Verizon is not so required, will FairPoint be  
4 stocking its inventory to be ready pre-close or  
5 pre-cutover?

6 A. FairPoint takes over the supply chain as of close. So,  
7 we are -- we will be prepared at close to take over  
8 that responsibility. And, we will -- there will be an  
9 inventory in the garage locations today, in the three  
10 state locations that exist today, as well as  
11 FairPoint's warehouse that will be -- we're in the  
12 process right now of signing an agreement.

13 Q. All right. Thank you. Now, I'm going to switch gears  
14 and ask you a series of questions on governance. And,  
15 you have before you, I believe, Staff Exhibits 15  
16 through 25, these were distributed a week ago, Monday,  
17 when Mr. Nixon was originally scheduled for the stand.  
18 But I have copies that I will display on the monitor  
19 for your convenience.

20 Mr. Nixon, do you understand that Staff  
21 has expressed significant financial concerns about the  
22 degree of debt that FairPoint will have if the  
23 acquisition takes place as currently proposed?

24 A. They have certainly expressed concerns, yes.

1 Q. And, would you agree that FairPoint will require sound  
2 performance to meet the debt service requirements it  
3 will face after acquisition?

4 A. I agree.

5 Q. And, do you agree that, if this Commission were to  
6 require the financial conditions that Staff has  
7 proposed in its testimony, that senior leadership of  
8 FairPoint will be required to pay particularly close  
9 attention to assuring that FairPoint looks ahead far  
10 enough to foresee and respond to any financial  
11 circumstances that would put its compliance with such  
12 conditions, if so imposed, in potential jeopardy?

13 A. We will do that as a matter of course.

14 Q. And, would you agree that there could be occasions in  
15 which the interest of FairPoint shareholders and  
16 lenders could potentially differ from those of this  
17 Commission with respect to financial conditions  
18 affecting FairPoint?

19 A. I'm not sure I'd go so far as to say that. I think  
20 those interests align. I'm not sure that those are  
21 necessarily in misalignment. I think other witnesses  
22 have testified on our willingness and our desire to  
23 make sure that, as to understanding that, for instance,  
24 the dividends are not sacrosanct. That we believe that

1 that would be, in balance, in the long-term best  
2 interest of the lender, of the investor, and of the  
3 customers, are aligned.

4 Q. Now, in areas, for example, say capital expenditures  
5 for maintenance in the network and that sort of thing  
6 will be a cash outflow to FairPoint, might not be in  
7 the same, you know, objective list of the shareholders.  
8 Is there a potential for that sort of conflict to  
9 arise?

10 A. I understand your question. I would tell you, again,  
11 over the long term, that an investor who's looking for  
12 a long-term return, a customer who is looking for  
13 continued service, and a lender who is looking for a  
14 company's ability to repay on their debt, would  
15 understand the need for the Company to maintain its  
16 plant and their assets, in such a way as to provide for  
17 that return. So, again, over the long term, I just  
18 don't think that they're misaligned. I understand the  
19 concern. I just don't think they're misaligned.

20 Q. Thank you. Now, is FairPoint rated at investment grade  
21 by any of the debt rating agencies?

22 A. No, ma'am.

23 Q. And, one of FairPoint's current board members is the  
24 Chief Financial Officer at Duke Energy, is that

1 correct?

2 A. David Hauser.

3 Q. And, in fact, Mr. Hauser is the only member of  
4 FairPoint's board employed by a major American  
5 corporation, is that correct?

6 A. That would be correct.

7 Q. And, is it true that Duke Energy, unlike FairPoint,  
8 does have an investment grade rating?

9 A. I believe that's the case. Subject to check, I believe  
10 that's the case.

11 Q. I am going to put on Staff Exhibit 15. Could you read  
12 for us the title of that document.

13 A. "The Charter of the Finance and Risk Management  
14 Committee of the Board of Directors of Duke Energy  
15 Corporation".

16 Q. Thank you. And, this document was available on Duke  
17 Energy's website when we were preparing for this  
18 proceeding. Can you take a look at the first section,  
19 on Section 1, "General Focus", for a minute?

20 A. Yes, ma'am.

21 Q. Can we conclude from this that Duke Energy has a  
22 Finance Committee, and that that Committee's Charter  
23 requires it to take a full review of the circumstances,  
24 commitments and risks that may jeopardize Duke Energy's



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1 financial condition?

2 A. That would be how I read this.

3 Q. Thank you. Exhibit 16.

4 A. I'm sorry?

5 Q. Exhibit 16, the next.

6 A. Okay, I'm there. Yes, ma'am.

7 Q. This also was available on Duke Energy's website. This  
8 shows a list of the Committees of the Board of  
9 Directors, is that correct?

10 A. I'm looking at 16 showing a list of the committees.

11 Q. Uh-huh. Could you read the name of those please.

12 A. In place of "board of directors", I think its  
13 "Committees. "Audit Committee Charter", "Compensation  
14 Committee Charter", "Corporate Governance Committee  
15 Charter", "Finance and Risk Management Committee  
16 Charter", and a "Nuclear Oversight Committee Charter".

17 Q. And, then, the list does not include an "executive  
18 committee", is that --

19 A. Not at this time, it doesn't.

20 Q. Now, FairPoint's website lists all of the committees of  
21 its Board of Directors, is that correct?

22 A. I believe it does.

23 Q. In fact, in the wake of Sarbanes-Oxley, under corporate  
24 governance reforms, most major American corporations

1 list all of their committees on its website, is that --

2 A. That's my understanding.

3 Q. Now, can we conclude from this exhibit that Duke Energy  
4 has no executive committee, you agreed with that?

5 A. I would say that this would represent that they don't  
6 have an executive committee. I've not examined or  
7 talked to Mr. Hauser. So, this would lead us to that  
8 conclusion.

9 Q. Fair enough. Thank you. Is it also true that the Duke  
10 Energy Board of Directors has ten members, compared to  
11 the nine anticipated for FairPoint after acquisition?

12 A. If I'm looking at your Staff Exhibit 17?

13 Q. Yes.

14 A. And count quickly, I think that would be the case.

15 Q. Okay. Thank you. So, it would appear then, wouldn't  
16 it, that there's no material size difference in the  
17 boards that would account for any greater or lesser  
18 need for an executive committee at FairPoint, is that  
19 correct?

20 A. I'm not sure that the -- that comparing the size of the  
21 boards, it probably -- it may be a factor, I'm not sure  
22 it's the factor. So, I'm not sure that's a good  
23 analogy. But, I think, in this case, the observation  
24 is correct.

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1 Q. On the face of it, right.

2 A. Yes, as I said, the observation is correct.

3 Q. Thank you. Now, closer to home, do you agree that PSNH  
4 is by far the largest electric utility in New  
5 Hampshire, and that its parent, Northeast Utilities,  
6 operates one of the largest electrical systems in New  
7 England, extending to the States of Connecticut,  
8 Massachusetts, and New Hampshire?

9 A. I would not be able to opine to that. I don't know.

10 Q. Okay. Would you accept subject to check?

11 A. I will. They're a very large, very well-respected  
12 company.

13 Q. Yes.

14 A. And, we are looking forward to doing business with  
15 them.

16 Q. And, are you familiar with Northeast Utilities?

17 A. Not with Northeast Utilities, no.

18 Q. Would you agree, based on the information we just  
19 discussed, as to the extent of territory that Northeast  
20 Utilities covers in New England, that the fact that  
21 distinguishes Northeast Utilities from Verizon, which  
22 operates throughout the U.S., as well as  
23 internationally, with Northern New England representing  
24 only a very small fraction of Verizon's business, that

1 territorially, these two companies are distinguishable?

2 A. Ma'am, I have no idea. I just cannot even draw a  
3 conclusion on it. I'm not familiar with Northeast  
4 Utilities.

5 Q. Okay. Will you accept subject to check that Northeast  
6 Utilities extends to Connecticut, Massachusetts and New  
7 Hampshire?

8 A. That would be asking me to check, which I don't -- I'm  
9 not sure I'm going to do.

10 Q. Okay. I'll move on. Upon the acquisition of Verizon's  
11 Northern New England landline assets, FairPoint will  
12 have more than three-quarters of its entire operations  
13 in just the three-state area, is that correct?

14 A. FairPoint will?

15 Q. Correct.

16 A. Yes, ma'am.

17 Q. Okay. Look at the next exhibit, also from Northern  
18 Utilities' website, Staff Exhibit 18.

19 MR. COOLBROTH: Just to correct, that's  
20 "Northeast Utilities", rather than "Northern Utilities",  
21 is that right?

22 MS. FABRIZIO: I'm sorry, did I  
23 misspeak?

24 MR. COOLBROTH: I thought I heard

1 "Northern Utilities".

2 CHAIRMAN GETZ: Northeast.

3 MS. FABRIZIO: I apologize.

4 BY MS. FABRIZIO:

5 Q. Okay. Would you agree that this document also shows  
6 the existence of a finance committee?

7 A. I'm sorry, I'm looking at 19. What --

8 Q. I think I have the wrong -- thank you. Marked Exhibit  
9 19.

10 A. Okay. And, your question was "does it show an audit  
11 committee or --

12 Q. Does it show the existence of a finance committee?  
13 And, is there an executive committee as well?

14 A. Yes, it does. It does. It does show a finance  
15 committee, as well as an executive committee.

16 Q. Okay. And, Staff Exhibit 20. This refers to the  
17 Northeast Utilities' Executive Committee. And, this is  
18 an excerpt from the most recent proxy statement of the  
19 company available on the website as well. Would you  
20 agree that this shows that the Executive Committee did  
21 not meet in 2006?

22 MR. COOLBROTH: If you know.

23 **BY THE WITNESS:**

24 A. This would -- This document would so indicate. I do

1 not have personal knowledge.

2 BY MS. FABRIZIO:

3 Q. Sure. Okay. Back to the Northeast Utilities' Finance  
4 Committee.

5 A. Is that Exhibit 21?

6 Q. Twenty-one.

7 A. Okay.

8 Q. As was true for Duke Energy, does this show that the  
9 Northeast Utilities' Finance Committee Charter also  
10 calls for the same type of forward-looking financial  
11 assessment by the committee?

12 A. I'm sorry. Could you point me, just to move this  
13 along, point me to what you're looking for? It talks  
14 about a finance committee charter.

15 Q. Actually, it would probably be more helpful if you  
16 review the document as a whole.

17 A. I'm looking at 21, Page 1.

18 Q. And, could you read under "Committee Authority and  
19 Responsibilities". You don't need to read out loud,  
20 but just review.

21 A. "Committee Authority and Responsibilities". And, your  
22 question again was what?

23 Q. Would you review that list. And, would you agree that,  
24 as we discussed for Duke Energy, that the Charter of

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1 this Finance Committee for Northeast Utilities also  
2 calls for the same type of forward-looking financial  
3 assessment? Similar to what we reviewed for Duke  
4 Energy earlier?

5 A. Bear with me a sec. Again, if you want to -- I can  
6 skim it quickly. Certainly talks about the financial  
7 goals and financing, talks about financial budgets,  
8 generally forward-looking.

9 Q. Do you agree that, generally speaking, these are  
10 forward-looking financial directives for the Finance  
11 Committee?

12 A. I think the Finance Committee also has the obligation  
13 to make sure that the audited financials are correct,  
14 from an historical perspective. But they also have an  
15 obligation, I believe as it says here, forward-looking  
16 also.

17 Q. Potential risks, issues?

18 A. That's my understanding.

19 Q. Thank you. Now, realizing that you may not be familiar  
20 with the utility neighborhood here in New England,  
21 would you agree that Unitil represents the other major  
22 U.S. owned electric utility in New Hampshire?

23 A. Only because we've been doing a lot of work with them  
24 on their pole attachment concerns, we've gotten to know

1 them very well.

Q. Thanks. Now, --

A. I can't tell you what -- sizewise what they are, but --

4 Q. Okay.

5 A. -- we also look forward to working with them.

6 Q. Great. And, my search of Unitil's website disclosed no  
7 indication of a finance committee, but it did list an  
8 executive committee. And, Staff --

9 A. I see that on Staff 22.

10 Q. Yes. Thank you. So, could you please take a look of  
11 this listing of the duties of that particular  
12 committee.

13 A. And, I assume this conforms with their bylaws and their  
14 charters, so it's designed appropriately?

15 Q. I would assume so, yes.

16 A. Okay.

17 Q. And, contentwise, would you agree that, in fact, this  
18 Executive Committee does not appear to have the power  
19 to act in lieu of the Board, but rather is designed to  
20 present reports and recommendations to that Board?

21 A. Is this all pages of their --

22 MR. COOLBROTH: I'm going to objection.

23 That calls for a legal conclusion of the witness, in terms  
24 of what the authority is of the Executive Committee, to



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1 act in the absence of Board action. That's a legal  
2 question.

3 MS. FABRIZIO: Okay. I'm going to move  
4 on.

5 BY MS. FABRIZIO:

6 Q. Let's see. Referring to the same document. Aren't  
7 some of the forward-looking financial matters on which  
8 it is to serve the Board a supplemental source of  
9 oversight and expertise, some of the very same matters  
10 that we've seen in some of the documents we've looked  
11 at thus far for the finance committees?

12 A. There may be some overlap or some commonality.

13 Q. Okay.

14 A. I have not had time to do an exhaustive study of this.

15 Q. Thanks. All right. Moving to Staff Exhibit 23. I  
16 can't show the whole document here. But this is the  
17 composition of Unitil's Board of Directors, again taken  
18 from their website. Do you agree that this shows that  
19 the Company's 11 directors -- it has 11 directors, and  
20 that, of those 11, at least 10 of them appear to have  
21 strong connections with either New Hampshire or  
22 Massachusetts, where Unitil serves?

23 A. I have not read this and I cannot opine to that, unless  
24 you -- I can't opine to that.

1 Q. And, are you aware that New Hampshire's third major  
2 investor-owned electric utility is owned by a foreign  
3 company, and that would be National Grid, is foreign  
4 owned?

5 A. I was not aware of that. So, obviously, I didn't know  
6 them very well.

7 Q. Okay. I'm now turning to FairPoint documents, I'm sure  
8 you're intimately familiar with, also taken from the  
9 Company's website, Staff Exhibit 24.

10 A. And, I think that's been updated to include the  
11 addition of Bonnie Newman, who's our new Lead Director.

12 Q. Okay. Point taken. This was downloaded a week ago  
13 when hearings began here in this proceeding.

14 A. Okay.

15 Q. And, generally, does this list, with the exception of  
16 Ms. Newman, does it accurately identify the directors  
17 and their backgrounds?

18 A. It does.

19 Q. And, this list shows five directors, including  
20 FairPoint's CEO, is that correct?

21 A. This list does, that's correct.

22 Q. And, with Ms. Newman, it will be six directors?

23 A. Yes, ma'am.

24 Q. Okay. If we look at this document, and in conjunction

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1 with our knowledge of Ms. Newman, it looks like I  
2 believe Ms. Newman has strong connections with New  
3 England and New Hampshire?

4 A. I think she lives in Portsmouth.

5 Q. Okay. Great. So, three of the six outside directors,  
6 is that correct, beside the CEO -- no, I'm sorry. Two  
7 of the four outside directors, besides the CEO, have  
8 connections with Duke Energy, based in Charlotte, is  
9 that correct?

10 A. Have or had?

11 Q. Have had?

12 A. They have had? Well, David Hauser is there today.

13 CHAIRMAN GETZ: I think that's past  
14 pluperfect.

15 **BY THE WITNESS:**

16 A. And Bob Lilien used to be.

17 **BY MS. FABRIZIO:**

18 Q. So, two currently have direct ties?

19 A. Well, let me take a look. I think it says that David  
20 Hauser certainly does, and says that Bob Lilien did.  
21 I'm not sure Bob Lilien is tied to Duke today. He  
22 worked there, I believe it says, from 1993 to 2002.

23 Q. Okay. So, one currently has ties, one has past ties?

24 A. That's what I tried to say.

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1 Q. Great. Thanks. And, where are the other two outside  
2 directors or three, now with Ms. Newman? Where are  
3 they based?

4 A. Patricia Garrison-Corbin is in Philadelphia; Dr. Claude  
5 Lilly is in Clemson, South Carolina, and that's been  
6 updated since, he is now Dean of the Business School at  
7 Clemson; and Gene Johnson, our CEO, is in Charlotte.

8 Q. Okay. Thanks. Now, let's see, a bit ago -- I'm going  
9 to put Staff Exhibit 22 back up on the screen.

10 A. I'm sorry, this is 22?

11 Q. Twenty-two, yes.

12 A. All right.

13 Q. Sorry, I have old numbers I think. I'm sorry, it's 25.  
14 I apologize.

15 A. Okay. Twenty-five.

16 Q. Now, this is again downloaded from FairPoint's website.  
17 It's the FairPoint Audit Committee Charter. Do you  
18 have any reason to question whether this document is  
19 current or complete?

20 A. I do not.

21 MS. FABRIZIO: Thanks. Mr. Chairman, I  
22 have one confidential question remaining, otherwise that  
23 completes my questions for Mr. Nixon, the public session.

24 CHAIRMAN GETZ: All right. Let's finish

1 the questions from the Bench, then we'll turn to your  
2 confidential questions.

3 **EXAMINATION BY CMSR. MORRISON**

4 BY CMSR. MORRISON:

5 Q. Mr. Nixon, for the record, could you tell us the total  
6 amount, in terms of dollars, that would be transferred  
7 to Verizon if this transaction was approved?

8 A. I believe it's --

9 Q. We can take this as a record request.

10 A. Yes, I just want to be very careful.

11 Q. Now, we can take it as a record request, if that's  
12 better for you?

13 A. Okay. If you would.

14 Q. Okay. Next question. If approved, what would be the  
15 strike price of common shares offered to Verizon  
16 shareholders?

17 A. I do not have the answer for that question.

18 CMSR. MORRISON: I guess we'll need a  
19 record request for that also.

20 MR. COOLBROTH: And, I'll need a  
21 clarification. The strike price, is this --

22 CMSR. MORRISON: Strike price of Spinco  
23 shares.

24 MR. COOLBROTH: Strike price is usually

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1 related to an option of some kind. I'm trying to figure  
2 out what the question relates to?

3 CMSR. MORRISON: When -- It's been  
4 testified to earlier that Verizon shareholders will be  
5 receiving equity in terms of stock in the new company.  
6 And, I'm wondering what will be the value of that stock  
7 per share?

8 MR. COOLBROTH: Just trying to think of  
9 how to answer. It's 55 shares per one Verizon share, is  
10 what they get, and then it would be the market.

11 CMSR. MORRISON: Okay. That really  
12 answers the heart of my question. So, it's a 55 to 1  
13 swap?

14 MR. COOLBROTH: That's right.

15 CMSR. MORRISON: That's a lot of shares  
16 out of a new company.

17 MR. COOLBROTH: Well, they get one share  
18 of FairPoint for every 55 that they own of Verizon.

19 CMSR. MORRISON: Okay. I understand  
20 that now.

21 BY CMSR. MORRISON:

22 Q. Are there any other classes of stock other than common  
23 to be issued in the new company?

24 A. No, sir, not that I'm aware of. I think that's the

1 only one we're doing.

2 Q. If this is approved, will the Verizon corporate hold  
3 any shares in the new company?

4 A. No, sir, they will not.

5 Q. So, then, all the liability is really transferred to  
6 their shareholders, not to corporate, as far as Verizon  
7 is concerned?

8 A. I think that the effort, again, for them to maintain  
9 their ability, they could not have equity ownership in  
10 the Company, again, subject to check, and still have  
11 the Reverse Morris Trust work.

12 Q. Okay. Thank you. Would you agree that it's possible  
13 that the revenue numbers you projected could be less  
14 than anticipated?

15 A. They could be less, they could be more. Again, those  
16 are our best understanding as of today.

17 Q. What do you believe the effects will be on total line  
18 count and revenue per the line by the deployment of  
19 technology such as static or mobile broadband WiFi?

20 A. Would that be static/mobile WiFi that we deploy or  
21 somebody else deploys?

22 Q. That comes onto the market.

23 A. Okay. Well, again, --

24 Q. Whether it's yourself or competitors.

1 A. I'd answer it in two ways.

2 Q. Sure.

3 A. First is, that we look forward to working  
4 collaboratively with various network providers. Many  
5 of those network providers will be looking for somebody  
6 to provide the backbone capacity and to get them to the  
7 net, to the cloud, if you will. And, there may be, and  
8 we hope there would be, an opportunity for us to bid  
9 for that type of opportunity. I think, as Dr. Sicker  
10 indicated yesterday, that the -- there is the  
11 constraint, if you will, going to the cloud, can be as  
12 effective -- as important as the last -- as the last  
13 mile out to the customer prem. So, we would hope to  
14 and we look forward to the opportunity to get some of  
15 that business.

16                   Number two, we are very technology  
17 agnostic ourselves. We today offer wireless broadband  
18 in the Midwest to our customers today. We have  
19 developed and deploy today a community WiFi. One of  
20 our communities came to us and they asked us to build  
21 and deploy a community WiFi. And, the answer was, you  
22 know, and "so, what sort of revenue is there here for  
23 us in a small community?" And, they said "well just,  
24 you know, you build it and the customers will come."



1 And, I've seen that movie. And, rather than saying  
2 "no", we said "how could we do this together?" And,  
3 the community went and got grants to participate.  
4 FairPoint has now built, designed and will operate a  
5 community WiFi in a small community. The community has  
6 guaranteed a certain revenue stream to cover the cost,  
7 and then there's a revenue share above that. And, so,  
8 what we look to be is more than just a vendor of just a  
9 dry pipe, if you will. How can we add value? So,  
10 we'll add value, whether it's to be a capacity  
11 provider, we would add value to be a collaborative  
12 company that can help provide the actual service. And,  
13 at the end of the day, you know, there may be  
14 competitive offerings. But I also go back to the point  
15 that we support growing the business. And, the analogy  
16 may or may not work, but you often find McDonald's and  
17 Burger King on cross corners. And, they do that simply  
18 because it drives business. My underlying belief is  
19 that we need to drive business to New Hampshire, Maine  
20 and Vermont. And, the way you do that is by expanding  
21 the broadband availability. And, we want to be, you  
22 know, part of the equation. We'd like to be a catalyst  
23 for that, if you will, but understand there are other  
24 providers who can help get us there.

1 Q. Thank you. Technology, such as VoIP by Vonage or a  
2 different form from a company called UMA, do you see  
3 that affecting your total line count, plus your long  
4 distance charges?

5 A. Certainly, I think over time, as customers look at  
6 different ways to complete and to make calls, we expect  
7 that they will be migrating, in some cases, over to a  
8 voice-over IP. But, if there's no IP, they don't get  
9 to have voice-over IP. Our objective is to get them  
10 the IP. So, we look at purely as "how can we deploy  
11 that?" Recognizing that could be an unintended  
12 consequence. We believe the greater good is to get the  
13 broadband out to the customer as quickly as possible,  
14 and recognizing that there might be those who would  
15 like to use that then for their voice -- voice traffic.  
16 And, we recognize that. But, again, we also believe  
17 that there will be vertical services that we'll be able  
18 to deploy over the broadband network. And, at the end  
19 of the day, that we are not going to position ourselves  
20 as a "plain old telephone service" company. Our goal  
21 and our objective is to provide -- to position  
22 ourselves as a data company that also provides  
23 telephone service. And, that does not mean that we  
24 have a less of an interest in providing high quality

1 telephone service, meeting the service quality  
2 objectives. It's just a recognition that we have to  
3 change as quickly as our customers are changing. And,  
4 you know, that's got to be the commitment.

5 Q. You mentioned earlier that you have a WiFi community.  
6 Where is that community?

7 A. Westfield, New York.

8 Q. Thank you. Does the Company have any plans to become a  
9 cellular carrier?

10 A. We do not have any plans to be a facility-based  
11 cellular carrier. We do have an option to be a  
12 reseller, and -- well, that would be it. We do have  
13 the opportunity to be a reseller.

14 Q. In terms of dollars, if the transaction is rejected,  
15 what will be the cost to FairPoint? How much are you  
16 losing?

17 A. I'm not sure we have disclosed all that, certainly not  
18 in public, what we're spending.

19 CMSR. MORRISON: I would take that as a  
20 highly confidential document record request please.

21 MR. COOLBROTH: Sure.

22 CHAIRMAN GETZ: What number are we at?

23 MS. O'MARRA: Sixty-four.

24 MR. BAUM: We actually have provided a

1 few more today. So, I think the last would be 70. This  
2 would be 71. Including what I gave you this morning.

3 MR. McHUGH: We can clear that up during  
4 the break, Mr. Chairman.

5 CHAIRMAN GETZ: I'm sorry.

6 BY CMSR. MORRISON:

7 Q. This will probably also result in a record request.

8 But I'm wondering, what is the total amount of shares  
9 that would go to current staff, if this transaction is  
10 approved?

11 A. None.

12 Q. There are no bonus guarantees?

13 A. You said "shares", right?

14 Q. Yes, shares. In terms of shares.

15 A. No. There is no new plan that's been initiated. There  
16 was a -- and they're all listed in the S-4, but there  
17 is a current restricted stock offering that the senior  
18 executives have, but those were initiated and started  
19 beforehand. And, there's nothing that's due coincident  
20 with the close. There is, as I mentioned yesterday, a  
21 bonus, but not a stock bonus, if you will.

22 Q. Are you aware of any retirements among senior staff or  
23 board of directors in the next two years? Has anybody  
24 made any statements, public or private?

1 A. I think, as we talked about with Mr. Johnson, he  
2 indicated that his employment agreement expires next  
3 year. And, he has not announced his retirement, and I  
4 think sometimes that's been confused with his  
5 retirement date, but he has not announced it.

6 CMSR. MORRISON: Thank you. That's all  
7 the questions I have.

8 CHAIRMAN GETZ: Commissioner Below.

9 CMSR. BELOW: Thank you, Mr. Chairman.  
10 Good morning, Mr. Nixon.

11 WITNESS NIXON: Good morning.

12 **EXAMINATION BY CMSR. BELOW**

13 BY CMSR. BELOW:

14 Q. I think you referred to the possibility of reselling  
15 wireless service, I think somebody else's testimony  
16 from FairPoint referred to it as "branded wireless  
17 service". Could you just elaborate a little bit on  
18 what that might mean?

19 A. Certainly. I think it's called "MVNO" is the acronym.  
20 But what it would allow FairPoint to do is to buy  
21 cellular service from, in this case, Verizon Wireless,  
22 and brand it as "FairPoint". There is a couple  
23 different ways you can offer this. You can be a  
24 facility-based provider with your own name, your own

1 brand. You can be an agent for a company, which I've  
2 done in the past, and all you're doing is you're  
3 selling somebody else's service and getting a  
4 commission back, but you're selling that party's name.  
5 Or, you can be a reseller. And, by being a reseller,  
6 similar to what we do with long distance, is that we  
7 will be reselling long distance service, branding as  
8 our name, but as a resold product, similar to how we do  
9 it here.

10 Q. Okay. And, that would allow you to package it with  
11 other services and things like that?

12 A. It would indeed.

13 Q. And, would you be considering deploying fixed wireless  
14 broadband service in areas where you can't reach with  
15 DSL?

16 A. We have already engaged conversations with wireless  
17 providers to see if we could either do that ourselves  
18 or through a collaborative effort.

19 Q. Okay. And, do you expect that your MSAN facilities  
20 might provide opportunities for wholesale connections  
21 to the Internet for other providers?

22 A. I would say that we would offer those as required and  
23 obligated under the rules. And, I'm not sure that  
24 gives anybody any more of an opportunity or not. You

1 know, we would meet the rules and regulations as  
2 required under the 214 Checklist.

3 Q. Okay. But, from just a technical perspective, the  
4 deployment of MSANs in most, if not all of, COs  
5 improves the opportunity either for yourselves or  
6 potentially wholesale to use different means,  
7 technologies to connect to broadband connections  
8 between offices and back to a central point?

9 A. Boy, I'm not sure I'd be the one to ask in terms of,  
10 from a technological perspective, if they would have to  
11 collocate different type of equipment to do a drop and  
12 insert, I'm probably not the one. Again, I want to  
13 make a -- distinguish, and I think you did, between a  
14 technical capacity, as opposed to a regulatory  
15 obligation.

16 Q. Okay. Do you -- At this point, does FairPoint  
17 anticipate or have any plans to migrate voice traffic  
18 from the current circuit switched network to the  
19 IP/MPLS network?

20 A. I will have to check to see if we -- to see if we're  
21 going to be using that network to bring back the voice  
22 traffic to the switch. And, I want to distinguish  
23 something for a minute. Distinguishing between what  
24 you asked about and pure VOIP. And, pure VOIP, if you

1 will, bypasses that circuit switched network from the  
2 public switched telephone network out to the  
3 terminating end. You know, we may very well be  
4 utilizing this network to process traffic back from the  
5 customer's prem back to our central office. That's  
6 very possible. Now, but again, I want to distinguish  
7 between that and pure VOIP then, which just takes it  
8 completely off net.

9 Q. Right. Okay. Well, you know, I probably should have  
10 asked this back of the panel of Brown, Harrington and  
11 Smee. But perhaps you could provide a data response on  
12 that question, to what extent you're anticipating or  
13 planning that voice traffic might migrate to the MPLS  
14 network?

15 A. Okay. And, again, just so I'm clear on the request, to  
16 migrate to the MPLS network we're going to deploy here  
17 is limited to the local three-state MPLS network. And,  
18 we'll be happy to get that for you.

19 Q. All right. Okay.

20 CHAIRMAN GETZ: Do you have that, Mr.  
21 Coolbroth?

22 MR. COOLBROTH: Yes, we do.

23 WITNESS NIXON: Good, because I didn't  
24 write it down. Thank you.



1 BY CMSR. BELOW:

2 Q. In your rebuttal testimony, on Page 7, you did a update  
3 to your testimony on line 12 to change the 100,000  
4 figure to 57,000, in terms of the anticipation that  
5 there would be over 57,000 additional access lines that  
6 will be broadband addressable within two years of  
7 closing, is that correct?

8 A. I think that question was asked of Mr. Brown yesterday,  
9 "how did we go from the original plan to this plan?"  
10 And, I believe he said "it was a combination of a  
11 couple factors." And that, based upon our current  
12 plan, over 57,000 is the number that we're projecting  
13 that we'd be able to have that would be available.

14 Q. And, I take it that 57,000, which you changed to  
15 conform with that update, that's presumably based on  
16 your sort of minimum goal of expanding the number of  
17 qualified broadband lines from 61 percent to at least  
18 about 71 percent. Is that your understanding?

19 A. That is correct.

20 Q. And, so, if you were to achieve the upper range of your  
21 goal, which is up around 82, 83 percent, which you  
22 think the upper end might be achievable, then that  
23 57,000 figure would grow to over 100,000, is that  
24 correct?

1 A. Subject to check. We'd have to do the math. And, if I  
2 might, --

3 Q. Yes.

4 A. -- could I expound on that a little bit? Today, and  
5 again, just to compare the Verizon approach to DSL,  
6 which is similar to the approach used in the industry  
7 across the country, is one of providing DSL out to  
8 18,000 feet, because of the surety of being able to  
9 give that kind of speed. Because FairPoint serves many  
10 rural parts of the country and small urban centers,  
11 it's been our experience that customers would like to  
12 get broadband, to the extent that they can. And,  
13 somebody using dial-up today would love to get 384,  
14 768, 1 Meg. They would just like to get more than what  
15 they have today. Our effort and our approach to  
16 broadband then is that we don't want just an  
17 18,000-foot limitation to be a barrier to getting  
18 broadband service to the customers. And, so, what  
19 you've got is what you just said. The 57,000 is the  
20 lower end of the book end, this approach that we use,  
21 the 83 percent is the upper end. And, what that  
22 conforms to, our sort of philosophical approach to  
23 broadband, which is you get it out as fast as you can  
24 to as many people as you can, recognizing that there

1 are people who might live beyond 22, 25,000 feet, who  
2 would experience less than a 1.5 megs. And, again, our  
3 experience is there are people out there who would love  
4 to get what they can until technology can allow us to  
5 get up to 1.5 megs. But, so far, people would just  
6 like to get broadband.

7 Q. As you're probably aware, Northern New England can face  
8 extreme weather, such as ice storms, hurricanes, or  
9 extreme nor'easters that can take down a large number  
10 of lines and poles sometimes, too, in a single event.  
11 I know you've referenced your plan to develop a  
12 business continuity plan. But, as you know, or may  
13 know, I think most, if not all, of the electric  
14 utilities in New Hampshire have affiliates and/or  
15 nonaffiliates from outside of the Northern New England  
16 region, who can provide backup or line crews to help  
17 restore lines and set new poles, in the event of such a  
18 large area event.

19 My question is, does FairPoint now have  
20 such relationships or do you plan to develop  
21 relationships where you can bring in the additional  
22 line crews to help restore lines, communication lines  
23 and poles, those that you're responsible for, in the  
24 event of such a large-scale outage?

- 1 A. Yes, good question. Let me answer it in two ways.  
2 First, I grew up on the shores of Lake Erie. So, I'm  
3 very familiar with the cold weather months, even though  
4 I'm from Charlotte. We today have relationships across  
5 the FairPoint classic companies, where we will dispatch  
6 and we have dispatched companies, whether it's the  
7 panhandle of Florida for a hurricane, or up in New  
8 England, if there is bad inclement weather in the  
9 winter. We are in the process right now of entering  
10 into mutual aid agreements with other companies that  
11 will allow us to bring companies in from outside of the  
12 impacted area to provide us the resources that you just  
13 alluded to. And, so, we're doing that, and we'll have  
14 that in place prior to the end of this year.
- 15 Q. Okay. And, what -- do you have a sense of what the  
16 upper limit or minimum, what the range might be of  
17 additional crews that might be available to you, in  
18 such a -- in an extreme emergency, assuming the places  
19 where you have some reciprocal arrangements don't also  
20 have a need?
- 21 A. Right. I don't at this time. We will, and I'd be  
22 happy to share that document with you that will give  
23 that kind of specificity. I do not have that at the  
24 time. But we are developing that business continuity

1 plan, understanding the geography involved and the span  
2 of potential impact. As well as the history of the ice  
3 storms in the past and sort of the widespread impact  
4 that it has. So, we take all of that in consideration.  
5 And, we'd be happy to provide you a copy of that plan  
6 when we're towards the end of the year.

7 Q. Okay.

8 CHAIRMAN GETZ: Did we already reserve a  
9 exhibit for that, the document that's --

10 WITNESS NIXON: I think we did.

11 CHAIRMAN GETZ: -- planned to be ready  
12 in December?

13 WITNESS NIXON: I think we did.

14 BY CMSR. BELOW:

15 Q. I think, on Page 23 of your prefiled rebuttal  
16 testimony, at the top of the page you list five places  
17 in Northern New England where you expect most new hires  
18 to be located, Portland and Bangor, Maine; Manchester,  
19 Littleton, New Hampshire; Burlington, Vermont. I think  
20 you've said that you expect that most, if not all, new  
21 employees will be located in premises that you'll own  
22 after close, if this deal closes. Is that correct?

23 A. That's correct.

24 Q. So, you'll -- the amount of office space you'll need to

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1 lease is minimal, there might be some, but not a whole  
2 lot?

3 A. Fairly minimal.

4 Q. Okay. Could you characterize what each of these five  
5 locations might specialize in, if you know that or do  
6 you know that? If there's particular groups that will  
7 -- specialties that will focussed in some of these five  
8 locations?

9 A. Let me take a crack at it.

10 Q. Okay.

11 A. And, this is as it is today. Understanding that this  
12 continues to be an evolving business and evolving need.  
13 If we take a look, for instance, at Littleton, that  
14 would -- our current design would indicate that would  
15 be collections center. So, it would be, primarily, I  
16 think that would be the primary group up there.

17 Q. Which would mean bills, processing bill payments?

18 A. It would be to contact and work with folks that have  
19 not paid or are delinquent on the bills and work out  
20 payment arrangements with them.

21 Q. Oh. Okay.

22 A. Manchester, a couple different work groups, the largest  
23 work groups would be two-fold. One would be the data  
24 center and the other would be our network operations

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1 center. And, we have other ancillary organizations  
2 that would go along with that. Boy, I tell you, and  
3 the remainder, in Burlington, I believe that there's  
4 going to be a fairly large wholesale group there.  
5 There will be some engineers there. I know, boy,  
6 I'm -- and, across all, across the sites we'll have the  
7 HR distributed, so they're close to the work groups.  
8 We would have the -- I think right now we're planning  
9 to have HR and legal over in the Portland area. And,  
10 the Bangor, I think eventually the plan there is to  
11 have -- part of that would be an outbound telemarketing  
12 group. And, I think that's in broad case what that is.

13 CMSR. BELOW: Okay. I think that's all.

14 Thank you.

15 CHAIRMAN GETZ: Commissioner Morrison.

16 **EXAMINATION BY CMSR. MORRISON**

17 BY CMSR. MORRISON:

18 Q. Mr. Nixon, I have one more question, or actually one  
19 more request. Could you provide me with whatever press  
20 releases that FairPoint issued associated with your  
21 WiFi deployment in Westfield?

22 A. Sure.

23 CMSR. MORRISON: Thank you.

24 WITNESS NIXON: Fred, can you --

1 MR. COOLBROTH: Yes.

2 WITNESS NIXON: Okay. I can do that.

3 CHAIRMAN GETZ: Redirect?

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

5 **REDIRECT EXAMINATION**

6 BY MR. COOLBROTH:

7 Q. Mr. Nixon, do you recall yesterday having testified  
8 with regard to the Company's position on a possible  
9 extended period in which the Company would agree not to  
10 raise rates, and, correspondingly, there would be an  
11 agreement not to decrease rates? Do you recall that?

12 A. I do.

13 Q. And, I think you referred to that as a "stay-out  
14 period" in your mind?

15 A. I did.

16 Q. And, it could extend to two to three years?

17 A. Under certain mutual stay-outs, that was correct.

18 Q. And, you were also asked about how temporary rates  
19 might function during that stay-out period?

20 A. I remember the conversation.

21 Q. And that, if I were to tell you that one possible  
22 consequence of temporary rates is that existing rates  
23 could be made temporary, in which case, at the end of  
24 the stay-out period, there could be a retroactive



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1 adjustment. Did you have that in mind when you were  
2 being asked about temporary rates?

3 A. Absolutely not. The concept there is the existing  
4 rates as they are through that period, without any sort  
5 of resetting of those rates in the future.

6 Q. So, in your mind, the stay-out period, there would be  
7 no change in either permanent rates or the imposition  
8 of temporary rates or addition of new temporary rates  
9 during that stay-out period?

10 A. That's correct.

11 MR. COOLBROTH: That completes our  
12 redirect, Mr. Chairman.

13 CHAIRMAN GETZ: Okay. Thank you. I  
14 think at this point we'll go, just one line of inquiry  
15 that's confidential --

16 MS. FABRIZIO: Just one question.

17 CHAIRMAN GETZ: -- just one question  
18 that's confidential. Let's go into the confidential  
19 record, and then I think we would take the morning recess  
20 after that and resume at 11:30. So, if there is anyone in  
21 the room who's not privy to information that will be on a  
22 confidential record, I please ask that they leave the room  
23 at this time.

24 (PUBLIC HEARING RESUMES AT PAGE 81)

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1 (PUBLIC HEARING RESUMES FROM PAGE 77)

2 (Hearing reconvened at 11:37 a.m.)

3 CHAIRMAN GETZ: Please be seated. Okay.

4 Good morning. We're back on the record in 07-011.

5 Mr. Del Vecchio?

6 MR. DEL VECCHIO: Thank you,

7 Mr. Chairman. One administrative matter. We distributed,

8 among others, Exhibits 23C, 24C and 25C this morning.

9 They are confidential. I do not believe we distributed  
10 them in yellow folders, however, so I would just like to  
11 highlight that for the Commission and the parties.

12 CHAIRMAN GETZ: Okay. Thank you. All  
13 right, so let's...

14 MS. HOLLENBERG: Excuse me,

15 Mr. Chairman. I just wanted to follow up and close the  
16 loop on an issue that arose when I was questioning a  
17 FairPoint witness earlier and I asked about an estimate of  
18 the broadband expansion costs that would be associated or  
19 assigned to intrastate operations. I believe we did  
20 assign a record request number 52. And at that time, the  
21 Commission asked FairPoint and the OCA to discuss whether  
22 or not FairPoint would be able to provide an estimate of  
23 those costs. And I'm informed, by Mr. McHugh, that that  
24 will be possible and he expects that the answer will be

1 provided sometime early next week.

2 CHAIRMAN GETZ: Okay. Thank you.

3 Let's see. Let me just try to recap on  
4 where we're headed here with Mr. Falcone and Mr. King.  
5 And I expect that we would do the cross-examination first  
6 of their prefiled testimony and, then, once that that's  
7 complete, focus on the third-party independent monitor  
8 agreement. And then, to the extent we need to bring  
9 Mr. Nixon into that conversation, we'll do that.

10 And once that's completed, next would be  
11 the Electric panel -- the Hybsch, Meissner, Warren panel,  
12 which I'm hopeful we'll get to today -- and then follow up  
13 with Mr. Nestor, who would be related to those electric  
14 issues, and then Dr. Peres and Ms. Baldwin. I don't  
15 expect we're going to get that far today. I guess we'll  
16 just have to see how things progress. And after that, I  
17 think the only remaining witness would be Mr. Pelcovits.

18 So I guess we'll just -- I don't know  
19 what the likelihood is of completing tomorrow, but it  
20 seems to me there's a fair possibility we may go into  
21 Thursday morning. So I just wanted to put that out there  
22 for everyone and does anyone has any suggestions, any  
23 concerns that they need to address?

24 MR. COOLBROTH: Mr. Chairman, the OCA is

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1 expressing interest in some further cross examination of  
2 Mr. Brown regarding the updated broadband plan. We could  
3 have him back here tomorrow. He has to drive over from  
4 Portland, so it would be convenient if we could have a  
5 time of day, roughly, when that examination might take  
6 place.

7 CHAIRMAN GETZ: Well, that appears to be  
8 a discrete piece. Does it make sense to do that first  
9 thing tomorrow morning?

10 MR. COOLBROTH: We can do that.

11 CHAIRMAN GETZ: All right. Anything  
12 else to...?

13 MS. FABRIZIO: Mr. Chairman, I'm sorry,  
14 I did receive an e-mail from Mr. Sawyer, who represents  
15 the CLECs who signed the stipulation agreement, and one of  
16 his witnesses would like to cross-examine Ms. Griffin, who  
17 is a witness on behalf of the Town of Hanover.

18 CHAIRMAN GETZ: Okay. I'm sorry. One  
19 of Mr. Sawyer's witnesses would like -- how did you put  
20 that?

21 MS. FABRIZIO: You're right. I  
22 shouldn't have put it that way. Mr. Sawyer would like to  
23 ask a few cross-examination questions of Ms. Griffin.

24 CHAIRMAN GETZ: Okay. Then, I guess we

1 just need to communicate with Mr. Ciandella that not  
everybody signed off and, if we could -- he could produce  
her, then we'll take care of that tomorrow or the next  
4 day.

5 MS. FABRIZIO: Okay. Thank you.

6 CHAIRMAN GETZ: Okay. All right. Is  
7 that it?

8 MS. FABRIZIO: Yes.

9 CHAIRMAN GETZ: Okay. Could you swear  
10 the witnesses, please?

11 **CHARLES H. KING, Jr., Ph.D., Sworn**

12 **ROBERT V. FALCONE, Sworn**

13 **DIRECT EXAMINATION**

14 BY MS. FABRIZIO:

15 Q. Mr. King, could you please state your full name for the  
16 record?

17 A. (King) Yes. Charles H. King, Junior.

18 Q. And by whom are you employed?

19 A. (King) Liberty Consulting.

20 Q. What is your business address?

21 A. (King) 43 Manor Drive, Basking Ridge, New Jersey.

22 Q. Thank you. And Mr. Falcone, could you please state  
23 your full name for the record?

24 A. (Falcone) Robert Vincent Falcone.

1 Q. And by whom are you employed?

2 A. (Falcone) I'm self-employed. I'm under contract for  
3 Liberty Consulting.

4 Q. And what is your business address?

5 A. (Falcone) It's 9 Ashwood Trail, Long Valley, New  
6 Jersey.

7 Q. Thank you. And are you the same Mr. Falcone and  
8 Mr. King who filed joint direct testimony on behalf of  
9 Staff on August 1st in this proceeding?

10 A. (King) Yes.

11 A. (Falcone) Yes.

12 MS. FABRIZIO: I would like to note that  
13 joint testimony by Messrs. Falcone and King are marked as  
14 Staff Exhibit No. 3.

15 And Mr. Chairman, I'd also like to note  
16 that Staff Exhibits 44 through 58, which were marked for  
17 identification and distributed yesterday to parties,  
18 consist of source documents referenced in the joint  
19 testimony of Messrs. Falcone and King.

20 CHAIRMAN GETZ: Okay.

21 BY MS. FABRIZIO:

22 Q. Messrs. King and Falcone, do you have any changes to  
23 your testimony?

24 A. (Falcone) Yes, just one. If you go to page 81, on line

1 number 2, the middle of the sentence currently says,  
2 "Confidential Attachment, Staff G, Roman numeral  
3 1:1-2," and it should say, "Confidential Attachment,  
4 Staff G, Roman numeral 1:FDR1-2."

5 Q. Thank you. And does that complete the changes?

6 A. (Falcone) Yes, that's the only change.

7 Q. And do both of you, Mr. King and Mr. Falcone, adopt  
8 this joint testimony today as accurate and true, to the  
9 best of your knowledge, information and belief?

10 A. (King) Yes.

11 A. (Falcone) Yes.

12 MS. FABRIZIO: Thank you. The witnesses  
13 are available for cross.

14 CHAIRMAN GETZ: Okay. My notes indicate  
15 that Mr. Mandl, Ms. Hatfield and FairPoint are interested  
16 in cross-examining this panel; is that correct?

17 MR. RUBIN: Mr. Chairman, that's  
18 correct. Based on the witnesses' prefiled testimony, I  
19 expect that I will have some questions for them about  
20 Staff Exhibit 61, when we get to that.

21 CHAIRMAN GETZ: Okay. That's fine.

22 MR. MCHUGH: And, Mr. Chairman,  
23 FairPoint has no questions of these witnesses at this  
24 time.

1 CHAIRMAN GETZ: Okay. All right. Then,  
2 let's begin with you, Mr. Mandl.

3 MR. MANDL: Just a point of  
4 clarification on the record. I believe there may have  
5 been a confidential and a public version of this panel's  
6 testimony and I just wanted to confirm that.

7 MS. FABRIZIO: In fact, I think there  
8 were three levels: Highly confidential, confidential, and  
9 public.

10 MR. MANDL: I only saw two, so two is  
11 fine. I just wanted to make sure that whatever needed to  
12 be designated was designated as to the other two levels of  
13 their testimony.

14 MS. FABRIZIO: Yes.

15 MR. MANDL: Okay. Thank you.

16 **CROSS EXAMINATION**

17 BY MR. MANDL:

18 Q. I'm going to be looking at the public version of your  
19 testimony and hopefully I'll get the page numbers  
20 correct.

21 I would first like to ask you, is it  
22 fair to say that, in Mr. Antonuk's supplemental  
23 testimony, he's incorporated as recommendations to the  
24 Commission a number of the points that have been raised



1 in your joint testimony?

2 A. (King) That is correct.

3 Q. Now, is it your understanding that Liberty, you know,  
4 has recommended a merger-approval condition regarding  
5 DSL availability requirements within 18 months after  
6 closing, as well as 24 months after closing?

7 A. (Falcone) Could you restate the question? I'm sorry.

8 Q. Is it fair to say that Liberty has recommended a merger  
9 approval condition that would require FairPoint to  
10 achieve certain DSL availability requirements 18 months  
11 after closing, based on a certain percentage, and then  
12 at 24 months after closing, another percentage?

13 A. (Falcone) That's correct.

14 Q. And from your review of the FairPoint testimony, is it  
15 your understanding that FairPoint has asked that it be  
16 relieved from compliance with retail quality-service  
17 standards for a period of 24 months after cutover?

18 A. (Falcone) That's correct.

19 Q. And is it also your understanding that FairPoint has  
20 entered into a memorandum of understanding with  
21 joint-pole owners that would afford it 42 months from  
22 the date of closing to address double-poling problems?

23 A. (Falcone) I know that there's been an agreement with  
24 those parties, but I couldn't attest to the 42 months.

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1 Q. All right. Now, am I correct that Liberty collectively  
2 has recommended a retail rate freeze of three years?

3 A. (King) That's correct.

4 Q. And you've also made recommendations that would provide  
5 wholesale customers with both rate stability and  
6 stability as to the wholesale operating environment; is  
7 that correct?

8 A. (King) That's also correct.

9 Q. Now, would you agree that Liberty has also recommended  
10 several merger conditions that FairPoint would be  
11 required to satisfy within 12 months after the date of  
12 closing?

13 A. (Falcone) Perhaps you could be more specific.

14 Q. If we were to look at -- I believe it's Attachment A  
15 to -- excuse me -- Exhibit A to Mr. Antonuk's  
16 supplemental testimony, where he sets forth a number of  
17 conditions.

18 A. (King) Yes.

19 Q. Thank you.

20 A. (King) I mean, yes, we have the exhibit.

21 Q. Okay.

22 A. (King) If you could point us to the particular area  
23 that you're looking at.

24 Q. Yeah. If you could -- it's -- if you could take a few

1 seconds and just familiarize yourself with that  
2 document and then just indicate whether you agree that  
3 Liberty has recommended some merger conditions that  
4 FairPoint would need to satisfy within 12 months after  
5 the closing date.

6 A. (King) There are some that would be met -- that we  
7 would recommend to be met within 12 months and some  
8 longer than 12 months.

9 Q. Right. And in some cases, you've recommended  
10 conditions that FairPoint would be required to meet  
11 prior to the merger closing?

12 A. (King) Yes, there are some conditions that would have  
13 to be met prior, that's correct.

14 Q. In the case of conditions that you propose to be met  
15 prior to merger closing, could compliance with those  
16 conditions result in a delay in the merger closing  
17 date?

18 A. (King) Conceivably. But it was our thought that they  
19 could be accomplished without any delay.

20 Q. All right. Fair enough. Now, in Exhibit A to  
21 Mr. Antonuk's supplemental testimony, Liberty  
22 recommended that, for three years after close, there be  
23 no change in FairPoint's wholesale obligations. Does  
24 that sound familiar?

1 A. (King) Let me just review a second.

2 Yes, that is correct.

3 Q. Okay. And in your testimony, I believe you had  
4 recommended some type of five-year period in which  
5 FairPoint's wholesale obligations would remain  
6 unchanged?

7 A. (Falcone) Do you happen to have that specific cite and  
8 testimony, Mr. Mandl?

9 Q. Let's see. I believe it's toward the end of your  
10 testimony, page 124 at lines 17 through 19.

11 A. (King) Yes, that is correct.

12 Q. Now, in terms of the three-year recommendation that's  
13 contained in Mr. Antonuk's supplemental testimony,  
14 would an extension of wholesale interconnection  
15 agreements, including those that are in effect on a  
16 month-to-month basis for three years from the date of  
17 closing, be consistent with the Liberty Group's  
18 recommendation as described in Mr. Antonuk's testimony?

19 A. (King) I would -- as long -- I mean, the particular  
20 recommendation is that there would be no change in the  
21 obligations. So, if that's a way to accomplish that,  
22 that's fine.

23 Q. All right. Thank you. Would the adoption of a retail  
24 rate freeze for a period of three years, without a

1 similar wholesale rate freeze, create any risks of  
2 adverse impacts on competition in New Hampshire?

3 A. (Falcone) Potentially.

4 Q. Thank you. Now, from your experience, would you agree  
5 that the negotiation and arbitration of interconnection  
6 agreements is a resource and time-intensive process?

7 A. (Falcone) Yes, I would agree with that.

8 Q. And would you consider it to be a negative if FairPoint  
9 were required to divert resources to such  
10 interconnection negotiations and arbitrations within a  
11 year after merger closing, given the other commitments  
12 that you have recommended and FairPoint's own  
13 commitments regarding broadband expansion, retail  
14 service quality, and the need to address double-poling  
15 issues?

16 A. (Falcone) That's a difficult question to answer. We  
17 certainly can't speak for FairPoint's resources. But  
18 we've heard from Mr. Nixon and other FairPoint  
19 witnesses how the wholesale business is going to be an  
20 important part of their business strategy, so I would  
21 have to assume that FairPoint would commit whatever  
22 resources it needed to commit to and negotiate  
23 interconnection agreements with its wholesale trading  
24 partners.

1 Q. Would you agree that if FairPoint did not have to  
2 expend resources on interconnection agreement  
3 negotiations and arbitrations for a period of three  
4 years after merger and closing, that would provide  
5 FairPoint with additional resources to apply to  
6 operational needs, such as retail service quality,  
7 broadband expansion, and addressing double-poling  
8 issues?

9 A. (Falcone) Well, I tend to think it would be a different  
10 group of people. The person who's going to be  
11 negotiating an interconnection agreement with a  
12 wholesale trading partner is not going to be the same  
13 person who's out deploying broadband facilities. So  
14 that's a difficult question, again, to answer.

15 If it would be that those resources  
16 could be used for something else and they wouldn't have  
17 to hire those resources, perhaps. But certainly, it's  
18 not going to be the same group of people doing those  
19 different diverse functions that you just laid out.

20 Q. Right. But, hypothetically, if FairPoint did not need  
21 to spend a million dollars on interconnection agreement  
22 negotiations, arbitrations and TELRIC studies, it would  
23 have a million dollars to spend on something else.

24 A. (King) Hypothetically.

1 Q. Thank you. Based on your testimony, have you indicated  
2 that FairPoint might encounter difficulties after  
3 cutover, given your experience with the Hawaiian  
4 Telecom situation described in your testimony?

5 A. (Falcone) Well, if -- again, there is ample opportunity  
6 for problems to exist, yes. And that is one of our  
7 concerns that we lay out in our testimony, right.

8 Q. Would you agree that, after closing, FairPoint will  
9 need time to staff and train employees that are needed  
10 to operate the local exchange and wholesale operations  
11 that it would be taking over from Verizon?

12 A. (Falcone) Yes. And I believe FairPoint witnesses have  
13 indicated that, also.

14 Q. And similarly, FairPoint will need to staff and train a  
15 group to handle pole and conduit licensing?

16 A. (Falcone) Yes, that's my understanding.

17 Q. If you could turn to page 104 of your testimony and if  
18 I could refer you to your -- to lines 17 through 22,  
19 would you agree that FairPoint should be required to  
20 provide non-discriminatory service to wholesale  
21 customers?

22 A. (King) Yes.

23 Q. Would you also agree that competition in retail  
24 customer choice could be adversely affected if

1 FairPoint extended more favorable rates and terms to a  
2 subset of wholesale customers than it extended to  
3 another subset of wholesale customers?

4 A. (King) Not necessarily. It depends on the different  
5 conditions. I mean, the key is that there be some form  
6 of competition to have alternative means to serve the  
7 retail customers.

8 Q. If you could turn to page 106 of your testimony,  
9 starting at the top of the page, you cited FairPoint's  
10 lack of experience in providing the full range of  
11 wholesale local service offerings; correct?

12 A. (King) That's correct.

13 Q. And would you regard it as beneficial and in the public  
14 interest if there were a period of stability that  
15 enabled FairPoint to develop its wholesale  
16 organization, develop working relationships with  
17 wholesale providers, and develop experience with its  
18 new systems?

19 A. (Falcone) I'm not sure what you mean by "a period of  
20 stability." FairPoint takes -- for example, if  
21 FairPoint -- if this deal is closed, FairPoint is going  
22 to be responsible for dealing with those wholesale  
23 providers, wholesale customers that it has. So I'm not  
24 sure what you mean by "a period of stability," because



1 FairPoint also needs to do many other things after  
2 close.

3 Q. In your testimony, haven't you stated that it's  
4 important that there be a period of stability with  
5 respect to wholesale customers following the merger  
6 transaction?

7 A. (King) Can you point to the passage you're talking  
8 about?

9 Q. Rather than me hunt for it, I'll just ask you if you  
10 could take that subject to check and I may find the  
11 reference for you.

12 MS. FABRIZIO: Mr. Chairman, actually,  
13 we have located the cite. It's on page 115 of the joint  
14 testimony, toward the bottom of the page.

15 A. (King) Yes. I believe the cite that you're talking  
16 about is, "In order to maintain the vital competitive  
17 market in New Hampshire, FairPoint must make this  
18 transition as smooth as possible for wholesale  
19 customers and maintain a stable operating environment  
20 for them."

21 And the notion that we were trying to  
22 address there was to make sure that there are no  
23 service interruptions and other -- other aspects that  
24 have to do with the transition, not only for wholesale,

1 but also for retail customers.

2 Q. And if we took a look at page 124 of your testimony for  
3 a moment, you had proposed -- that is, Liberty had  
4 proposed -- Commission requirements that FairPoint  
5 maintain what Verizon offers and not seek any changes  
6 in wholesale obligations for a period of five years  
7 after closing.

8 A. (King) That's in the testimony, yes.

9 Q. Yes. If we could turn to page 110 of your testimony.  
10 And if I could refer you to lines 5 through 7, you  
11 state there that CLECs should not be forced to bear the  
12 expense of such system changes and training simply  
13 because of an ownership change of the incumbent local  
14 exchange carrier.

15 A. (King) That is correct.

16 Q. Now, in terms of the expenses of system changes, would  
17 you include E-bonding, labor and related costs that the  
18 CLECs would have to incur in order to have that type of  
19 interface with FairPoint?

20 A. (Falcone) Well, there's certainly some costs that the  
21 CLECs will have to bear to transition their current  
22 E-bonding system over.

23 But what we were talking about here  
24 referencing was any development costs for a new

1 E-bonding system or a new interface or a WebGUI. You  
2 know, we're envisioning the costs to be minimal that  
3 would require -- assuming, again, based on what we've  
4 heard from FairPoint, that they're going to follow  
5 industry standards and they're going to change as  
6 little as possible from what Verizon currently offers,  
7 there would be some costs that would be appropriate.

8 Q. Now, would you include, among those costs, costs  
9 incurred by CLECs with regard to FairPoint's need to  
10 adopt new point codes after giving back to Verizon  
11 Verizon's point codes?

12 A. (Falcone) I understand that there's new point codes and  
13 all the switches need to be changed to point codes.  
14 Again, I see that as a cost of doing business. I  
15 don't -- I couldn't put a dollar figure as to what the  
16 CLECs' cost would be to change those point codes to  
17 comply, but I don't see that as being very significant  
18 effort.

19 Q. But you'd agree that those would be expenses incurred  
20 simply because of an ownership change?

21 A. (Falcone) Yes, that's correct.

22 Q. If we could refer to your testimony again at page 110  
23 at the bottom and going over to the top of page 111,  
24 you've indicated that the cutover target dates of

1 FairPoint, as with other dates associated with the  
2 transition, appear to you to be unrealistically short;  
3 is that correct?

4 A. (King) That is correct.

5 Q. Now, I'd like to try to understand a little bit more  
6 about your recommended conditions on page 124 of your  
7 testimony. You discuss FairPoint being required to  
8 commit not to seek, for five years, any change in  
9 wholesale obligations through such means as forbearance  
10 or other regulatory waivers.

11 Was it your intention to recommend that,  
12 after this five-year period, FairPoint would be allowed  
13 to seek regulatory waivers that it would be prohibited  
14 from seeking during that five-year period?

15 A. (King) We made no recommendation as to what should  
16 happen after the five-year period.

17 Q. All right. So FairPoint has entered into a settlement  
18 agreement with several CLECs, containing provisions  
19 whereby it will not seek suspensions or modifications  
20 of it's Section 251 interconnection obligations as a  
21 so-called 2 percent carrier. And as I read that  
22 settlement agreement, that's a permanent commitment.  
23 Would you find that acceptable?

24 A. (King) We certainly have no problem with any commitment

1 that extends beyond the five years.

2 Q. All right.

3 A. (King) If that's your question.

4 Q. Yes. Thank you. Would you agree that FairPoint's  
5 readiness for cutover involves more than an examination  
6 of system testing?

7 A. (King) Absolutely, yes.

8 MR. MANDL: All right. I think that  
9 completes my cross of the witnesses' prefiled testimony.  
10 I do have cross on the monitoring proposal, which I can do  
11 after others have...

12 CHAIRMAN GETZ: Yeah. Let's defer that.  
13 Ms. Hatfield?

14 MR. MANDL: Thank you.

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

16 **CROSS EXAMINATION**

17 BY MS. HATFIELD:

18 Q. Good morning, gentlemen. Or good afternoon, as it is  
19 afternoon.

20 A. (King) Good afternoon.

21 A. (Falcone) Good afternoon.

22 Q. I wanted to direct your attention to page 10 of your  
23 prefiled testimonies.

24 A. (King) We're there.

1 Q. Okay. At the bottom of page -- excuse me. I'm at page  
2 11. At the bottom of page 11, you discuss that the  
3 fact that you have two main concerns about FairPoint's  
4 ability to carry out its broadband plan. And carrying  
5 over on page 12 and the following pages, you discuss  
6 those two concerns.

7 And I want to ask you, do you still --  
8 is it still your belief that the plan is based on too  
9 many unsupported assumptions and that FairPoint's  
10 estimate of the capital it will need to implement the  
11 plan is significantly understated?

12 A. (Falcone) Well, based on what we've seen so far from  
13 FairPoint's revisions to its plan, it seems to lend  
14 credence to our concerns here, that they were -- they  
15 were with merit. FairPoint has, as we've heard from  
16 Mr. Brown yesterday, drastically reduced the number of  
17 lines that it's going to make available for broadband  
18 service and, at the same time, the costs of the plan  
19 have gone up. And when questioned, Mr. Brown stated --  
20 you know, what prompted those changes -- and one of the  
21 bits of information that he gave us was that the change  
22 was prompted by additional information that he received  
23 from Verizon on assumptions that they were making,  
24 which proved that their assumptions were not valid with

1 relation to power, cabinet size, room in the cabinet.

2 So to use Mr. Brown's words, as  
3 FairPoint comes down from the 15,000 feet down to the  
4 5,000 feet, down to the ground, they still may be  
5 making assumptions. I don't know that. But until --  
6 and I believe Mr. Brown did say that until they get  
7 access to the network after close, that they still have  
8 to make some assumptions because they don't have all  
9 the information that they need to make concrete  
10 decisions, without a doubt, from Verizon. Until they  
11 get to that point, I have to say, yes, there are still  
12 some concerns.

13 Q. And if we turn to page 120 in your testimony, on lines  
14 -- starting on line 9 and further down in line 17  
15 through 19, you recommend that the Commission require  
16 FairPoint to provide the following levels of DSL  
17 ability. And you suggest 75 percent of all access  
18 lines within 18 months of close, 82 percent within 24  
19 months, and 95 percent within sixty months. Are those  
20 still your recommendations?

21 A. (Falcone) Could you give us a moment, please?

22 Q. Sure.

23 A. (Falcone) Yes, they are.

24 Q. Thank you. And with respect to service quality, if you

1 turn the page on page 122 of your testimony, you set  
2 forth specific conditions that you recommend that the  
3 Commission oppose regarding network service quality.

4 Do you see that page?

5 A. (Falcone) Yes. I'm on that page.

6 Q. And on line 10, you suggest that, within two months of  
7 close, FairPoint should present the Commission with a  
8 detailed service quality improvement plan along with an  
9 estimate of the capital and operational costs of  
10 implementing these plans. Is that still your  
11 recommendation?

12 A. (King) Yes.

13 A. (Falcone) Yes.

14 Q. On line 13, you recommend that FairPoint must agree to  
15 an independent audit of its service quality measurement  
16 reports one year after cutover. Is that still your  
17 recommendation?

18 A. (Falcone) Yes, it is.

19 Q. And then, the next one, on line 15, you recommend that  
20 FairPoint must commit to bring service quality up to  
21 Commission-imposed standards by nine months after  
22 close. Is that still your recommendation?

23 A. (Falcone) Give me one moment, please.

24 Yes, it is.



1 Q. And then, if you go down to line 20, you state that --  
2 given that FairPoint is inheriting these service  
3 quality issues from Verizon, Verizon must pay  
4 50 percent of all capital costs that FairPoint incurs  
5 to replace any faulty existing plant facilities needed  
6 to bring service quality up to standards that are  
7 uncovered by 12 months after close.

8 Is that still your recommendation?

9 A. (Falcone) Yes, it is.

10 MS. HATFIELD: I have no further  
11 questions. Thank you.

12 CHAIRMAN GETZ: Thank you. Let's  
13 proceed this way. I think maybe at this point, if -- it  
14 may make sense to have the panel give a brief summary of  
15 Exhibit 61, the cutover monitoring agreement or whoever --  
16 Ms. Fabrizio?

17 MS. FABRIZIO: Actually, Mr. Chairman, I  
18 just had one quick question on redirect. Is this an  
19 appropriate time for that?

20 CHAIRMAN GETZ: We can do that.

21 MS. FABRIZIO: On the testimony.

22 CHAIRMAN GETZ: Sure.

23 MS. FABRIZIO: Thank you.

24 **REDIRECT EXAMINATION**

1 BY MS. FABRIZIO:

2 Q. I'd like you to turn to page 120 of your joint  
3 testimony, line 18. It reads, "82 percent of all..."

4 (Discussion was held off the record.)

5 Q. Line 18 reads, "Eighty-two percent of all access lines  
6 within 24 months of close." Is that what you have  
7 before you?

8 A. (King) That was in the original testimony, yes.

9 Q. And has that number been updated?

10 A. (King) It has been updated. In Mr. Antonuk's  
11 supplemental testimony, we changed that to 85 percent.

12 MS. FABRIZIO: Thank you.

13 CHAIRMAN GETZ: Okay. Then let's turn  
14 back to the panel, then.

15 Gentlemen, if you can, I guess, briefly  
16 walk us through this statement of scope and give us an  
17 idea of what your intent is with respect to this proposal.

18 WITNESS KING: Yes, Mr. Chairman.

19 First of all, I think it might be  
20 helpful to give a little background as to how this  
21 evolved. This was something that we were engaged in by  
22 the staffs of the three states, as part of a competitive  
23 bidding process. And we put in an original proposal with  
24 some suggestions as to how to do this cutover monitoring.

1 And that -- and our proposal was accepted by the -- by the  
2 three staffs. And this is a further elaboration and  
3 addition to that proposal by -- including the specific  
4 input from the three different staffs. I think it's --  
5 the easiest way to describe this is that it has basically  
6 three parts to it, combined with a potential fourth part,  
7 depending on what happens at cutover.

8 The first part would be to review and  
9 assess FairPoint's current plans for testing to determine  
10 whether they're ready for cutover. And that testing would  
11 include not simply the systems, but would include the  
12 situation with the personnel, the situation with their  
13 business processes, and how all of those things fit  
14 together into an end-to-end package to ensure that cutover  
15 is ready to achieve.

16 So the first thing would be an  
17 assessment of whether those plans that they have for that  
18 sort of testing are appropriate, and any recommendations  
19 we would make if we found issues with them. I should also  
20 say that, during that process, we contemplate that we will  
21 have significant interaction back and forth with the  
22 FairPoint folks so that we would be explaining to them  
23 anything that we would consider to be problematic about  
24 their current plans. And we would assume that they would

1 updated those plans, subject to our recommendations.

2           The second phase of the -- the second  
3 phase of the monitoring is actually the monitoring. Once  
4 it's agreed as to -- as to the specific testing that would  
5 be done, the criteria, and what the acceptance of those  
6 criteria would be, then there would be a continuing  
7 monitoring until the time at which cutover occurs. And we  
8 would be supplying to the three staffs, on a monthly  
9 basis, a report as to our assessment of the progress in  
10 meeting the objectives that have been set for cutover.

11           The third thing that would occur is at  
12 the point where FairPoint is ready to deliver its notice  
13 of cutover readiness. And at that point, we contemplate  
14 that there would be a lot more scrutiny and a lot more  
15 interest on the part of all the parties, but particularly  
16 the staffs. And so we contemplate, in this scope  
17 document, a process through which Liberty would be able to  
18 answer questions on the monthly reports up to that point,  
19 and to answer questions as to whether at that point we  
20 agree with FairPoint that they are ready to issue a notice  
21 of cutover readiness.

22           We also have in here the possibility  
23 that the -- not the possibility, but we have in here the  
24 fact that, after cutover, we would also supply a final

1 report which would review the entire process up to that  
2 point and any remaining recommendations that we might  
3 have.

4 Now, the last piece, which is this  
5 cutover -- post-cutover review and report, would only  
6 apply if there was evidence to the three state staffs that  
7 there may have been issues associated with the cutover  
8 process that would therefore require us to come back and  
9 assess the situation, find out what happened, and make any  
10 report and recommendations with regard to that. So that  
11 would only be optional, assuming that the three staffs  
12 would require it.

13 I think that concludes my -- unless  
14 Mr. Falcone wants to add anything.

15 WITNESS FALCONE: Just one thing. When  
16 Mr. King talked about system readiness and operational  
17 readiness, I just wanted to stress that that also includes  
18 a review of staffing and the staffing plans and staffing  
19 of the open jobs and the training of those people.

20 CHAIRMAN GETZ: Okay. Thank you. Let's  
21 turn to Mr. Mandl, then, unless you want to defer to let  
22 someone else go first. Are you prepared?

23 MR. MANDL: I'm ready to go.

24 First, I'd like to thank the Staff for

1 its efforts in working on this proposal. And I'd also  
2 like to thank the Commissioners for their allowing the  
3 opportunity to introduce this document into the record at  
4 this stage of the case and to afford parties an  
5 opportunity to ask questions on an issue that we consider  
6 to be of utmost importance.

7 **RECROSS EXAMINATION**

8 BY MR. MANDL:

9 Q. I'd like to first ask whether -- you describe a  
10 competitive bidding process in relation to this scope  
11 of work. Has there been any formal agreement that  
12 Liberty has entered into regarding its performance of  
13 this scope of work?

14 A. (King) As I understand it, the idea is that there would  
15 be an amendment to our current contract with the New  
16 Hampshire Public Utilities Commission and that this  
17 work would be added to that.

18 Q. And so, in terms of commencement of this work, that  
19 would await the amendment of your existing contract to  
20 provide for this additional scope?

21 A. (King) No. Because we consider this work to be  
22 essential to get started as soon as possible, we would  
23 contemplate that we would -- we would begin work before  
24 that process had been complete.

1 Q. All right. Now, in order for you to perform the scope  
2 of work that you've outlined, would you require the  
3 consent and cooperation of FairPoint?

4 A. (King) Certainly.

5 Q. And has FairPoint consented -- to your knowledge, has  
6 FairPoint consented to Liberty's performance of the  
7 scope of work that you've described?

8 A. (King) As far as I know, there has been no formal  
9 consent one way or the other. But I have no reason to  
10 believe that they have any opposition to it.

11 Q. That may be a question for Mr. Nixon.

12 CHAIRMAN GETZ: We'll get there.

13 Q. As far as the board process and the board's review of  
14 cutover planning and readiness issues, it's fair to say  
15 that you covered that topic at some length in your  
16 prefiled testimony; correct?

17 A. (King) Yes.

18 A. (Falcone) Yes.

19 Q. Is the Staff, to your knowledge, seeking any prior  
20 approval from the Commission regarding the statement of  
21 monitoring that you've provided?

22 A. (King) Not to my knowledge.

23 Q. Is it your understanding that the Commission would be  
24 free to propose additional monitoring requirements

1 after its review of the record, the entire record in  
2 this proceeding?

3 A. (King) Obviously, the Commission has the right to do  
4 whatever they want to do with regard to that.

5 Q. Did the staffs determine or would you agree that the  
6 monitoring proposal that you've outlined does not  
7 affect FairPoint's compliance with the terms of the  
8 transition services agreement with Verizon?

9 A. (King) I'm not sure that it has any relationship to the  
10 terms of the TSA action.

11 Q. All right. That's fine. The statement of scope  
12 provides that payment to Liberty will be received  
13 through the New Hampshire Commission. Do you have any  
14 understanding as to whether FairPoint will pay for the  
15 cost of Liberty's work?

16 A. (King) That is my understanding, yes.

17 Q. And is it fair to say that the statement of scope does  
18 not provide for FairPoint's assuming that payment  
19 obligation?

20 A. (King) The statement of scope itself does not. Yes,  
21 that's correct.

22 MR. MANDL: Again, this is where some  
23 questions to Mr. Nixon may be helpful. I can come back to  
24 him.



1 CHAIRMAN GETZ: Yeah. Let's defer that.  
2 Let's do a round on Mr. Falcone and Mr. King and then  
3 we'll turn to Mr. Nixon.

4 BY MR. MANDL:

5 Q. Fine. I'd like to refer you to the -- just the first  
6 paragraph on page 1 of the cutover monitoring statement  
7 of scope. And just wanted to obtain your  
8 clarification.

9 In the first sentence, Liberty indicates  
10 its understanding that the three commissions -- well,  
11 two commissions and the Vermont Department of Public  
12 Service -- are interested in engaging a consultant to  
13 monitor this process in the event that the state  
14 commissions approve the proposed transaction.

15 I guess, first of all, when you refer to  
16 "the commissions" in the first paragraph, are you  
17 referring to the commission staffs in Maine and New  
18 Hampshire?

19 A. (King) It really is the staffs that would be the  
20 organizations to which this work would be provided.

21 Q. And in the third sentence, you indicate that, using  
22 your defined term, state regulators, recognizing that  
23 FairPoint is already developing and testing systems,  
24 Liberty's participation prior to any regulatory

1           approvals may prove useful even if the transaction is  
2           not ultimately approved.

3                           I take that to mean, when I read the  
4           sentences together, that the intent is that Liberty  
5           would go forward with its cutover monitoring statement  
6           of scope prior to there being any state commission  
7           orders approving or disapproving the proposed  
8           transaction.

9    A.   (King) That is correct.  And, in particular, the first  
10   part of the work, which is the review and assessment of  
11   FairPoint's plan testing and cutover readiness process  
12   is contemplated to take place before -- potentially  
13   before such approval, so that it might inform such  
14   approvals.

15   Q.   Now, with regard to the statement of scope and the  
16   three or four portions of that that you outlined for  
17   us, has Liberty developed a timeline for the  
18   performance of its work?

19   A.   (King) Not in detail at this point.

20   Q.   In any form?

21   A.   (King) Only mental.

22   Q.   Well, what I'm getting at is, you've testified that --  
23   in your prefiled testimony -- that the timetable of  
24   FairPoint for cutover, you know, by May 30th, 2008, was

1 regarded as unrealistic.

2 A. (King) Yes.

3 Q. And what I'm trying to get a sense of is whether  
4 adoption of the cutover monitoring process that you've  
5 described would have an effect on the overall timeline  
6 under which FairPoint is currently operating.

7 A. (King) It would be our great desire to have this  
8 process not affect the cutover. That it would not  
9 impact, through the monitoring, when the cutover would  
10 occur so that we would not get in the way of the system  
11 development, we would not get in the way of the  
12 development of the training of the staff, we would not  
13 get in the way of the business processes.

14 So no, it's contemplated not to -- not  
15 to impact the schedule.

16 Q. Is there a point in time ---

17 A. (King) In and of itself.

18 Q. Is there a point in time when Liberty would develop a  
19 timeline for carrying out the various steps in  
20 monitoring that you've described in the statement of  
21 scope?

22 A. (King) We don't contemplate putting together a hard and  
23 fast timeline, because it all depends on the way that  
24 FairPoint continues with its development of its systems

1 and business processes and its training programs.

2 Q. So from the standpoint of wholesale customers, how will  
3 wholesale customers be informed, for example, of how  
4 much time they will have to review a draft report that  
5 you propose to provide to them?

6 A. (King) What specifically are you referring to?

7 Q. Um...

8 A. (King) Is this on page 2?

9 Q. I think it may appear in a couple of places, but let's  
10 try page 2.

11 Yes. On page 2, under "Key  
12 Deliverables," with regard to the -- I think the first  
13 stage of monitoring, you describe review and assessment  
14 of FairPoint plan testing and cutover readiness  
15 process. On page 2, under "Key Deliverables," you  
16 indicate the release of a draft report for review and  
17 comment by state regulators and the interested parties,  
18 including wholesale customers.

19 When would wholesale customers receive  
20 this draft report within the FairPoint cutover  
21 timeline, and how much time would wholesale customers  
22 have to review and submit comments on that draft  
23 report?

24 A. (King) Those are details that we have not worked out

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1 with the -- with the staffs from the three states. But  
2 I do anticipate that that is something that we would --  
3 we would work out when we get close to the point where  
4 it is appropriate to release that draft report.

5 Q. With regard to the FairPoint cutover timeline, would  
6 you agree that the -- this Commission and the other  
7 state commissions are not bound to that timeline,  
8 should they believe that it is inadequate in order to  
9 carry out the statement of scope that you've described?

10 A. (King) Yes. I don't see how the two commissions and  
11 the board would be bound.

12 Q. Now, you were here when Mr. Nixon testified that, if  
13 cutover -- if the cutover date were to be delayed, it  
14 would be to FairPoint's advantage to know that as soon  
15 as possible so that it could avoid incurring certain  
16 costs that it would incur if it expected to cut over on  
17 May 30th in 2008?

18 A. (King) Yes, I do recall that.

19 Q. Do you think a more-definitive timeline would be  
20 helpful to FairPoint, as well, given that  
21 consideration?

22 A. (King) Well, I'm not -- yeah, go ahead.

23 A. (Falcone) I think, Mr. Mandl, one of the things that's  
24 confusing here is FairPoint has its timeline for when

1 it wants to cut over and issue its notice of readiness.  
2 Our timeline can't mirror that timeline because if we,  
3 in doing this work, find that FairPoint's testing plan,  
4 whatever, is insufficient, we need to give them that  
5 feedback. We need to see what they're doing about it.  
6 So that -- that input may impact their timeline.

7 But we're -- we're not going to be able  
8 to do certain things here until we get information from  
9 Capgemini and FairPoint. So we can't make a hard and  
10 fast timeline that says, by December 1st, we'll have a  
11 report because, by December 1st, they may still owe us  
12 a lot of information. And our report may be a simple  
13 report of they owe us a lot of information.

14 Q. Well, the statement of scope adds some steps to the  
15 cutover readiness determination process that were not  
16 included in FairPoint's original plans; is that fair to  
17 say?

18 And I'm focusing in particular on the  
19 involvement of a third-party monitor, the preparation  
20 and release of a draft report as described on page 2,  
21 and an opportunity for review and comment by interested  
22 parties, including wholesale customers.

23 My assumption is that some amount of  
24 time -- some reasonable amount of time will be allowed

1 for that to occur and that that would have an impact on  
2 the cutover timeline that FairPoint has provided.

3 A. (King) Well, I certainly would not anticipate that  
4 FairPoint would be holding up its development, you  
5 know, waiting for the results of that feedback. I  
6 would assume they would be continuing to move along  
7 their timeline.

8 Q. With regard to the review and assessment of the  
9 FairPoint plan testing and cutover readiness process  
10 you begin to describe on page 1 of the statement on  
11 scope, when does Liberty expect to begin this first  
12 part of the scope of work?

13 A. (King) We have already actually begun collecting  
14 initial information.

15 Q. Now, I take it that you've received the FairPoint  
16 system testing strategy document.

17 A. (King) Yes, that is correct.

18 Q. Okay. And with regard to -- again, referring to page  
19 1, in terms of the reviews that are listed there, have  
20 any of these reviews been conducted by Liberty already?

21 A. (King) Some of them have begun would be the way to, I  
22 think, best answer the question.

23 Q. Could you indicate which ones have been done?

24 A. (King) Well, we certainly have begun the review of the

1 systems testing strategy. We certainly have begun  
2 review of the systems testing plans and test cases and  
3 the outcomes and the acceptance criteria. Most of the  
4 work that we have done to date is examining the systems  
5 development. We have -- we -- a next key thing that we  
6 need to -- that we do plan to engage in is an  
7 examination of the staffing plans, examination of the  
8 business processes, and examination of the end-to-end  
9 testing and the training.

10 Q. Well, on page 1, as part of this first stage of work,  
11 you indicate that Liberty will also review the concerns  
12 and requirements expressed by wholesale systems users.  
13 Has any of that review begun?

14 A. (King) No, that has not.

15 Q. And when is that review expected to begin?

16 A. (King) I can't say when it would begin. We would have  
17 to -- we still have to talk to FairPoint as to the  
18 format for that. What we do is -- we contemplate doing  
19 that through the normal contacts that FairPoint has  
20 with the wholesale providers.

21 Q. Now, as far as identifying ---

22 CHAIRMAN GETZ: Excuse me, Mr. Mandl.  
23 I'm just trying to judge when we should take the lunch  
24 recess. How much further do you have?



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1 MR. MANDL: I have a ways to go.

2 CHAIRMAN GETZ: "A ways" meaning an  
3 hour?

4 MR. MANDL: Um...

5 CHAIRMAN GETZ: Fifteen minutes?

6 MR. MANDL: I think it will be within an  
7 hour, but it won't be 15 minutes.

8 CHAIRMAN GETZ: Okay. Let's -- I think  
9 this is the time to take the lunch recess, then. It's  
10 12:40. Let's resume at 1:45.

11 (Lunch recess taken at 12:40 p.m.)

12 (Hearing reconvened at 1:54 p.m.)

13 CHAIRMAN GETZ: Please be seated.

14 Good afternoon, we're back on the record  
15 in Docket DT 07-011. And I believe Mr. Mandl was  
16 inquiring of the panel.

17 MR. MANDL: Thank you, Mr. Chairman.

18 CHAIRMAN GETZ: And actually, maybe  
19 before we go, I want to make sure there's no misimpression  
20 about the status of this Exhibit 61, the FairPoint cutover  
21 monitoring statement of scope. And I guess I would think  
22 it's best characterized at this point as a proposal by the  
23 staffs of the three states; that there's no commitment at  
24 the commission level at any of the three states at this

1 point, though I take it that the notion was raised in the  
2 third-party monitoring and the companion proceedings in  
3 Vermont and in Maine.

4 But this document has just been, I  
5 guess, finalized by the staffs. And as I understand the  
6 proposal, it would be implemented by an extension of the  
7 New Hampshire contract with the Liberty Consulting Group,  
8 and then that all three states would have the ability, I  
9 guess, to refer to the process or information that results  
10 out of this.

11 And I think Mr. Mandl, you were, I  
12 guess, inquiring along the line of the contractual issue,  
13 that this would, consistent with the existing contract  
14 with Liberty as a consultant to Staff and the Commission,  
15 that that would be, then -- pursuant to RSA 365:37, then  
16 would be a cost of the consultant that would be imposed  
17 upon the petitioner. I think that's where we are, at  
18 least as I understand it. So if you could proceed.

19 BY MR. MANDL:

20 Q. Thank you. With regard to Liberty's intention to  
21 review concerns expressed by wholesale system users,  
22 are there any plans to develop, I guess, what you'd  
23 call the equivalent of a wholesale-customer service  
24 list and points of contact at wholesale customers so

1 they would be aware of this process as it -- as it  
2 proceeds?

3 A. (King) We did not contemplate that, no.

4 Q. And are there points of contact at Liberty that  
5 wholesale customers can reach out to to express their  
6 concerns? Is there a process for that?

7 A. (King) There is no process for that. It is our  
8 assumption that the wholesale providers would provide  
9 information back to FairPoint of their concern about  
10 issues.

11 Q. Do you have any objection to wholesale customers  
12 providing their concerns directly to Liberty -- I  
13 suppose this could be done in a number of ways -- and  
14 those concerns could be shared with FairPoint?

15 A. (King) We would need to discuss that with the three  
16 staffs. There's a potential that that could  
17 significantly increase the scope of the work. And that  
18 would be my main concern with that. But we can discuss  
19 that with the staffs.

20 Q. Well, you can understand that, if a wholesale customer  
21 were required to submit its concerns to FairPoint, that  
22 we have no assurance that those concerns would be  
23 conveyed in the same form to Liberty.

24 A. (King) Well, as I think I mentioned prior to the lunch

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1 break, we would be participating, at least monthly, in  
2 calls that FairPoint would have with the CLECs and  
3 other wholesale providers and, therefore, could hear  
4 directly the concerns from the wholesale providers at  
5 that point.

6 Q. Yeah. How would -- I mean, how would you notify the  
7 wholesale community that such calls were taking place  
8 and who would be notified?

9 A. (King) Well, we haven't worked that process out with  
10 FairPoint. But I'm assuming that FairPoint has a  
11 method for contacting the wholesale community.

12 Q. So you're relying on FairPoint as opposed to the  
13 staffs?

14 A. (King) Principally, we would rely on FairPoint, yes.

15 Q. Were you present when FairPoint testified -- I believe  
16 it was Mr. Haga -- that it does not plan to develop its  
17 cutover readiness criteria until sometime in December  
18 2007? Do you recall that?

19 A. (Falcone) I do recall that, yes.

20 Q. And do you recall, also, that the cutover readiness  
21 criteria available in December 2007 from FairPoint  
22 would be in draft form?

23 A. (Falcone) I don't recall that he said it was in draft  
24 form. But subject to check, I'll agree with you.

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1 Q. Now, will Liberty be defining the operational readiness  
2 criteria that you describe would be included in the  
3 monitoring work you'll be performing?

4 A. (King) What we will be doing is, through our  
5 interactions with FairPoint and through input that we  
6 might receive, for example, from the wholesale  
7 customers, as part of the at least monthly calls we  
8 would have and other things that we might pick up --  
9 what we would do would be to identify, among the  
10 criteria that FairPoint may be developing, what we  
11 consider to be the key criteria.

12 If we see that there are criteria that  
13 might be missing from that list, we will also recommend  
14 those to FairPoint and we would hope that they would  
15 agree and add them to their list.

16 Q. And would Liberty be receptive to receiving operational  
17 readiness criteria from wholesale customers?

18 A. (King) We would presume that would be something that  
19 the wholesale customers would be providing to us as  
20 part of those monthly calls, yes.

21 Q. Now, during your -- I guess the first scope of work  
22 that you've described -- that is, the review and  
23 assessment of FairPoint plan testing and cutover  
24 readiness process -- will Liberty be reviewing

1 FairPoint contingency plans and disaster-recovery  
2 plans, which I believe are described as part of its  
3 business-continuity plans?

4 A. (Falcone) Yes, we will. Along with the network  
5 disaster-recovery plans, we will also be looking for  
6 their system disaster-recovery plans.

7 Q. And do you recall testimony from FairPoint that the  
8 business-continuity plans, in draft, are expected to be  
9 available sometime in December 2007?

10 A. (King) I don't recall the specific date, but subject to  
11 check.

12 Q. Okay. With regard to the transition period or  
13 pre-cutover period, the five-day period, however we  
14 want to describe it, will Liberty be reviewing  
15 FairPoint's preparations for that five-day time period?

16 A. (Falcone) Yes. We will review what their plans are and  
17 the communication of those plans to all the  
18 stakeholders.

19 Q. And will you be reviewing the adequacy of any plans  
20 that FairPoint has for the manual processing of orders  
21 during that time period and whether adequate resources  
22 are available?

23 A. (Falcone) We plan on reviewing any manual processes  
24 that FairPoint plans to put in place, both during that

time period and after the cutover time period.

3 Q. Now, is it your understanding that the exact duration  
4 of this transition period won't be known until after a  
5 further data extract from Verizon that's scheduled to  
6 occur in January 2008?

7 A. (Falcone) That's my understanding, from the FairPoint  
8 testimony that I heard.

9 Q. With regard to the testing plans and the testing  
10 acceptance criteria, if there were any disagreements  
11 between Liberty and FairPoint, is FairPoint required to  
12 accept Liberty's recommendations?

13 A. (King) As far as I know, there is no requirement on  
14 FairPoint.

15 Q. If there were a disagreement as to testing criteria or  
16 testing plans, would that be something Liberty would  
17 describe in any report?

18 A. (King) Absolutely.

19 Q. With regard to the test plans and business process  
20 plans of FairPoint, will Liberty be reviewing draft  
21 plans or final plans or both?

22 A. (Falcone) Both, because I would imagine FairPoint is  
23 going to be looking for our input on any draft plans  
24 that they have, which we would be most happy to give  
them.

1 Q. In terms of the cutover readiness issues, will Liberty  
2 be examining whether wholesale customers have been  
3 afforded adequate time to establish interoperability  
4 with FairPoint through E-bonding?

5 A. (Falcone) One of the things that FairPoint has  
6 indicated that they're going to offer the CLECs is the  
7 opportunity to do a user-acceptance test, which would  
8 include the use of their E-bonding system, as well as  
9 their WebGUI system. And it's our intention to kind of  
10 monitor how that user-acceptance test is communicated,  
11 the scope of that test, and how it's conducted, and the  
12 outcome of it.

13 Q. You've reviewed, I take it, the FairPoint test strategy  
14 document.

15 A. (Falcone) Um...

16 I've gotten so many documents lately,  
17 frankly, I'm not sure exactly which one that is. The  
18 latest one we had was a proprietary exhibit to this  
19 proceeding. FairPoint also provided it to us  
20 separately. And it was called the "Nor'Easter Project  
21 Plan" and in that was their test strategy. So I think  
22 that's the latest document that contains their test  
23 strategy.

24 Q. Okay. Also with regard to your assessment of



1 FairPoint's cutover readiness, will you be examining  
2 FairPoint's acquisition of new point codes and whether  
3 wholesale customers have completed their work in order  
4 to deal with the new point codes?

5 A. (Falcone) That's a difficult question to answer. To an  
6 extent, yes. But it's my understanding that  
7 FairPoint's plan for the implementation of those new  
8 point codes would take an extended period of time well  
9 after cutover. And we certainly, per the current  
10 scope-of-work document, will not be involved at that  
11 time unless, of course, there's a lot of input coming  
12 in to the commissions that there's problems that would  
13 have us remain involved.

14 Q. If we could turn to page 3 of the statement of scope  
15 under the section involving monitoring of testing and  
16 cutover readiness process, you indicate that Liberty  
17 will review test results on a weekly basis as testing  
18 proceeds, examining all severity 1 and severity 2  
19 failures and a select set of other results and so  
20 forth.

21 Will Liberty be reviewing severity 3 and  
22 severity 4 failures?

23 A. (Falcone) Yes, we will. The focus here on severity 1,  
24 severity 2 is obviously those are what I'll call show-

1 stoppers. Typically, a severity 3 is something that  
2 there is an elegant work-around, if you will, for lack  
3 of a better way to put it. And severity 4 is typically  
4 something that's kind of touchy-feely in nature.  
5 Things aren't centered right on the screen or something  
6 like that. There's really no operational impact, other  
7 than it's more a human impact for the people who are  
8 using the system. But we will be looking at all test  
9 failures.

10 Q. Will you also be looking at FairPoint's plans and time  
11 tables for fixing severity 3 and severity 4 failures?

12 A. (Falcone) We will determine what their plans are. We  
13 will also work with Capgemini and FairPoint to assess  
14 whether we even agree that something is a severity 3 or  
15 severity 4, based on how we see the results, because  
16 perhaps we don't agree with their classification. If  
17 they're classifying it as a severity 3 and we think it  
18 should be a higher severity level, we will certainly  
19 give them that input.

20 Q. That was my next question.

21 A. (Falcone) I knew that.

22 Q. But I take it, FairPoint determines whether a failure  
23 is categorized as severity 1, 2, 3, or 4?

24 A. That's one of the things we need to discuss with

1 Capgemini and FairPoint as to -- and need to nail down.  
2 So we're not there yet. But, yes, right now, it's my  
3 understanding that they're the ones who make the  
4 determination as to severity 1, 2, 3, or 4.

5 Q. And if there were disagreement between FairPoint and  
6 Liberty as to the classification of a severity failure,  
7 would that disagreement be contained in a Liberty  
8 report?

9 A. (King) If we considered it a significant disagreement,  
10 we certainly would, yes.

11 Q. Will Liberty be reviewing all of the types of testing  
12 described by Mr. Haga and Mr. Kurtze, including stress-  
13 testing and volume-testing?

14 A. (Falcone) When you say "all the types of testing,"  
15 let's make something clear. Any system-development  
16 project has many levels of testing. And there's some  
17 very low-level testing -- what I'll call unit testing  
18 -- which is the actual developer testing the  
19 application kind of in his or her own world before it  
20 moves up to the next level. We will not be getting  
21 down into the mud looking at that -- those levels of  
22 testing.

23 We will be looking at the end-to-end  
24 functionality of the systems to make sure that things

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1 are flowing through and the communications between  
2 systems are working correctly. We will also be looking  
3 at the performance-testing or stress-testing, as you  
4 called it.

5 Q. Thank you. Will Liberty's scope also include the  
6 review of business simulation?

7 A. (Falcone) If, by that, you mean business processes and  
8 whether the people who have to use these systems are  
9 capable of using 'em -- the systems could work  
10 wonderfully, but if nobody knows how to use them and  
11 business processes are in place, obviously, that's not  
12 going to do anybody any good. So a long-winded answer  
13 to say yes, we will be looking at business process  
14 testing.

15 Q. Okay. And will you also be reviewing conversion  
16 testing?

17 A. (Falcone) By "conversion testing," you mean the data  
18 coming over from Verizon to -- into FairPoint systems?

19 Q. Yes.

20 A. (Falcone) Yes, we will.

21 Q. At the top of page 2, let's see, you indicate that you  
22 would have monthly conference calls with CLEC subject-  
23 matter experts. And if there were any complicated work  
24 efforts or problems that required a more-frequent

1 assessment of progress, would Liberty be open to more-  
2 frequent communication with the CLEC subject-matter  
3 experts?

4 A. (King) Yes, we would, if there was something severe.

5 Q. Thank you. You may have answered this, but I think,  
6 just to confirm, your testing review will include an  
7 evaluation of the flowthrough of orders; is that  
8 correct?

9 A. (Falcone) That is correct.

10 Q. Will you be making any comparisons between the rate of  
11 flowthrough demonstrated by your evaluation and  
12 Verizon's normal flowthrough rates?

13 A. (King) No, we were not contemplating including that.

14 Q. Will there be a metric or a -- to determine whether the  
15 rate of flowthrough is satisfactory, from your  
16 standpoint?

17 A. (Falcone) What we planned on doing right now -- and I  
18 don't think we've gotten that far down the road,  
19 Mr. Mandl. But what we plan on doing is identifying  
20 the order types that will flow through and those that  
21 will not flow through, giving input to Capgemini and  
22 FairPoint if we thought that the order types that were  
23 not flowing through would cause a severe hardship for  
24 the CLEC community and for FairPoint's operation.

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1 Q. All right. Will you be reviewing the ability of  
2 FairPoint to conduct number porting based on intervals  
3 that Verizon employs today?

4 A. (Falcone) We will be reviewing FairPoint's process and  
5 testing for doing number porting. Obviously, in a test  
6 environment, it's difficult to determine what their  
7 interval's going to be, because it's in a controlled  
8 environment as opposed to being in an operational  
9 environment where, you know, you're in a real world.

10 So as far as testing an interval, we'll  
11 test that their process should be able to make -- meet  
12 those intervals, but that remains to be seen in an  
13 operational aspect.

14 Q. Okay. Would that be true of trunk-ordering intervals,  
15 as well?

16 A. (Falcone) Yes.

17 Q. Thank you. If we could turn to page 4 of the statement  
18 of scope, with regard to the provision of monthly  
19 written reports to state regulators, you're referring  
20 there to the state staffs?

21 A. (King) Yes, that is correct.

22 Q. And will those monthly reports be available to other  
23 stakeholders, such as wholesale customers?

24 A. (King) I believe it states that there would be a public

1 version that would be available. Let me double-check  
2 that.

3 Yes. If you look at the last bullet on  
4 page -- last large bullet on page 3, it says that a  
5 monthly written report to the state regulators will be  
6 a deliverable, including a public version.

7 Q. And I take it it would be your understanding that  
8 FairPoint would determine what's public and what isn't?

9 A. (King) That was not my understanding.

10 Q. No? Who would make that determination?

11 A. (King) That would be between Liberty and the staffs.

12 Q. All right. You're aware that there are parties to this  
13 proceeding that have entered into confidentiality  
14 agreements and, under those agreements, have been  
15 provided with documents such as the FairPoint test  
16 strategy planning document?

17 A. (Falcone) Well, there's different levels of  
18 confidentiality, as we understand it, in this  
19 proceeding. And depending on what level a party  
20 qualifies for, we understand that different documents  
21 are distributed. I'm not sure where that particular  
22 one fits in and what level it fits into.

23 Q. Yeah. If the material in question were considered  
24 confidential, do you see any reason why a wholesale

1 customer that's entered into a confidentiality  
2 agreement should be precluded from receiving a  
3 confidential version of these monthly reports?

4 A. (King) Well, let's take a step back. The terminology  
5 that was used here was not meant, in my understanding,  
6 to differentiate between public and confidential. It  
7 was between what we might provide to the staff and what  
8 we might provide to everyone. So it's not -- it's not  
9 a confidentiality versus a non-confidentiality issue.

10 However, to answer your question  
11 directly, if there were items that were confidential  
12 that were in the report -- I'm not contemplating that  
13 there would be much of that -- then, clearly, we would  
14 abide by whatever the confidentiality rules are that  
15 apply to different parties.

16 Q. Okay. But as written, the statement on scope provides  
17 that some stakeholders will receive a version of  
18 monthly reports that differs from the version given to  
19 the state staffs?

20 A. (King) It contemplates that possibility, yes.

21 Q. Also, on page 4, you indicate that you will include in  
22 reports known work-arounds planned by FairPoint; is  
23 that correct?

24 A. (King) That's correct.



1 Q. And will those reports reflect any analysis or  
2 information regarding the impact on operations of these  
3 known work-arounds?

4 A. (King) Well, certainly, if we were aware of what such  
5 an impact was, we would report such. I can also  
6 contemplate that, in some cases, we wouldn't  
7 necessarily be able to determine the complete impact  
8 and so, therefore, would not be able to report. But if  
9 there was a significant impact, we would let people  
10 know.

11 Q. As you understand the statement on scope and the  
12 reports that will be provided, will the known work-  
13 arounds planned by FairPoint be provided to wholesale  
14 customers?

15 A. (Falcone) I think we're getting back into if there was  
16 a work-around -- and I'm just anticipating -- that had  
17 some information that might be proprietary for  
18 FairPoint's internal operation, for its retail  
19 operation, I expect they'd want to keep that  
20 confidential. I don't know that. If there was a  
21 work-around that's going to affect all the parties or  
22 wholesale, in particular, they certainly would know  
23 that.

24 Q. All right. Thank you. On page 4, you refer to

1 preparing a final report to the state staffs. Will  
2 that final report be made available to wholesale  
3 customers?

4 A. (King) I would assume so. That's up to the state  
5 staffs to determine. But subject to their agreement to  
6 do so, yes.

7 Q. And that's the report that you contemplate preparing --  
8 well, let me back up a step.

9 That report is one that you provide at  
10 the end of the monitoring process after cutover; is  
11 that correct?

12 A. (King) That is correct.

13 Q. And you indicate, also, on page 4, that you anticipate  
14 that, in the month before FairPoint is likely to  
15 provide the notice of readiness to cut over, that the  
16 state staffs will have an increased need for  
17 information about testing status?

18 A. (King) That's correct.

19 Q. During that month prior to the cutover readiness  
20 notice, if you were to provide a report a month before  
21 FairPoint is likely to provide the cutover readiness  
22 notice under the current schedule, that monthly report  
23 would be due as early as the closing date of this  
24 transaction?

1 A. (King) No. I would have assumed February, actually,  
2 rather than the closing date.

3 Q. So if these now -- I believe we had prior testimony  
4 that, for FairPoint to achieve the May 30th, 2008  
5 cutover date, it would need to give Verizon the notice  
6 of readiness for cutover as early as February 28th,  
7 2008 and no later than March 31st, 2008.

8 A. (King) Yes.

9 Q. Do you recall that?

10 A. (Falcone) Well, as early as, but no later than, March  
11 31st; right. That's correct. So I believe what we  
12 were focusing on and what -- I believe it was --  
13 whichever FairPoint witness it was, they said that they  
14 would have to give their notice by March.

15 So I'm assuming -- we're working on the  
16 assumption that FairPoint's going to use that sixty  
17 days and give the notice sixty days prior to their  
18 intent to cut over.

19 Q. All right. So you would be looking to provide a report  
20 to the state regulators roughly thirty days prior to  
21 March 31st, 2008?

22 A. (Falcone) Well, yes, but we'll be giving reports prior  
23 to that, certainly, because we're going to be giving  
24 them weekly updates. And we'll be giving them reports

1 after that, also.

2 A. (King) Yeah, that's very important to emphasize. In  
3 addition to the formal monthly report, we do have built  
4 into here the possibility -- well, not the possibility,  
5 but the fact that we will be having weekly calls with  
6 the state regulators, as well.

7 Q. Now, under the statement of scope, does FairPoint  
8 retain its right, as it has under the transition  
9 services agreement, to determine when it will give  
10 Verizon the irrevocable notice of readiness for  
11 cutover?

12 A. (Falcone) Under this statement of scope?

13 Q. Right. Right.

14 A. (Falcone) Certainly, I believe so, yes.

15 Q. Right. There's nothing in here that would prevent  
16 FairPoint from doing that, despite reservations by  
17 Liberty as to FairPoint's readiness to give that  
18 notice?

19 A. (King) There's nothing in this scope document that  
20 would do so, yes.

21 Q. If you provided the staffs with a report expressing  
22 reservations about FairPoint's readiness to give  
23 Verizon the notice of readiness for cutover, does this  
24 cutover-monitoring process provide for the staffs to

1 tell FairPoint, "You're not ready, you can't go  
2 forward"?

3 A. (King) This process does not. This process is only to  
4 provide the data, the information necessary for the  
5 staffs to take action if they considered it the correct  
6 thing to do.

7 Q. If you could turn to page 5 of the statement on scope  
8 -- let me withdraw that question and move on to another  
9 point.

10 With regard to the duration of Liberty's  
11 engagement on a post-cutover basis, would you think it  
12 desirable for Liberty to stay on board for, say, a 45-  
13 to 60-day period in order to cover post-cutover billing  
14 intervals and to have a little more history on how the  
15 post-cutover business processes were functioning?

16 A. (King) This particular plan does not contemplate that,  
17 unless there are issues that have been raised regarding  
18 the quality of the cutover process. Were that the  
19 case, then yes, then we would want to stay on long  
20 enough to look at all the appropriate data, including  
21 billing data.

22 Q. Are there any metrics or criteria established for  
23 Liberty's exit from the monitoring process?

24 A. No.

1 Q. I guess what I'm wondering about is, in the same way  
2 that Capgemini is assisting FairPoint and you would be  
3 assisting the staffs, what would be the capabilities of  
4 the staffs to monitor the post-cutover issues that  
5 might occur during a 60-day period after cutover?

6 A. (King) Well, I can't speak for the staffs. I suspect  
7 it's up to them and it would depend on the situations  
8 in each of the three states.

9 Q. And in terms of a timeline developed to handle the  
10 monitoring scope, would you agree that that timeline  
11 for the monitoring scope is not the same as the  
12 timeline that's attached to the CLEC settlement that's  
13 been filed in this proceeding?

14 A. (King) I would have to look at the...

15 Q. I'd be happy to give you a couple of examples. I'm  
16 looking at Attachment 1 to the three CLEC settlements.

17 A. (King) And what did you want specifically did you want  
18 to point out in Attachment 1?

19 Q. Well, for example, under action item 3B, there's an  
20 opportunity for wholesale customers and the staff  
21 consulting firm to submit input to FairPoint on a  
22 preliminary wholesale OSS test plan. And the timetable  
23 for completion is tomorrow.

24 A. (King) Well, I agree that getting it all done by

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1 tomorrow is going to be very ambitious.

2 Q. So would you be contemplating a timetable that differs  
3 from Attachment 1 to the CLEC settlement?

4 A. (King) Yes. I can't speak to the input from the  
5 wholesale customers, but certainly our input will be  
6 after October 31st, as well as before.

7 Q. In terms of the cutover readiness criteria important to  
8 Liberty, would you include a ready-response team to  
9 deal quickly with any interconnection disputes?

10 A. (Falcone) I think what we would look to see is that the  
11 wholesale organization, FairPoint's wholesale  
12 organization, was properly staffed with the appropriate  
13 customer-service representatives for -- or client  
14 representatives, however they were going to be  
15 organized -- so that each CLEC knew who their point of  
16 contact was and where they take their issues to.  
17 Beyond that, how FairPoint handles disputes on  
18 interconnection agreements, I believe, is beyond the  
19 scope of this testing.

20 Q. Would you agree that, in your prefiled testimony, you  
21 expressed some concerns that wholesale customers might  
22 not be given adequate time by FairPoint to conduct  
23 testing of their own systems and to receive training on  
24 FairPoint's new systems?

1 A. (King) Can you point exactly to where you're referring?

2 Q. I was afraid you were going to say that.

3 I don't want to delay the hearing. I'm  
4 not finding a ready reference to that. I think your  
5 testimony will speak for itself in that regard.

6 In terms of the -- FairPoint's readiness  
7 to give Verizon the notice of readiness for cutover, is  
8 it your understanding that the commissions, themselves,  
9 as opposed to staffs, would be in a position to do  
10 orders in this proceeding -- an order in this  
11 proceeding to determine how the go or no-go decision is  
12 made?

13 A. (King) As far as we understand, the staff -- the  
14 commissions definitely have the right to impose  
15 conditions of that nature.

16 MR. MANDL: Thank you. I had a few  
17 questions for Mr. Nixon, but I can defer those, pending  
18 whoever else needs to deal with Mr. Falcone and Mr. King.

19 CHAIRMAN GETZ: Okay. I guess it goes  
20 to Mr. Rubin, then.

21 MR. RUBIN: Yes, thank you,  
22 Mr. Chairman.

23 **CROSS EXAMINATION**

24 BY MR. RUBIN:



1 Q. Good afternoon.

2 A. (King) Good afternoon.

3 A. (Falcone) Good afternoon.

4 Q. Could you give us an idea of when you expect or hope  
5 that the various state entities will actually approve  
6 this contract?

7 A. (King) We would anticipate that that will happen  
8 relatively soon, but we don't have a specific  
9 timeframe.

10 Q. Okay. I thought you said earlier that you've already  
11 essentially started work on some of these tasks; is  
12 that right?

13 A. (King) Yes, that is correct.

14 Q. What's the rush?

15 A. (King) The development that FairPoint is engaging in is  
16 proceeding apace and the testing is proceeding apace.  
17 And as a result of that, it's extremely important for  
18 the monitor to get in and start examining that and  
19 providing feedback to FairPoint as soon as possible.  
20 If we see something that we believe is missing or is  
21 being done in an incorrect fashion, the sooner we can  
22 provide that input to FairPoint, the better.

23 Q. Is the fact that this contract is necessary an  
24 indication that either you or the staffs you're working

1 for are not satisfied with what they've seen from  
2 FairPoint to date?

3 A. (Falcone) I think what we've seen to date is probably  
4 about the same stuff that you've seen to date. And  
5 obviously, if we're going to be engaged in this testing  
6 monitoring, we need to get a lot more information.

7 And as Mr. King said -- Dr. King said --  
8 there is so much going on -- that Capgemini has been  
9 engaged for so long that, the longer we wait, the more  
10 the train is passing us by, and we want to get in there  
11 as quickly as possible.

12 Q. All right. I'm a little concerned about that. If you  
13 look at the statement of scope in the first paragraph  
14 -- I mean, that first kind of long sentence indicates  
15 that the -- I guess, the two commissions and the  
16 Department of Public Service, you know, feel they need  
17 to do some monitoring in the event that the three  
18 regulators approve the proposed transaction.

19 Do you see where I'm talking about?

20 A. (King) Yes.

21 Q. And it sounds to me like you're starting work before  
22 that approval has occurred; is that right?

23 A. (King) That's correct.

24 Q. And then, later in that paragraph, you say, well, your

1 participation may prove useful even if the transaction  
2 is not ultimately approved. Can you explain for us how  
3 the work you're doing would provide any benefit if the  
4 transaction is not approved?

5 A. (King) The issue there is, we believe that the input  
6 that we would provide, particularly with regard to our  
7 assessment of the testing, could be of benefit to the  
8 three different regulatory bodies as part of the  
9 assessment of approval.

10 Q. Okay. And I think you said something similar before  
11 the lunch break, where you -- I wrote this down, I  
12 think, word for word -- where you said that your  
13 opinions might inform such approval; that is, you  
14 expect the regulators to rely on whatever reports you  
15 provide. Is that your understanding?

16 A. (King) We would hope that the regulators would find  
17 what we -- what we would provide to be useful, yes.

18 Q. Okay. So your understanding, then, is that you're  
19 going to be providing information that will get to the  
20 decision-making bodies themselves, not just to the  
21 staffs of ---

22 A. (King) Well...

23 Q. --- the three entities?

24 A. Well, it would be provided through the staffs, and then

1 the staffs can provide that information to the  
2 regulatory authorities.

3 Q. Okay. And I believe -- I don't want to put you in an  
4 awkward position. I know that you're not the staffs.  
5 But have you had any discussions that indicate how this  
6 information will -- will or may be used in the actual  
7 decision by the commissions about the ultimate approval  
8 of this transaction?

9 A. (King) No, we have not.

10 Q. And I'm not sure you answered the question I asked you,  
11 which is how the information about the FairPoint and  
12 Capgemini systems would be useful if the transaction is  
13 not approved.

14 A. (Falcone) I believe the answer was that the information  
15 could possibly be used by the commissions and/or -- and  
16 the staffs to help make a determination whether or not  
17 the transaction should be approved.

18 Q. Okay. Well, that's different than what it says here,  
19 and that's why I'm a little bit unclear. I mean,  
20 you're saying it may help the commissions decide  
21 whether to approve the transaction. And, you know, we  
22 can debate that all afternoon, which, believe me, I  
23 don't want to do.

24 But it says here that -- that your

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1 participation would be useful if the transaction is not  
2 approved. And I'm trying to figure out what that  
3 means. If this commission or one of the other  
4 commissions says no, it's not in the public interest  
5 for FairPoint to acquire Verizon in northern New  
6 England, how is what you're doing going to provide any  
7 benefit?

8 A. (King) If the information that we provided was part of  
9 that decision, then it seems to me it's perhaps  
10 provided benefit.

11 Q. And if the Commission reaches that decision without any  
12 input from you, then what?

13 A. (Falcone) Then we move on. I'm not -- I think you're  
14 hung up on the semantics. I think what we're saying  
15 is, the language here is intended to mean that, based  
16 on the information we're going to provide from our  
17 monitoring, it may be helpful in this Commission or one  
18 of the other two commissions in making a decision. If  
19 the semantics don't say that, I apologize.

20 Q. Why don't you just ask the commissions to order  
21 FairPoint and Capgemini to stop the development work  
22 until it has been determined that this transaction is  
23 in the public interest?

24 A. (King) Because we ---

1 Q. And then you can get in and monitor and review and the  
2 process moves forward.

3 A. (King) Because that's not what the three staffs asked  
4 us to do.

5 Q. Fair enough. And do you know why they didn't ask you  
6 to do that?

7 A. (King) You'll have to ask them.

8 Q. Okay. On the second page of the statement of scope --  
9 well, I'm sorry. Let me just -- one more question on  
10 what we were talking about.

11 Do you understand that there are parties  
12 to this case who are asking the Commission to reject  
13 the transaction?

14 A. (King) Oh, yes.

15 Q. Okay. Thank you. Now, if we look at the second page  
16 of the statement of scope, the second bullet on the  
17 page says, "Review staffing requirements and plans."

18 Hypothetically, if there's a  
19 disagreement between you and FairPoint -- let's say  
20 FairPoint says they can perform a certain function with  
21 five people and you think they need ten people to do it  
22 -- what happens?

23 A. (Falcone) Well, that would be something that we would  
24 put in our report to the staff. And Staff, then, has

1 the choice of what they want to do with it, in terms of  
2 dealing with FairPoint.

3 Q. Okay. So it's not contemplated in this that you would  
4 actually try to work through these issues with  
5 FairPoint. You might raise concerns and, then, if you  
6 don't get a satisfactory response, it just ends up in  
7 your report?

8 A. (King) Well, you know, I don't think it's correct to  
9 assume that we wouldn't try to work it out with  
10 FairPoint. I mean, what we have contemplated is that  
11 we would be working in close communication with  
12 FairPoint to provide them with our assessment. And if  
13 there was disagreement, we'd try to figure out what the  
14 reason for the disagreement is. They may convince us  
15 that we were wrong. We would hope that we would -- if  
16 we believe we're right, we would hope that we would  
17 convince them that they're wrong. But if, after that,  
18 there is still disagreement, we would reflect that  
19 disagreement in what we report to the staffs.

20 Q. Okay. Let's look at the third page under the heading  
21 "Key Deliverables," toward the bottom of the page. The  
22 first one is a weekly telephone conference with the  
23 state regulators. Have those calls started yet or, if  
24 not, do you know when they will start?

1 A. (King) Yes. They'll start at the beginning of next  
2 month.

3 Q. I'm sorry. The beginning of November?

4 A. (King) Beginning of November, yes.

5 Q. Okay.

6 A. (King) It's still October, I think.

7 Q. Yeah. And do you know who will participate in those  
8 calls?

9 A. (King) Representatives from the three staffs that are  
10 referenced in this document.

11 Q. Okay. Do you have any understanding of the  
12 relationships of those staffs to the members of the  
13 commissions and public service board, in terms of any  
14 kind of formal or legal relationship that they have?

15 A. (King) I certainly wouldn't say I know them in complete  
16 detail, but I have some understanding, yes.

17 Q. Okay. Is it your understanding that, in Maine and New  
18 Hampshire, the staffs are advisory staffs; that is,  
19 they are allowed to talk with the commission members?

20 A. (King) Yes, that is correct.

21 Q. And is it your understanding that the Department of  
22 Public Service in Vermont is not in the same position;  
23 that they are a party to the case, but cannot speak  
24 directly off the record with members of the public



1 service board?

2 A. (King) That is my understanding, yes.

3 Q. On page 4 of this document, under the heading "Key  
4 Deliverables," the second bullet is -- it says,  
5 "Participation in a status conference with the Vermont  
6 Public Service Board." Do you know when that would  
7 occur?

8 A. (King) Obviously, that would occur dependent on the  
9 timing needs of Vermont and with information to be  
10 provided to us by the people in Vermont who would be  
11 setting that up.

12 And, in fact, the whole reason for that  
13 bullet is to address the very issue you raised, which  
14 is the fact that the DPS needs to communicate with the  
15 board through a formal process.

16 Q. Okay. So, as far as you know, that contemplates some  
17 type of public process. So it wouldn't just be with  
18 the Public Service Board? It would somehow re-open the  
19 case?

20 A. (King) I cannot speak to whether that's a public  
21 process or not. That's up to how Vermont wants to  
22 handle it.

23 Q. Okay. Further down on page 4, under the heading,  
24 "Post-Cutover Review and Report," you use the term

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"customer-affecting problems." Can you tell us what those are?

I'm sorry. Do you see what I'm referring to?

A. (King) You're talking about the third line in "Post-Cutover..." Okay.

Q. Yes.

A. (Falcone) What's envisioned there is that it's now post-cutover and Staff and the Commission is hearing complaints from the CLEC community, the IXC's, the ISPs, the retail customers, all of the above, any mixture of that community on anything, whether it be a provisioning issue, whether it be a maintenance repair issue, whether it be a billing issue. So customer-affecting complaints is a pretty large umbrella and covers a large range of customers.

Q. Okay. Does it encompass financial problems?

A. (Falcone) When you say "financial problems," help me understand what you mean there.

Q. If, you know, after cutover, it looks like FairPoint's going to have cash-flow problems, for example, is that part of this or not?

A. (King) That wasn't something that was contemplated by this. But, really, what this is trying to say is that

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1 if the staffs see issues that they consider to be  
2 significant enough that we would need to be brought  
3 back into the process, they would then do so.

4 Q. Okay. Well, that was, I guess, part of my question.  
5 Is that category of issues limited to those that are  
6 having an immediate impact on customers or does it also  
7 contemplate longer-term types of problems?

8 A. (King) Well, that's really up to the staff. But what I  
9 can tell you is that, when we discussed this language  
10 with the staff, it's really the customer-affecting  
11 issues of the sort that Mr. Falcone was talking about  
12 that they were thinking of.

13 MR. RUBIN: Okay. Thank you. That's  
14 all I have.

15 CHAIRMAN GETZ: Actually, I would like  
16 to follow up with you, Mr. Rubin. The inquiry you had  
17 about the meaning of this sentence on page 1 and the  
18 phrase about "may prove useful even if the transaction is  
19 not ultimately approved," in your inquiry, was the concern  
20 that somehow, between the close of the record and the  
21 issuance of the order, there would be some kind of non-  
22 record information that would be affecting or informing  
23 the decision that we would ultimately issue? Is that the  
24 concern that you were having?

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1 MR. RUBIN: Yes, Mr. Chairman. That's  
2 very much our concern. And, you know, Dr. King was, I  
3 think, very, you know, forthright when he said that he  
4 thought that was what the staffs might have in mind, is  
5 that somehow this information might, you know, influence  
6 the decision that the commissions make. And we're very  
7 concerned about that.

8 The record has already closed in two  
9 states. We expect the record to close, you know, here,  
10 you know, within the next day. And, obviously, our  
11 position is that the transaction should not be approved.  
12 And this really seems to be, you know, putting the cart  
13 before the horse, saying, "Well, we're going to go out and  
14 make sure the transition works smoothly," when we think  
15 the transition should never occur. And obviously, we're  
16 not alone in that opinion. But I'm having a great deal of  
17 trouble understanding why the state commissions should be  
18 engaging in this process before there's been a  
19 determination that the underlying transaction is in the  
20 public interest.

21 CHAIRMAN GETZ: Okay. All right. Thank  
22 you. I understand. And then, just let me make clear,  
23 it's certainly not our intent to render a decision in this  
24 case or any case based on information that's not part of

1 the record.

2 MR. RUBIN: We appreciate that. Thank  
3 you.

4 CHAIRMAN GETZ: Ms. Hatfield?

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

6 **RE CROSS EXAMINATION**

7 BY MS. HATFIELD:

8 Q. Good afternoon, again.

9 A. (King) Good afternoon.

10 A. (Falcone) Good afternoon.

11 Q. I'm wondering if there is a proposed budget for this  
12 scope of work?

13 A. (King) There is a proposed budget, yes.

14 Q. And can that be disclosed to the parties?

15 A. (King) I would have to talk to the staffs about that.

16 MS. HATFIELD: So perhaps that's a  
17 record request?

18 CHAIRMAN GETZ: Perhaps?

19 MS. HATFIELD: Does it want to be  
20 disclosed how?

21 CHAIRMAN GETZ: We can make that a  
22 record request.

23 BY MS. HATFIELD:

24 Q. And I believe that you testified that your

1 understanding is that FairPoint would be paying the  
2 costs of the scope of work?

3 A. (King) That's our understanding, yes.

4 Q. And would you consider the costs associated with the  
5 scope of work to be transactional costs?

6 A. (King) I'm not sure what you mean by that. Could you  
7 clarify?

8 Q. A cost related to the transaction.

9 A. (King) You mean how it would be accounted for by  
10 FairPoint?

11 Q. Well, just in your view, how you would consider the  
12 cost.

13 A. (King) I really don't have a view on that, I don't  
14 think.

15 Q. And I will -- I do have a question for Mr. Nixon, along  
16 these lines, but I was just wondering, in your view,  
17 would you see it as a cost that could be recovered from  
18 ratepayers or would it be a cost related to the  
19 transaction that the company couldn't recover?

20 A. (King) That's really not something that I have  
21 expertise in, so I would -- I'd defer that to someone  
22 who had that expertise.

23 Q. Okay. I think, in your discussion with Mr. Mandl and  
24 possibly with Mr. Rubin, the issue of disagreement

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1           arose. And I want to make sure I'm clear that if  
2           there's disagreement between Liberty -- and the staffs  
3           may or may not agree with you -- and FairPoint, and you  
4           express those disagreements, is it the case that you  
5           wouldn't be able to stop the cutover from taking place?

6   A.   (King) We would have no authority one way or the other  
7           about stopping or not stopping the cutover. All we can  
8           do is recommend.

9   Q.   And your recommendation goes to the staffs?

10  A.   (King) The recommendation goes to the three staffs,  
11           yes.

12  Q.   As well as to the company.

13  A.   (King) Certainly, the recommendations to the company  
14           would be happening on a regular basis -- and to the  
15           staffs, for that matter. But yes to both.

16  Q.   And so, do you think, contemplated in this process,  
17           that as Mr. Rubin has just discussed is a little bit  
18           confusing, because this isn't really a condition of  
19           approval because this contract will be approved sooner  
20           than approval, if there is an approval. So do you know  
21           if it's contemplated that the cutover could be stopped  
22           by the commissions, based on your report to the staffs?

23  A.   (King) Contemplated by whom?

24  Q.   By the staffs.

1 A. (King) I really haven't discussed that issue with the  
2 staffs. You know, the main thing that we've been  
3 concerned about is providing the information to the  
4 staffs. How the staffs would use that information  
5 after it's provided is beyond the scope of what we've  
6 discussed.

7 Q. Is there a process in the event that there is  
8 disagreement among the three state staffs?

9 A. (King) We haven't discussed that.

10 Q. And then, on page 4, in that paragraph at the bottom  
11 that we were just -- you were just discussing with  
12 Mr. Rubin about what might happen if there are problems  
13 during or after cutover, the paragraph states, "The  
14 state regulators may elect to retain Liberty for  
15 further work."

16 So would the post-cutover review and  
17 report actually be the subject of an additional  
18 contract or would it be sort of an extension of this  
19 one?

20 A. (King) You know, again, we haven't discussed that. But  
21 my assumption is that it would be an extension of this  
22 contract.

23 MS. HATFIELD: That concludes my  
24 questions for these two witnesses.



**EXAMINATION BY CMSR. BELOW**

1  
2 BY CMSR. BELOW:

3 Q. Going back a bit, on page 13 of your direct testimony,  
4 you pointed out that, in response to a data request,  
5 FairPoint stated -- this is at line 15 -- "Close to  
6 60 percent of the DLC sites are fiber-fed, which might  
7 render DSL deployment feasible in the near term, given  
8 consideration for appropriate business-case support."

9 And that implies that 40 percent are not  
10 fiber-fed, which, from the numbers, I think it's  
11 publicly stated here that the number that's fiber-fed  
12 is 247, approximately? So there would be roughly 165  
13 that are not fiber-fed. And I think, later on, you --  
14 you know, there's this sort of open question as to when  
15 or if they would be able to have DSL broadband service  
16 at those locations.

17 Have you gotten any information, since  
18 you did your direct testimony, to change your opinion  
19 or concerns about this issue?

20 A. (Falcone) No. One of the concerns that's registered in  
21 the testimony -- I can't put my finger on it right now  
22 -- is specifically to that 40 percent. And what we  
23 essentially said then and remains the case now is that  
24 FairPoint has been silent on how it plans on treating

that 40 percent of the customers that it would serve by remote terminals that are not fiber-fed.

2  
3 Q. You expressed concerns on pages 14, 15, and perhaps  
4 some subsequent pages, you discuss about -- concern  
5 about knowing how many lines at the fiber-fed DLC  
6 locations would be capable of -- DSL-capable, and an  
7 assumption that FairPoint had apparently assumed that a  
8 hundred percent would be capable, but in their due  
9 diligence and response to data requests, you hadn't  
10 seen any evidence that they really looked at what  
11 portion of those customer lines or loops would be  
12 capable.

13 I think you expressed a particular  
14 concern that there might be features that would make  
15 them not capable. Something -- I guess I'm not  
16 familiar with something, a coil loop or something like  
17 that.

18 A. (Falcone) Loop coil.

19 Q. Loop coil. Have you received any information, since  
20 you filed your testimony, that would address your  
21 concern or -- and/or -- well, let me stop there.

22 A. (Falcone) Based on Mr. Brown's testimony yesterday and  
23 the revised plans, it seems that the concerns were  
24 somewhat warranted, because Mr. Brown is saying that,

1 as they got more information from Verizon -- "they"  
2 being FairPoint -- they kind of scaled back their plan  
3 from the initial plan that was issued in June. And I'm  
4 going to be very careful about what I say, because all  
5 this is proprietary, so I won't give any numbers.

6 But from the initial plan that was given  
7 in June to the most-current plan that was shared  
8 yesterday, the number of lines that are going to be  
9 made DSL-capable has dropped significantly; whereas,  
10 the cost has increased somewhat. Again, I won't give  
11 numbers here. And part of the reason, Mr. Brown said,  
12 again, as they got more information, they realized that  
13 some of their assumptions that they were making at the  
14 30,000-foot level didn't pan out.

15 Q. On page 25 of your testimony at line 9 and 10, you  
16 stated that FairPoint -- the FairPoint due diligence  
17 appears to have been seriously flawed. And you go on  
18 and explain some of the reasons for your -- for that  
19 conclusion.

20 Have you received any information  
21 subsequent to your testimony that would at all modify  
22 your opinion or is that still a specific concern of  
23 yours?

24 A. (Falcone) It is still a concern. In my opinion, it was

1 modified slightly by the testimony yesterday, again, of  
2 Mr. Brown.

3 Let's take this in two phases. There's  
4 two -- what I'll call two aspects of the due diligence.  
5 One was the inside-plant or the central-office due  
6 diligence. We heard yesterday that they only looked at  
7 four offices in New Hampshire. All of them were host  
8 switching sites.

9 There's 96 remote switching sites in New  
10 Hampshire. FairPoint didn't visit a single one of  
11 those. They really didn't look at any sites in rural  
12 areas. And we even heard testimony that one of the  
13 sites they visited was in pretty poor shape from an  
14 environmental standpoint Mr. Harrington was discussing.

15 So from an inside-plant standpoint,  
16 looking at the central office, central-office  
17 equipment, I think it was still very lacking and they  
18 could have done more.

19 Outside plant, the one modification was  
20 originally from a data request response that FairPoint  
21 provided. It indicated that they only looked at one  
22 outside-plant location, which was Portsmouth. And  
23 then, Mr. Brown testified yesterday that, indeed, they  
24 forgot to put four other locations, the same four

1 locations that they looked at the central office -- I  
2 believe it was Dover, Manchester, Newmarket and...

3 A. (King) Concord.

4 A. (Falcone) Concord, thank you. Where we are, actually,  
5 so I shouldn't forget. And he indicated that they did  
6 look at outside-plant locations in those sites.

7 My concern there, though, was Verizon  
8 did not accompany FairPoint on any of those  
9 observations of the outside plant. So as Mr. Brown  
10 testified yesterday, they were only able to observe  
11 what you and I could observe driving by in our car and  
12 looking at the wires on the line, looking at the  
13 telephone poles, looking at the boxes. They did not  
14 actually kick the tires, if you will. They didn't open  
15 up any of the boxes to see what it looked like inside  
16 or anything of that nature.

17 Q. Including looking at the portion of the outside plant  
18 that kind of terminates in the central office -- and  
19 the central-office inspection, do you know if that  
20 included looking at that part of the outside plant?

21 A. (Falcone) As Mr. Brown testified yesterday, the same  
22 four central offices where they looked at the inside  
23 plant, Mr. Brown indicated that they also drove around  
24 and looked at -- he said that they used the central

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1 office -- kind of they started there, looked at the  
2 facility routes leaving the office, and they drove  
3 those routes looking at the lines up on -- you know,  
4 the aerial lines up on the poles.

5 So from an inside plant, they looked at  
6 inside four central offices, the four that I named.  
7 Outside plant, apparently, those four -- according to  
8 Mr. Brown, they looked at those four, plus the one at  
9 Portsmouth that they indicated in their data request  
10 response.

11 Q. And at this date, do you have any additional  
12 information regarding your concern expressed around  
13 page 31 and 32 about whether Verizon would complete or  
14 -- it seems that Verizon -- it seemed, I think, at that  
15 time, that it would look -- that Verizon would not  
16 complete or might not complete, prior to closing,  
17 investments in permanent water-proofing of the Raymond  
18 station, as well as the fiber -- fiber -- Pinkham Notch  
19 fiber ring.

20 A. (King) As far as I'm aware, those will not be completed  
21 by the contemplated date of close.

22 CMSR. BELOW: Okay. So there's no real  
23 update or change to that testimony, either.

24 Okay. That's all. Thanks.

**EXAMINATION BY CHAIRMAN GETZ**1  
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BY CHAIRMAN GETZ:

Q. Good afternoon, gentlemen.

A. (King) Good afternoon.

A. (Falcone) Good afternoon.

Q. I just want to follow up a little bit on this Exhibit 61 and the third-party monitoring approach.

And I guess I understood, at the outset, you basically said that this approach arose out of a concern among the staffs of the three states that the irrevocable notice of readiness could potentially be issued prematurely. Is that a fair characterization?

A. (King) Yes.

Q. And but what you're doing here, though, is really your approach is limited to you would be monitoring and reporting to the staffs.

A. (King) That's correct.

Q. And then, I guess, it looks like you've purposely stopped short of hard-wiring some kind of -- or making a recommendation about what the next step might be, what the states might do with this process, how they might use this process, in terms of what to do if there was a potential conflict between your report and actions that FairPoint might be prepared to take. Is

1 that ---

2 A. (King) That is correct. I think what we contemplated  
3 was that there would be sufficient agreement between --  
4 what we would hope, let me put it this way -- is that  
5 there would be sufficient agreement between us and  
6 FairPoint, after we had worked with FairPoint to  
7 express our concerns. That there would be a  
8 sufficiently clear set of criteria that, once FairPoint  
9 had met those criteria, it would be fairly obvious that  
10 they were -- they were ready to cut over.

11 But to answer your question, we did not  
12 include within this particular proposal -- within this  
13 particular scope -- a process for how the information  
14 would be used if there was a disagreement between us  
15 and FairPoint as to whether those criteria were met.

16 CHAIRMAN GETZ: Okay. Redirect,  
17 Ms. Fabrizio?

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

19 MR. DEL VECCHIO: Excuse me, Mr.  
20 Chairman. I didn't jump up soon enough. I have one  
21 question to ask of this panel regarding Exhibit 61.

22 **CROSS EXAMINATION**

23 BY MR. DEL VECCHIO:

24 Q. I take it, gentlemen, that the scope of the proposal



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1 that you've provided to the Commission to date does not  
2 entail a review of Verizon's transitional operating  
3 systems, protocols or practices; is that correct?

4 A. (King) No, it does not.

5 MR. DEL VECCHIO: Thank you. Thank you,  
6 Mr. Chairman.

7 CHAIRMAN GETZ: Ms. Fabrizio?

8 MS. FABRIZIO: Thank you.

9 **REDIRECT EXAMINATION**

10 BY MS. FABRIZIO

11 Q. Have either of you -- Dr. King and Mr. Falcone, have  
12 either of you worked on other systems-testing projects  
13 that have incorporated meetings between an ILEC, the  
14 wholesale community it serves, and yourselves as an  
15 independent party?

16 A. (King) Yes.

17 Q. And with how many different ILECs have you done so?

18 A. (King) We've done that with, let's see -- yeah, well,  
19 we've done that with Verizon. We've done that with  
20 BellSouth prior to BellSouth's merger with AT&T. We  
21 did that with Ameritec prior to Ameritec's merger with  
22 AT&T. And we've done that with -- well, with Quest.  
23 Go ahead.

24 A. (Falcone) Also, Bell Atlantic and -- I'm not sure if it

1 was before the merger with Bell Atlantic -- with  
2 perhaps NYNEX in New York.

3 And then not us, but I was also involved  
4 with Hawaiian Telephone.

5 Q. I'm sorry?

6 A. (Falcone) Hawaiian Telephone.

7 Q. Thanks. And in your work with those ILECs, was there  
8 ever any doubt in your mind about whether the  
9 particular ILEC had failed to reach out to the  
10 wholesale community to keep it informed about the  
11 purposes and scheduling of key steps and meetings?

12 A. (Falcone) Let's separate, if I may, the two, being  
13 Hawaiian Telephone and the 271 testing, which was what  
14 Mr. King was referring to.

15 In the 271 testing, both Dr. King and  
16 myself worked for Bearing Point. And Bearing Point was  
17 kind of the focal point for the communications between  
18 the ILEC and the CLEC community, as opposed to this  
19 testing where we're looking for ---

20 A. (King) This monitoring.

21 A. (Falcone) This monitoring, right, where we're going to  
22 be sitting in on FairPoint's calls with the wholesale  
23 partners.

24 In Hawaiian Telephone, it was -- as I

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1 understand how FairPoint's going to operate, it was  
2 very similar to how FairPoint's going to operate, in  
3 that Hawaiian Telephone had monthly meetings with the  
4 CLECs and the IXCs and whoever chose to attend -- there  
5 were monthly calls -- and kept them apprised of what  
6 was going on with the test plan, the cutover plan, very  
7 similar to how it's planned to be done here.  
8 Hopefully, with different results.

9 Q. Thank you. And just to make sure that no CLEC or other  
10 stakeholder is missed here in this process, would you  
11 be willing to reach out to the staffs of the three  
12 states to make sure that FairPoint adds to its list any  
13 stakeholders identified by those staffs?

14 A. (King) Certainly.

15 Q. And a couple of follow-ups to the questions from the  
16 Commissioners.

17 Regarding the question that Chairman  
18 Getz had for, I believe it was, Mr. Rubin, did you,  
19 Dr. King, intend to convey the notion that you would  
20 provide information after the close of the record for  
21 this Commission's use in deciding on whether to approve  
22 the transaction?

23 A. (King) Absolutely not. If I gave that impression, I  
24 apologize.

1 Q. Okay. Thanks. And Mr. Falcone, in response to a  
2 question from Commissioner Below, you said you couldn't  
3 put your finger on a particular citation in your  
4 testimony about copper-fed loops. Is it the reference  
5 that you've made at the bottom of page 21 of your  
6 testimony? Is that...

7 A. (Falcone) Give me a moment.

8 Q. ...what you were looking for?

9 A. (Falcone) That's exactly what I was looking for. May I  
10 read it?

11 It says, "Conversely" -- first it talks  
12 about the 60 percent. "Conversely, this indicates that  
13 the remaining 40 percent of these sites must be fed by  
14 copper. To date, FairPoint has not supplied any  
15 information on how it intends to provide DSL services  
16 to customers served by these copper-fed DLC systems."

17 MS. FABRIZIO: Thank you. That  
18 concludes my questions, Mr. Chairman.

19 CHAIRMAN GETZ: Thank you.

20 Then these witnesses are excused. Thank  
21 you, gentlemen. And we'll turn to Mr. Nixon.

22 (Discussion was held off the record.)

23 CHAIRMAN GETZ: Mr. Nixon, welcome back.

24 I'll note for the record that you've already been sworn

1 and I believe it's Mr. Mandl's turn.

2 **PETER G. NIXON, Previously Sworn**

3 **CROSS EXAMINATION**

4 BY MR. MANDL

5 Q. Good afternoon, Mr. Nixon.

6 A. Good afternoon.

7 Q. Just a few brief questions. You've seen the scope-of-  
8 work document that we've been discussing this  
9 afternoon?

10 A. I have.

11 Q. Has FairPoint formally consented to Liberty's  
12 performance of the scope of work outlined in that  
13 document?

14 A. There's been -- no. And there's been no formal request  
15 for us to do so. We have reviewed it and we do consent  
16 to them performing the work.

17 Q. Okay. And is it FairPoint's intention to fully  
18 cooperate with Liberty in its conduct of the scope of  
19 work?

20 A. It is. And if I might...

21 You know, we view -- particularly  
22 because this is such a sensitive and important subject  
23 -- that with the experience that Liberty brings, we  
24 also respect the amount of effort and the collaborative

1 approach to this area. And the approach we've taken is  
2 absolutely collaborative with them and expect to  
3 cooperate fully.

4 Q. You've heard testimony from the Liberty witnesses that  
5 it is their understanding that FairPoint will be paying  
6 for the cost of Liberty's work under this monitoring  
7 arrangement; is that correct?

8 A. That is correct.

9 Q. And is that obligation something FairPoint would accept  
10 as a merger condition?

11 A. What's that, that we would pay for this third party?

12 Q. Yes.

13 A. It is.

14 Q. Okay. Thank you. Would FairPoint also accept as a  
15 merger condition that it would not seek to collect  
16 these costs directly or indirectly from retail or  
17 wholesale ratepayers or pole and conduit licensees?

18 A. FairPoint has no intention to seek to recover these as  
19 part of our rate-making process. These would be  
20 considered to be a transaction expense. I don't  
21 personally believe it is necessary to make it a merger  
22 condition to do that. I think my testimony should  
23 suffice and -- as well as the record. So I don't  
24 believe that would necessarily even be part of the

1 merger condition.

2 Q. Thank you. Does FairPoint intend to file this  
3 monitoring statement of scope in the state of Vermont?

4 A. This is not FairPoint's monitoring scope. This is the  
5 document that belongs to the Staff. I don't believe  
6 it's FairPoint's.

7 Q. All right.

8 A. That's not to say we don't support it and not to say we  
9 wouldn't cooperate fully with it.

10 Q. With regard to the performance of cutover monitoring  
11 that's described in this statement of scope,  
12 recognizing that some of the work that Liberty will be  
13 performing will occur prior to any orders from the --  
14 any order from the Commission regarding the proposed  
15 transaction, but given the fact that some of the work  
16 may occur after an order is issued approving the  
17 proposed transaction, would FairPoint consent to this  
18 cutover monitoring process as a merger condition?

19 A. Again, I would hope that the commissions and board will  
20 reserve the merger conditions for those things that are  
21 of utmost importance and not into the operations of the  
22 company. I recognize that this is of utmost importance  
23 and, if the Commission so desired to do that, we'd  
24 accept that as part of the merger condition. We do

1 recognize that this is a very important element. I  
2 have been on the record as saying I would like -- you  
3 know, I expect the Commission to reserve conditions for  
4 things that are really key. This appears to be that  
5 case and we'd agree to that.

6 Q. And you'd agree that the Commission has the flexibility  
7 to impose additional conditions relative to cutover  
8 readiness, if it chose to do so?

9 A. I'm not a regulatory attorney and I'm not sure I have  
10 the knowledge of what they can and cannot do. So I  
11 will take a pass on that one.

12 Q. All right. Fair enough.

13 A. No disrespect intended, I assure you.

14 MR. MANDL: I won't ask you my A-Rod  
15 question. Okay. No further questions for Mr. Nixon.

16 CHAIRMAN GETZ: Okay. Mr. Rubin, do you  
17 have anything?

18 MR. RUBIN: No questions.

19 CHAIRMAN GETZ: Ms. Hatfield?

20 MS. HATFIELD: I have no questions,  
21 thank you.

22 CHAIRMAN GETZ: Ms. Fabrizio? Anyone?  
23 Then you're excused. Thank you,  
24 Mr. Nixon.



10/30/07 DAY 7 VERIZON/FAIRPOINT-PUBLIC

1 THE WITNESS: Thank you.

2 CHAIRMAN GETZ: I think, at this point,  
3 it's probably a good time to take a short recess. But let  
4 me make sure everyone's on the same page. I guess the  
5 next step would be the Electric panel; is that correct?

6 Everybody's in agreement? Okay. Let's  
7 take 15 minutes. And then, when we come back, we'll  
8 address the panel. Thank you.

9 (Recess taken at 3:22 p.m.)

10 (Hearing reconvened at 3:50 p.m.)

11 CHAIRMAN GETZ: Good afternoon. We're  
12 back on the record in DT 07-011. And let me make sure I  
13 understand where we are. So we have the panel from PSNH,  
14 Unitil and National Grid. We have the direct testimony  
15 from each of the three witnesses, a good bit of which has  
16 been supplanted by the memorandum of understanding with  
17 FairPoint. Is that a fair characterization?

18 MR. COOLBROTH: Yes, Mr. Chairman.

19 MR. McHUGH: Yes.

20 CHAIRMAN GETZ: Then we have the  
21 outstanding issue; I guess it would be the remaining issue  
22 is the debate between Verizon and PSNH and Unitil over the  
23 recovery of certain maintenance tree-trimming expenses.

24 So in terms of proceeding then, we'll

1 have the qualification of the three witnesses. My  
2 understanding, in terms of requested cross, is that the  
3 Consumer Advocate, Staff and Verizon has questions for the  
4 panel, I guess.

5 But there's also a request, Mr. Epler,  
6 that you wanted to do cross of Mr. Hybsch? Is that still  
7 the case?

8 MR. EPLER: No. At this point, I will  
9 not have cross.

10 CHAIRMAN GETZ: How about at the point  
11 when we get to --

12 MR. EPLER: We're not on the record yet;  
13 right? Oh, we are? No, at this point and points  
14 continuing into the future, I will not have any.

15 CHAIRMAN GETZ: Great. Thank you.  
16 Well, let's then proceed with qualifying the witnesses.  
17 Oh, let's get them sworn first, I guess.

18 **PANEL OF ROBERT HYBSCH, CHERYL WARREN**  
19 **AND THOMAS MEISSNER, SWORN**

20 MR. EATON: Mr. Chairman, if I could  
21 further refine what you were talking about, as far as the  
22 issues going forward. All three witnesses are going to  
23 testify about the memorandum of understanding. The  
24 National Grid witness is not --- does not have any

1 testimony regarding a claim against Verizon. And her  
2 availability is today, and today only. So if we could go  
3 forward with just the memorandum of understanding issues  
4 first and then go back to the Verizon issue, that way we  
5 can finish with the National Grid witness first, and she  
6 can be excused and catch her -- and return to her home,  
7 which is out of state.

8 CHAIRMAN GETZ: That's fine.

9 **DIRECT EXAMINATION**

10 BY MR. EATON:

11 Q. Mr. Hybsch, would you please state your name for the  
12 record.

13 A. (Hybsch) Robert T. Hybsch.

14 Q. And for whom are you employed?

15 A. (Hybsch) Public Service Company of New Hampshire.

16 Q. And what are your duties? What's your position and  
17 what are your duties with Public Service Company?

18 A. (Hybsch) I'm director of customer operations, which  
19 involves the design and construction of distribution  
20 network, as well as emergency restoration and some  
21 other various duties regarding large power account  
22 management and customer service.

23 Q. Could you move your microphone a little bit closer so  
24 it picks up? Thank you.

1 And how long have you worked for Public  
2 Service Company?

3 A. (Hybsch) Just over 29 years. I'm sorry. Thirty years.

4 Q. Mr. Hybsch, did you have testimony prepared by you or  
5 under your supervision submitted in this proceeding?

6 A. (Hybsch) Yes, I did.

7 Q. And has that been premarked as PSNH Exhibit 1-P for  
8 identification?

9 A. (Hybsch) Yes, it has.

10 Q. And that was filed on August 1st, 2007?

11 A. (Hybsch) Yes.

12 Q. And your background and qualifications are attached to  
13 that exhibit as your first attachment; correct?

14 A. (Hybsch) Correct.

15 Q. Now, did you discover any problems with that testimony?

16 A. (Hybsch) Yes, we did. It was brought to our attention  
17 that a reference to a prior year -- we referred to 2005  
18 in my testimony regarding some trimming maintenance  
19 expenditures that we were looking to recoup from  
20 Verizon. In fact, it was the year 2006.

21 Q. And did PSNH submit an errata page on August 28, 2007  
22 to correct that?

23 A. (Hybsch) Yes.

24 Q. And that's been premarked, that package, as Exhibit

1 PSNH 2-P?

2 A. (Hybsch) That's correct.

3 Q. And Mr. Hybsch, did PSNH enter into a memorandum of  
4 understanding with FairPoint Communications?

5 A. (Hybsch) Yes, we have.

6 Q. And does that cover many of the issues that was  
7 addressed in the first part of your testimony?

8 A. (Hybsch) Could you restate that, please?

9 Q. Your prefiled testimony concerned certain conditions on  
10 the successor company having to do with your  
11 relationship -- Public Service Company's relationship  
12 regarding joint pole activities; correct?

13 A. (Hybsch) Yes. The memo of understanding addressed the  
14 issues that related to FairPoint Communications going  
15 forward from an operational perspective.

16 Q. Thank you. And that was submitted and premarked, at  
17 least the memorandum of understanding with Public  
18 Service and PSNH was premarked as PSNH Exhibit 3-P;  
19 correct?

20 A. (Hybsch) Yes, that's correct.

21 Q. And finally, the last prefiled exhibit is a two-page  
22 document, and it's been premarked as PSNH Exhibit 4-P.  
23 Could you describe what that document is?

24 A. (Hybsch) That was in response to a data request from

1 Verizon, marked FPVC-002.

2 Q. With the correction made to your testimony, are these  
3 four exhibits -- the corrections that you made with  
4 Exhibit 2-P, are these four exhibits true and accurate  
5 to the best of your knowledge and belief?

6 A. (Hybsch) Yes, they are.

7 Q. And if you were asked those same questions today, you  
8 would answer in the same way?

9 A. (Hybsch) Yes, I would.

10 MR. EATON: Mr. Hybsch will later give a  
11 summary of the memorandum of understanding. But I'd  
12 suggest we go through the qualifications of the other two  
13 witnesses first, and then I'll come back and he can do  
14 that.

15 CHAIRMAN GETZ: Okay. Thank you.

16 **DIRECT EXAMINATION**

17 BY MS. BLACKMORE:

18 Q. Ms. Warren, would you please state your full name and  
19 business address for the record.

20 A. (Warren) Yeah. Cheryl A. Warren, 1125 Broadway,  
21 Albany, New York, 12201.

22 Q. Who are you employed by?

23 A. (Warren) National Grid.

24 Q. What position do you currently hold with National Grid?

1 A. (Warren) I'm currently the vice-president of asset  
2 strategy and investment planning.

3 Q. What are your duties and responsibilities in that  
4 position?

5 A. (Warren) My group creates all the asset strategies for  
6 the corporation, including vegetation strategy. We  
7 also developed the reliability enhancement program,  
8 have responsibility for the capital budget and the  
9 research and development program.

10 Q. You have in front of you a document that's been marked  
11 as National Grid Exhibit 1P?

12 A. (Warren) Yes.

13 Q. Could you please identify that document?

14 A. (Warren) It's my direct testimony for this case.

15 Q. And is that testimony true and accurate to the best of  
16 your knowledge?

17 A. (Warren) Yes, it is.

18 Q. After your testimony was filed, did National Grid enter  
19 into a memorandum of understanding with FairPoint?

20 A. (Warren) Yes, it did.

21 Q. You have in front of you a document that's been marked  
22 as National Grid Exhibit 2P. Could you identify that  
23 document?

24 A. (Warren) It is the memorandum of understanding between

1 National Grid and FairPoint.

2 DIRECT EXAMINATION

3 BY MR. EPLER:

4 Q. Mr. Meissner, could you please state your full name and  
5 job title and your job responsibilities.

6 A. (Meissner) My name is Thomas P. Meissner, Jr. My job  
7 title is senior vice-president and chief operating  
8 officer, and I'm responsible for operations and  
9 engineering for Unitil, including all related support  
10 functions and administrative functions.

11 Q. And you have before you a document that's been  
12 premarked as Unitil Exhibit 1P, consisting of testimony  
13 and three schedules. Was this prepared by you?

14 A. (Meissner) Yes.

15 Q. And do you have any changes or updates concerning your  
16 testimony?

17 A. (Meissner) Yes, I do. On Page 28, there is a section  
18 where we list a total arrearage outstanding for  
19 payments for tree-trimming in the amount of  
20 \$340,748.23. I would --

21 Q. Please talk into the microphone.

22 A. (Meissner) Okay. I would like to identify at this time  
23 that that amount on Page 28 was as of July 11th. Since  
24 that time, we've continued to do tree-trimming, and



1 there have been additional invoices that increased that  
2 amount. However, there's also been payments made by  
3 Verizon over the last month that would be applied  
4 towards that amount which we have not yet reconciled to  
5 the amounts owed. But they went back to trimming that  
6 was performed as far back as 2005. So as a result,  
7 that amount will change, but I cannot give an update to  
8 the amount today.

9 Q. Okay. Thank you. Now, asked the same questions other  
10 than that section that you just referred to, if I've  
11 asked the same questions today in this testimony, would  
12 your answer be the same?

13 A. (Meissner) Yes, they would.

14 Q. Now, in your testimony, you discuss a number of  
15 conditions that you recommend that the Commission  
16 impose on the proposed transaction between Verizon and  
17 FairPoint. And these are summarized on Pages 32 and 33  
18 of your testimony; is that correct?

19 A. (Meissner) That's correct.

20 Q. And of the total seven conditions that appear on those  
21 two pages, six of them relate to the requirements that  
22 FairPoint be directed to meet or implement with respect  
23 to the operation and maintenance of the joint poles,  
24 and one condition which relates to what the Commission

1 should require Verizon to meet with respect to amounts  
2 outstanding for tree-trimming services performed by  
3 Unitil; is that correct?

4 A. (Meissner) That's correct.

5 Q. Now, in the time since you filed this testimony, has  
6 Unitil met with representatives of FairPoint and  
7 reached an agreement with respect to the six conditions  
8 you referenced?

9 A. (Meissner) Yes, we have.

10 Q. And is that agreement the memorandum of understanding  
11 dated October 4th, 2007 between FairPoint and Unitil?

12 A. (Meissner) Yes, it is.

13 Q. And do you have with you a copy of that memorandum of  
14 understanding?

15 A. (Meissner) Yes, I do.

16 MR. EPLER: And that's been premarked as  
17 Unitil Exhibit 2-P, I believe?

18 CHAIRMAN GETZ: That's correct.

19 BY MR. EPLER:

20 Q. And does this memorandum of understanding resolve all  
21 the issues Unitil has raised with respect to the  
22 transfer of the joint pole plant to FairPoint, with  
23 respect to the issues concerning FairPoint  
24 specifically?

1 A. (Meissner) It addresses the six issues that were  
2 specific to FairPoint, yes.

3 Q. And it does not resolve the remaining issue with  
4 respect to Verizon.

5 A. (Meissner) That is correct.

6 MR. EPLER: Thank you.

7 **DIRECT EXAMINATION, Resumed**

8 BY MR. EATON:

9 Q. Mr. Hybsch, could you please summarize the MOU that was  
10 entered into between PSNH and FairPoint Communications?

11 A. (Hybsch) Yes. The memorandum of understanding  
12 basically addressed the major points not only in my  
13 testimony, but also several of the issues that were  
14 raised during the pole docket, first one being  
15 communication and coordination. Basically, we've  
16 agreed to assign joint pole coordinators and senior  
17 management representatives to work out day-to-day  
18 issues relative to the joint ownership of poles between  
19 PSNH and FairPoint Communications.

20 In the area of emergency response  
21 management, we've developed or agreed to develop early  
22 communication procedures to ensure both joint owners  
23 are made aware of emergencies early on in the process.  
24 And an agreement to evaluate -- FairPoint has agreed to

1 evaluate multiple solutions to resolve existing  
2 response problems to emergency situations -- i.e., pole  
3 accidents, things of that nature. And those -- they've  
4 agreed to look at a broad number of resolutions to that  
5 issue which would, you know, include stand-by, overtime  
6 contract labor, et cetera, recognizing that they have  
7 to work with the representative labor force on that.  
8 And they've committed to achieve same-time response as  
9 electric utilities in time, once they've been able to  
10 address those issues.

11           Regarding pole inspection and  
12 maintenance, they've made a commitment to adhere to IOP  
13 No. 6, which is reference to the inspection of poles  
14 before year 20, before the 20th anniversary of a pole,  
15 and subsequently 10 years thereafter, which is a ground  
16 line inspection and treatment program.

17           We've agreed in maintenance  
18 tree-trimming area. FairPoint has recognized the need  
19 for maintenance tree-trimming of jointly-owned  
20 facilities. They've agreed to adherence to IOP No. 7:  
21 Joint maintenance trimming to be shared on a  
22 75-percent/25-percent basis -- 75-percent electric,  
23 25-percent telephone -- where the trimming is agreed to  
24 be of mutual benefit. Whenever there is disagreement

1 to that end of either party, minimum -- FairPoint has  
2 agreed to pay a minimum 15-percent contribution towards  
3 maintenance tree-trimming going forward.

4           Regarding pole relocations, commitment  
5 to place a high priority on municipal and New Hampshire  
6 DOT request for pole relocations. And as joint owners  
7 of the pole, this is very important to us working with  
8 our municipalities in the state of New Hampshire so  
9 that we don't hold up their construction projects. So  
10 the timely setting of poles and transfer facilities and  
11 removal of poles is absolutely critical. And FairPoint  
12 has committed to work with us going forward in that  
13 area.

14           Transfer of facilities, double poles.  
15 FairPoint has made a commitment to eliminate the  
16 existing backlog of double poles throughout the state  
17 within 36 months post-merger, which will, from our  
18 perspective, from an operational perspective, it will  
19 be of very much help to us as we work with the 211  
20 municipalities throughout the state that PSNH serves.

21           Relative to new pole sets, commitment to  
22 improve the exchange-of-notice process which is  
23 referred to in our joint ownership agreement as IOP  
24 No. 9. They want to work with us on that to improve

1 communications and bring that system into the 21st  
2 Century.

3 Install poles by customer-needs date,  
4 which will be a big change, where we'll be focusing on  
5 setting the poles and providing service by our  
6 customer's needs date versus the available resources  
7 that we might have at our disposal, with the commitment  
8 that it wouldn't be any sooner than 15 days and no  
9 sooner than 30 days for large jobs, and 15 days for  
10 small jobs. But that would be a tremendous improvement  
11 to response time over what we're experiencing today.

12 They've agreed to adoption of the JOA,  
13 joint ownership agreement, and the inter-company  
14 operating procedures by, one, incorporating what we've  
15 agreed to in the memorandum of understanding into our  
16 joint ownership agreement and our IOPs within 12 months  
17 after merger. And they've also agreed -- and actually,  
18 this was FairPoint's idea -- to renegotiate the entire  
19 joint ownership agreement and inter-company operating  
20 procedures with all the electric companies in New  
21 Hampshire with the understanding of operational  
22 efficiencies, where we can work together and change  
23 some of our business practice so we can operate more  
24 efficiently as joint owners. And that we very much

look forward to.

2                   Probably the most important part of this  
3 memo of understanding is the resolution of disputes.  
4 There's been a dispute-resolution process included in  
5 this which would include senior management first and  
6 then a mediation where the two parties would get  
7 together if senior management is unable to agree on  
8 resolving any particular issue with the joint ownership  
9 agreement. And arbitration by mutual agreement would  
10 be an option that both parties could agree to go  
11 forward with; and lastly, and very importantly, looking  
12 for New Hampshire PUC jurisdiction and other legal  
13 remedies over disputes arising in the joint ownership  
14 agreement.

15                   And lastly, the MOU would be conditional  
16 on New Hampshire PUC approval.

17 Q. On behalf of PSNH, Mr. Hybsch, are you satisfied with  
18 the outcome of this resolution with FairPoint  
19 Communications?

20 A. (Hybsch) Yes, I am.

21 Q. And I'll ask the other witnesses on the panel.

22                   Is the MOU that your companies executed  
23 very similar to the one that Mr. Hybsch just described?

24 A. (Warren) Yes, it is for National Grid.

1 A. (Meissner) It is also for Unitil.

2 MR. EATON: Thank you. My witness is  
3 available for cross-examination, but I think there may be  
4 a bit more direct.

5 **DIRECT EXAMINATION, Resumed**

6 BY MS. BLACKMORE:

7 Q. Just a couple here. Ms. Warren, does the MOU resolve  
8 the issues that you raised in your prefiled testimony?

9 A. (Warren) Yes, it does.

10 Q. What are you asking the Commission to do with respect  
11 to the MOU?

12 A. (Warren) The effectiveness of the MOU is really  
13 conditioned upon the Commission reviewing and adopting  
14 the terms that have been set forth. So we're asking  
15 you to review and adopt those terms as written, without  
16 condition or change.

17 Q. Thank you.

18 **DIRECT EXAMINATION, Resumed**

19 BY MR. EPLER:

20 Q. Mr. Meissner, you've heard the testimony by Mr. Hybsch  
21 with respect to the MOU. Do you generally agree with  
22 his characterization of the MOU?

23 A. (Meissner) Yes, I do.

24 Q. And do you believe that it fairly resolves the issues



1 that you've raised -- that Unitil has raised and you've  
2 raised on Unitil's behalf with respect to this  
3 transaction?

4 A. (Meissner) Yes, it resolves all issues on a prospective  
5 basis.

6 Q. And do you also agree with the characterization of the  
7 last section with respect to approval by the New  
8 Hampshire Public Utilities Commission, as contingent on  
9 full approval by the Commission?

10 A. (Meissner) Yes.

11 Q. And just drawing your attention back to the MOU, the  
12 maintenance trimming section that's on Page 3. This  
13 section caps the amount of trimming that Unitil could  
14 perform in any one year to 25 percent of its miles and  
15 lines; is that correct?

16 A. (Meissner) Yes, that's correct.

17 Q. And Unitil currently has a cyclical trimming plan in  
18 place; is that correct?

19 A. (Meissner) We do, yes.

20 Q. And is that plan effective in the same manner in both  
21 the capital and the seacoast areas of operation of  
22 Unitil?

23 A. (Meissner) We have one trimming program and one  
24 trimming policy that is applicable to all our locations

1 identically.

2 Q. Thank you.

3 MR. COOLBROTH: Mr. Chairman, I have one  
4 clarifying question at the appropriate time.

5 CHAIRMAN GETZ: Well, maybe since it's  
6 an MOU, is this friendly cross?

7 MR. COOLBROTH: It is.

8 **CROSS-EXAMINATION**

9 BY MR. COOLBROTH:

10 Q. Mr. Hybsch, just directing your attention to  
11 Paragraph 7 of the MOU, and just to clarify for the  
12 time period for the -- the maximum time period for the  
13 removal of double poles. I think you testified that it  
14 was 36 months. But continuing on, it says, does it  
15 not, that's following a six-month transition period; is  
16 that correct?

17 A. (Hybsch) That is correct.

18 MR. COOLBROTH: Thank you.

19 CHAIRMAN GETZ: All right. I guess the  
20 panel is ready to start with questions with respect to the  
21 MOU. So, Ms. Hatfield.

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

23 **CROSS-EXAMINATION**

24 BY MS. HATFIELD:

1 Q. Ms. Warren, I have a question that relates to the MOU  
2 but also ties back to your direct testimony. On Page 6  
3 of your direct testimony, starting on Line 1 and in  
4 that paragraph, you state that you recommend that a  
5 condition be placed on FairPoint to require a response  
6 to the site of emergency with qualified repair crews,  
7 excluding major storm events, within one hour on  
8 average. Is that correct?

9 A. (Warren) That is correct.

10 Q. And then if you turn to the MOU, which is National Grid  
11 Exhibit 2, and you look at Section 2 which covers  
12 emergency response, I think that the third paragraph  
13 states that FairPoint will evaluate possible  
14 alternatives to meet the same average response time as  
15 the electric company. I'm wondering, can you just  
16 discuss how that Section 2 in the MOU addresses the  
17 condition that you propose in your testimony?

18 A. (Warren) Essentially, it's the same condition. We  
19 didn't tag it back to the one hour on average. Those  
20 times do change over time. And it's certainly  
21 something we'd endeavor to do even more quickly. So  
22 working with FairPoint, we'll make sure that they're on  
23 a similar schedule to our schedules.

24 Q. So after FairPoint evaluates the possible alternatives,

1 they'll work with the electric companies to come to a  
2 mutually agreeable time; is that correct?

3 A. (Warren) That's correct.

4 Q. Thank you.

5 And I had a question for each of the  
6 members of the panel. First, is it true that your  
7 testimony in this case was limited to issues related to  
8 the ownership and management of poles?

9 A. (Meissner) Speaking for Unitil, my testimony was  
10 limited to joint ownership issues involved with the  
11 poles, yes.

12 A. (Warren) Same is true for National Grid.

13 A. (Hybsch) Same is true for PSNH.

14 Q. So your testimony did not go to whether FairPoint has  
15 the financial, technical or managerial ability to  
16 undertake this transaction; is that true?

17 A. (Meissner) That is correct for Unitil.

18 A. (Warren) And correct for National Grid.

19 A. (Hybsch) That's correct for PSNH.

20 Q. So, while in Paragraph 12 of your memorandum of  
21 understanding you state that you support the  
22 Commission's approval of the merger, you do so focused  
23 on the issues included in your testimony and not with  
24 respect to the financial, managerial or technical

1 abilities of FairPoint to undertake the transaction; is  
2 that correct?

3 A. (Meissner) That is correct for Unitil.

4 A. (Warren) And for National Grid.

5 A. (Hybsch) Same for PSNH.

6 MS. HATFIELD: Thank you very much. No  
7 further questions.

8 CHAIRMAN GETZ: Ms. Fabrizio.

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

10 **CROSS-EXAMINATION**

11 BY MS. FABRIZIO:

12 Q. Good afternoon. I will address my questions to the  
13 panel as a whole, give you the choice of who responds.

14 I'm paraphrasing, but I think it was  
15 last week -- I'm losing track of time -- the attorneys  
16 for both PSNH and Unitil argued that matters covered by  
17 the MOU go to the heart of utility service delivery.  
18 Would you agree with that characterization?

19 A. (Hybsch) I would have to qualify that, relative to it  
20 goes to the heart of utility service from our  
21 perspective in joint ownership of the poles which  
22 carries most of the infrastructure, and it doesn't have  
23 direct implications on the other services we provide as  
24 a utility, like customer service and things of that

1 nature, reliability --

2 Q. Sure. But the delivery provision --

3 A. (Hybsch) The delivery provisions, yes.

4 A. (Meissner) It also specifically, I think, goes to the  
5 delivery provisions that are related to what we do as  
6 joint ownership partners between the two companies. So  
7 a lot of what we do as delivery companies relates to  
8 things that we do in common, such as pole setting and  
9 delivery of service and so forth. So it relates  
10 specifically to joint operational things.

11 Q. Would you like to add?

12 A. (Warren) We pretty much agree to that, and also from  
13 the vegetation management perspective, in making sure  
14 that we're keeping our customers --

15 Q. The issues included in the MOU really do go to the  
16 provision of safe and adequate service. Would you  
17 agree?

18 A. (Warren) Yes.

19 A. (Meissner) Yes.

20 A. (Hybsch) Yes.

21 Q. Thanks. Shifting gears. On Paragraph 11 of each of  
22 the MOUs are your provisions for the resolution of  
23 disputes. I think I've observed that National Grid's  
24 paragraph is slightly different, in that it doesn't

1 include the arbitration provision. Is that correct?

2 A. (Warren) That is correct.

3 Q. And under this paragraph, as I understand it, first the  
4 parties shall attempt to resolve through mediation.  
5 Within five days of a request, they would -- one party  
6 would provide a list, the other party will choose a  
7 mediator. And then within 30 days the mediation is  
8 scheduled -- not resolved, by scheduled; is that  
9 correct?

10 A. (Hybsch) Yes.

11 Q. So there is no end date given for resolution by  
12 mediation in this language.

13 A. (Hybsch) That's correct.

14 Q. And then the next step is, if there is no resolution  
15 through mediation, then the parties may go by mutual  
16 agreement to arbitration. And here, selection is  
17 communicated within 10 days. Within another 14 days,  
18 two arbitrators select a mutually agreeable third  
19 individual. And then arbitration again is scheduled,  
20 not resolved, within 30 days, or longer if agreed to;  
21 is that correct?

22 A. (Hybsch) That's correct.

23 Q. And then the third step would be, if a dispute is not  
24 resolved in the first two steps, it would be to go to a

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1 court or regulatory agency, including this Commission;  
2 is that correct?

3 A. (Hybsch) That's correct.

4 Q. Okay. So my follow-up question to that is, how can  
5 this Commission be assured that third-party mediation  
6 and/or arbitration will not adversely affect the safe  
7 and reliable provision of service that your companies  
8 are obligated to provide under statute and that this  
9 Commission is mandated to insure?

10 A. (Hybsch) I would only point out that the arbitration is  
11 optional. It has to be by mutual agreement. So we can  
12 go from -- as I understand it as it was negotiated,  
13 basically it can go through non-binding mediation  
14 directly to the Public Utilities Commission.

15 Q. I see. Okay. I didn't understand that from the  
16 language.

17 A. (Hybsch) "By mutual agreement" was intentionally put  
18 there.

19 Q. I see.

20 A. (Hybsch) That both parties have to be in agreement to  
21 go to arbitration, to binding arbitration.

22 Q. I see. And is there also an option built in for the  
23 parties to take a matter directly to the Commission?

24 A. (Hybsch) No. Actually, the first step is for



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1 management to try and resolve it between the two  
2 operating companies. But recognize there are no  
3 provisions in the current joint ownership agreement and  
4 IOP that we have to take it to the Commission  
5 stipulated in our current agreement.

6 Q. With Verizon?

7 A. (Hybsch) Yes.

8 Q. Right.

9 MS. FABRIZIO: I have no further  
10 questions.

11 MR. EPLER: Mr. Chairman, before we go  
12 on, I just wanted to clarify something that Staff counsel  
13 may wish to follow up on or not. There is a difference  
14 between the provision in the second paragraph in Unital's  
15 MOU as compared to PSNH's MOU, and I'm just not sure if  
16 Staff was aware of that, that the first paragraph,  
17 mediation is an option under the Unital MOU. If you look  
18 at the language in PSNH's MOU, it says, "first the parties  
19 shall attempt," and in the Unital MOU it says, "first the  
20 parties may attempt." So the three options are equal  
21 options under the Unital MOU. Thank you.

22 CHAIRMAN GETZ: Thank you.

23 **EXAMINATION BY CMSR. BELOW**

24 BY COMMISSIONER BELOW:

- 1 Q. Ms. Warren, on Page 6 of your direct testimony at  
2 Lines 20 and 21, part of your recommendation was that  
3 there be a condition that, once the double-pole backlog  
4 was cleared, that FairPoint be required to maintain a  
5 backlog of double poles of less than 500 poles going  
6 forward -- which I assume, you know, that refers to the  
7 whole state of New Hampshire. Such a provision is not  
8 in the MOU, and so I presume that you no longer feel  
9 that that's a necessary requirement?
- 10 A. (Warren) The understanding is that prospectively we've  
11 worked out the deal now and that we have a better  
12 relationship, and with the MOU, that we'll continue to  
13 be having the backlog removed as just part of our  
14 normal course of business.
- 15 Q. Okay. And is it all of your understanding that, with  
16 regard to the double-pole backlog, where it says  
17 "within a maximum of 36 months following the six-month  
18 post-merger transition period," that that six months  
19 post-merger transition period starts at the close of  
20 the merger, or as opposed to, say, the cutover?
- 21 A. (Warren) Yes.
- 22 A. (Meissner) Close of the merger, yes.
- 23 A. (Hybsch) Close of the merger was the assumption.
- 24 Q. Thank you.

1                   COMMISSIONER BELOW: That's all.

2                   CHAIRMAN GETZ: Actually, I may have  
3 gotten ahead of myself. Mr. Del Vecchio, did I assume  
4 correctly that you didn't have questions on the MOU?

5                   COMMISSIONER BELOW: Also, I have another  
6 question.

7 BY COMMISSIONER BELOW:

8 Q. On the emergency response, in the third paragraph  
9 there's a reference to within 24 months of the merger,  
10 for FairPoint to meet the same average response time to  
11 emergency in its maintenance areas as the target  
12 average emergency response time for the electric  
13 company. I'm just curious. What is exactly meant by  
14 the phrase "target average response time for the  
15 electric company"? Up above, in the start of that  
16 paragraph, it says, "meet the same average time as the  
17 electric company." Is that what it means, or is the  
18 target time somehow different than the actual average  
19 response time?

20 A. (Hybsch) It's my understanding that it was negotiated  
21 that the two were the same. And as I understand it  
22 from our discussions on the pole docket, that the  
23 target or average response time for utilities was 60  
24 minutes or less response time for pole accidents.

1 Q. And is that regularly documented on some basis? Is  
2 there an actual annual number that you produce, or is  
3 this just sort of an internal understood number?

4 A. (Hybsch) It's historically been tracked internally at  
5 PSNH.

6 A. (Warren) It's not something that we track and report.  
7 We do look internally, but we don't report.

8 A. (Meissner) And the 60 minutes or less is a target  
9 number for us as well, but it's not something that we  
10 track and report. But we did produce those numbers in  
11 the other docket, and they were also less than 60  
12 minutes.

13 Q. So I'm just wondering what your expectation is. You're  
14 saying your own internal target response time which you  
15 normally achieve is 60 minutes or less. Would the  
16 expectation be that FairPoint's response time within 24  
17 months after the merger will be 60 minutes, or at least  
18 60 minutes, but not necessarily less than 60 minutes?

19 A. (Meissner) In a general sense, I think the answer is  
20 yes. But those numbers also do vary over time. And  
21 they also vary with geography, you know, depending on  
22 different parts of the state and so forth. So it's  
23 probably a better thing to target the response time of  
24 the electric utilities than to try to pin down a

1 specific number.

2 A. (Hybsch) Well, from PSNH's perspective, the 60-minute  
3 average response time would be an absolutely dramatic  
4 improvement from what we have today. And we would be  
5 elated with a 60-minute response time from telephone.

6 Q. Okay.

7 A. (Warren) Similarly for National Grid.

8 Q. Okay. Thank you.

9 COMMISIONER BELOW: I'm sorry, Mr. Del  
10 Vecchio.

11 CHAIRMAN GETZ: Did you have anything on  
12 MOU?

13 MR. DEL VECCHIO: Mr. Chairman, I was  
14 just going to say that we may have a question or two about  
15 the MOU, but it would be in the context of the  
16 tree-trimming dispute, and I don't think there's a need  
17 for Ms. Warren to be here for that.

18 CHAIRMAN GETZ: Okay. Thank you.  
19 I just had a couple questions then.

20 **EXAMINATION BY CHAIRMAN GETZ**

21 BY CHAIRMAN GETZ:

22 Q. Mr. Meissner, I looked at your prefiled testimony on  
23 Page 32. And I think on Line 2 you were saying that,  
24 basically, fundamentally changing the current pole

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1 ownership model is the best long-term solution to  
2 issues arising out of joint ownership. But then you  
3 said, as an alternative to a fundamental change, you  
4 were seeking imposition of seven conditions, I guess  
5 the seventh of which went to the tree-trimming issue.  
6 But of the first six conditions, are they basically  
7 resolved to your mind through the MOU?

8 A. (Meissner) Yes, the six conditions are resolved fully  
9 through the MOU.

10 Q. And I think -- is this a fair characterization of your  
11 position, that you would still hold that the change in  
12 the fundamental pole ownership model is the preferred  
13 approach, but this is a satisfactory approach --  
14 meaning, the MOU -- to all of the issues that Unitil  
15 has?

16 A. (Meissner) I think that's an accurate characterization,  
17 yes. I do think that there would be efficiencies to be  
18 achieved through sole ownership, and I do think that  
19 sole ownership could achieve better outcomes than joint  
20 ownership. But in the context of this docket and our  
21 testimony, I think what we've agreed it resolves  
22 90 percent of it; and therefore, we're satisfied with  
23 that as a resolution. As Bob said, it would be a  
24 dramatic improvement from where we are now and one that

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1 we'd be very happy with.

2 Q. And I don't believe, Mr. Hybsch or Ms. Warren, that  
3 either of you spoke directly to that issue of change in  
4 the ownership model. But I'll give you the opportunity  
5 to weigh in if you care to.

6 A. (Warren) I guess just speaking and having not weighed  
7 in in testimony, but a sole ownership model is  
8 ultimately a preferred model. I think there are a lot  
9 of advantages to having a sole ownership.

10 Q. An answer is not required, but if you have an opinion  
11 you'd like to share --

12 A. (Hybsch) We have discussed this internally as a  
13 company. And our approach is the ultimate solution is  
14 a joint ownership agreement where both parties are  
15 truly dedicated to not only executing the legal intent  
16 of the joint ownership agreement but the spirit of the  
17 agreement as well. When you're true business partners,  
18 I think there's a lot of synergies that can come from  
19 joint ownership. Conversely, if you don't have that  
20 partnership, it can be less than acceptable, to a point  
21 where one might suggest joint -- sole ownership as a  
22 way to get out of that type of agreement. But  
23 ultimately, if you're with a business partner that is  
24 dedicated to following every part of the joint

1 ownership agreement, we think that's a very workable  
2 solution.

3 Q. Thank you.

4 CHAIRMAN GETZ: Is there any objection  
5 to releasing Ms. Warren at this point?

6 (No verbal response)

7 CHAIRMAN GETZ: Okay then.

8 MR. COOLBROTH: Mr. Chairman, may I ask  
9 a couple of clarifying questions? I know they're not my  
10 witnesses and that this would be at leave of the  
11 Commission, but I believe I do have two that would help  
12 the record.

13 CHAIRMAN GETZ: Any objection?

14 (No verbal response)

15 CHAIRMAN GETZ: Hearing no objection,  
16 then Mr. Coolbroth.

17 MR. COOLBROTH: Thank you.

18 **CROSS-EXAMINATION**

19 BY MR. COOLBROTH:

20 Q. Mr. Hybsch, I'd like to direct your attention to  
21 Section 7 of the MOU relating to double poles. I think  
22 Commissioner Below asked you about practices relating  
23 to pole transfers going forward -- in other words,  
24 preventing a new backlog of double poles. Do you



1 recall that?

2 A. (Hybsch) I do.

3 Q. And looking at the first two sentences of Section 7,  
4 could you explain to the Commission, first of all, what  
5 an IOP is and how these two sentences address pole  
6 transfers going forward?

7 A. (Hybsch) Yes. The IOP is an inter-company operating  
8 procedure agreed to by the two companies. And there  
9 are certain requirements within the IOPs that stipulate  
10 how long one party should take to transfer facilities.  
11 And I believe that in the IOP regarding pole transfers,  
12 the expectation is that pole transfers would be changed  
13 out in 60 days. And so by virtue of agreeing to abide  
14 by the terms of the IOP, the transfers would be kept  
15 current with basically a 60-day inventory, which would  
16 be very acceptable to Public Service of New Hampshire.

17 Q. And with respect to the dispute-resolution provisions,  
18 for any of the panel, it would not -- and correct me if  
19 I'm wrong -- it would not be the intention of the  
20 parties to divest the Commission of jurisdiction over  
21 an instance where any utility -- be that FairPoint or  
22 one of the electric companies -- was failing to meet  
23 basic service obligations. This MOU is not intended to  
24 override the Commission's jurisdiction over that, is

1 it?

2 A. (Hybsch) No, that was not the intention.

3 A. (Warren) That was not intention.

4 A. (Meissner) I think this MOU was intended to actually  
5 clarify the jurisdiction with the Commission in  
6 situations where the two parties disagreed that the  
7 Commission had jurisdiction.

8 MR. COOLBROTH: Thank you. Those are my  
9 questions, Mr. Chairman.

10 CHAIRMAN GETZ: Anything else on the  
11 MOU?

12 (No verbal response)

13 Then, Ms. Warren, you're excused. Thank  
14 you.

15 (Ms. Warren is excused from the panel.)

16 CHAIRMAN GETZ: With respect to the  
17 tree-trimming and maintenance issues, Ms. Hatfield, did  
18 you have inquiry? I guess what I was anticipating was  
19 allowing Consumer Advocate and then Staff and then Mr. Del  
20 Vecchio to inquire in that order. If there's...

21 MR. EATON: Mr. Chairman, I have some  
22 additional direct on that.

23 CHAIRMAN GETZ: Additional direct?

24 MR. EATON: I have some --

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1 CHAIRMAN GETZ: In terms of qualifying  
2 or -- what are you --

3 MR. EATON: In terms of having Mr.  
4 Hybsch identify exhibits that we want to introduce with  
5 respect to the maintenance trimming issue.

6 CHAIRMAN GETZ: Ms. Knowlton.

7 MS. KNOWLTON: I'm going to object to  
8 any efforts by Mr. Eaton to introduce any exhibits through  
9 his own witness. He certainly had plenty of opportunity  
10 to attach documents to Mr. Hybsch's testimony, and he  
11 didn't attach any. I don't think that he should be  
12 offered the opportunity to supplement his witness's  
13 testimony today through any additional exhibits. He's  
14 welcome to use exhibits during cross-examination with Mr.  
15 Nestor. But I don't believe that it's appropriate to  
16 supplement his testimony today through such exhibits.

17 CHAIRMAN GETZ: Have these exhibits been  
18 circulated to all the parties? Do we have them?

19 MR. EATON: Yes. I brought them in this  
20 morning at 8:30. And I am going to use them in  
21 cross-examination, but Mr. Hybsch can identify them and  
22 tell the Commission where they came from. So, rather than  
23 try to do that through cross-examination of Mr. Nestor, he  
24 can identify the exhibits. In fact, he found two of them,

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1 and the rest come from -- the third one comes from PSNH's  
2 records, which he can identify rather than try to do that  
3 in a longer period with Mr. Nestor. I just want to  
4 identify the documents, where they came from.

5 CHAIRMAN GETZ: Well, I need to talk in  
6 real terms rather than theoretical terms. Are these  
7 Exhibits 5, 6, 7 and 8? Is that what we're talking about?

8 MR. EATON: Five was an exhibit that the  
9 Commission premarked during the oral arguments on the  
10 motion to strike. That's PSNH's joint pole -- joint use  
11 disagreement and inter-company operating procedures. But  
12 yes, Exhibit 6, 7 and 8.

13 MS. KNOWLTON: I would just note my  
14 continuing objection for the record. That's exactly my  
15 point, is that he's seeking to supplement his testimony.  
16 If he's using documents that are PSNH documents that are  
17 dated January 20th, 2006, clearly, those were within his  
18 possession prior to the filing of his August testimony.  
19 And this is supplemental testimony being offered at the  
20 last minute, which I object to.

21 CHAIRMAN GETZ: Well, let me take a  
22 second to actually read the exhibits. So it's -- really,  
23 what you've got a problem with is Exhibit 8? Is that  
24 correct?

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1 MS. KNOWLTON: Well, I also have an  
2 objection to Exhibit 7P. It says "Public Announcement" at  
3 the top and appears to relate to the town of Canton, which  
4 I believe is in Massachusetts. Actually have a selectmen  
5 from the town Canton sitting here to my left who I'd be  
6 glad to put on the stand and examine him about this  
7 document.

8 MR. DEL VECCHIO: I'm sure that was just  
9 gratuitous, Mr. Chairman.

10 MS. KNOWLTON: But I don't believe that  
11 questions relating to Massachusetts are part of the  
12 transaction that's before the Commission. So I would also  
13 note an objection to Exhibit 7P. And, again, for the  
14 reasons I previously stated, 6P I also don't believe  
15 should come in. There's certainly no reason I'm aware of  
16 why Mr. Hybsch could not have included this with his  
17 prefiled testimony back in August.

18 CHAIRMAN GETZ: Now, Mr. Eaton, I'm not  
19 sure if I caught this correctly. Did you say that you  
20 were intending to use this for cross-examination, these  
21 Exhibits 6, 7 and 8 for cross-examination of Mr. Nestor?

22 MR. EATON: Yes.

23 CHAIRMAN GETZ: Then do you need to try  
24 to get them in now on direct?

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1 MR. EATON: Well, I can represent that  
2 Exhibit 8 are part of the attachments to the data response  
3 that PSNH included in its testimony. That's request No. 2  
4 from Verizon, which is Exhibit PSNH 4. We had bulk  
5 attachments which we provided to the Staff and we provided  
6 to Verizon, and those documents are part of those bulk  
7 attachments. So that's been -- I can represent that  
8 that's been in the possession of Verizon since we  
9 responded to those data requests.

10 CHAIRMAN GETZ: But clarify for me that  
11 these are part of a data response by PSNH --

12 MR. EATON: By PSNH to a Verizon data  
13 request. The other two documents were -- I just want to  
14 tell -- ask Mr. Hybsch where he found them and to --  
15 rather than try to get Mr. Nestor to agree that they come  
16 from the Verizon web site, or did they come from the  
17 Internet.

18 (Discussion among Commissioners)

19 MR. EATON: This wasn't in the direct  
20 testimony of the opponent, this issue.

21 CHAIRMAN GETZ: So I guess what I would  
22 be interpreting what you're trying to do here, Mr. Eaton,  
23 is to authenticate these documents that you then want to  
24 use on cross-examination.

1 MR. EATON: Yes.

2 CHAIRMAN GETZ: And so I would allow  
3 that now through Mr. Hybsch. I don't think there's an  
4 abuse of process here or it unfairly affects Verizon in  
5 this case in a manner of any procedural way. So we're  
6 going to allow that.

7 MS. KNOWLTON: And I'd just like to note  
8 for the record our continuing objection, that we didn't  
9 have the opportunity to take discovery on this.

10 **DIRECT EXAMINATION, Resumed**

11 BY MR. EATON:

12 Q. Mr. Hybsch, I'm going to now ask you questions about  
13 the second part of your testimony, and that has to do  
14 with the claim of PSNH to ask this Commission to  
15 condition the approval of the transaction upon payment  
16 of \$506,000 from Verizon. Could you please describe  
17 that controversy.

18 MR. DEL VECCHIO: Objection. That  
19 clearly is a summary of prefiled testimony. That doesn't  
20 even go to the exhibits, per se. Mr. Chairman, this is an  
21 abuse of the process. That should not be permitted. We  
22 understood from our discussions with general counsel of  
23 the Commission that summaries would not be permitted.

24 MR. EATON: That's fine.

1 CHAIRMAN GETZ: Yeah. I think at this  
2 point we should just be trying to authenticate these three  
3 exhibits.

4 BY MR. EATON:

5 Q. Mr. Hybsch, could you please describe what's been  
6 premarked as PSNH Exhibit 6.

7 A. (Hybsch) Could I have a copy, please?

8 Yes, this is a screen print off of a  
9 Verizon web page, that I basically went to their web  
10 page, I believe it was Friday, and did a search on  
11 maintenance tree-trimming or trees. And this came up  
12 as, "Hazardous conditions outside your home. Call your  
13 local Verizon repair office immediately if you have  
14 hazardous conditions outside your home, such as a  
15 downed or dangerous telephone wires. Hazardous  
16 conditions include wires that are snapped, broken or  
17 hanging dangerously low, a tree or other large object  
18 leaning on wires, and any other hazardous conditions  
19 relating to telephone wires."

20 MS. KNOWLTON: I'd like note a  
21 continuing objection for the record. I thought the  
22 purpose of showing these exhibits to this witness was to  
23 authenticate them. And if they were just for  
24 authentication, then I think the question -- or the answer



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1 ends with, "I printed this off the Verizon web site." It  
2 doesn't go into the content of the exhibit.

3 CHAIRMAN GETZ: Yeah, I don't think it's  
4 necessary to read the document. I think, again, limiting  
5 ourselves to authenticating where it came from.

6 BY MR. EATON:

7 Q. Okay. Mr. Hybsch, could you look at PSNH Exhibit 7P.  
8 Do you have that in front of you?

9 A. (Hybsch) I do.

10 Q. Where did you find that exhibit?

11 A. (Hybsch) I found this exhibit on the Internet with a  
12 Google Search for the -- I believe I used the term  
13 "Verizon trimming" or "Verizon maintenance trimming."

14 Q. And you downloaded this document from that search?

15 A. (Hybsch) I printed -- yes, I opened this particular  
16 public announcement up and printed it.

17 Q. Do you have any idea of a date of this document? Do  
18 you know, is it 10 years old or...?

19 A. (Hybsch) No. I basically went and saw that the --  
20 inquired as to when the record was created. And  
21 according to the Internet, it was in 2005.

22 Q. Thank you. Now, could you look to exhibit, the  
23 premarked Exhibit 8P.

24 A. (Hybsch) Yes.

1 Q. Could you describe what those documents are.

2 A. (Hybsch) These are exchange of notices between Public  
3 Service and Verizon.

4 Q. And have those been completed by Verizon?

5 A. (Hybsch) Yes. They were submitted by PSNH on  
6 January 20th, 2006 and returned to PSNH on  
7 February 22nd, 2007. I'd like to correct. The third  
8 one was returned February 21st, 2007, the day before  
9 [sic] the other two.

10 MR. EATON: Mr. Chairman, I guess I need  
11 some direction now, because when we complied with your  
12 marking of the joint use agreement as Exhibit 5, I  
13 neglected to remember that there are two joint use  
14 agreements. One was with the -- is the successor  
15 agreement, or the agreement we took over from Connecticut  
16 Light and Power. And I guess I have copies to submit to  
17 the Commission now, but I don't know if you want to mark  
18 that also as Exhibit 5, PSNH 5-A or PSNH Exhibit 9. But  
19 there are two joint use agreements that PSNH has. And I  
20 only submitted the one that we have with -- in the service  
21 territory other than the Connecticut Light and Power --  
22 Connecticut Valley Electric Service territory. So I don't  
23 know if you want me to just submit that as part of  
24 Exhibit 5 or make it --

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1 CHAIRMAN GETZ: Well, let's just bring  
2 it in and we'll mark it as Exhibit 9.

3 MR. EATON: Okay. Thank you. I have no  
4 further questions.

5 CHAIRMAN GETZ: Thank you. Back to you,  
6 Ms. Hatfield.

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

8 **REXCROSS-EXAMINATION**

9 BY MS. HATFIELD:

10 Q. Question for both of you. When PSNH or Unitil incurs  
11 costs related to tree-trimming, who ultimately pays  
12 those costs?

13 A. (Meissner) Can you clarify? Are you talking about an  
14 individual within our company, or are you talking --

15 Q. No. I'm wondering if those costs are passed on to  
16 ratepayers.

17 A. (Meissner) Yes, those costs are passed on to  
18 ratepayers.

19 A. (Hybsch) With the exception of the \$506,000 in  
20 question, yes, the remaining balance of tree-trimming  
21 is passed on to customers.

22 Q. And with respect to the amounts that are at issue in  
23 this case between PSNH and Verizon, and Unitil and  
24 Verizon, is it correct that those amounts were not --

1 were disallowed in the company's most recent rate  
2 cases, so you were not able to pass them on to  
3 ratepayers?

4 A. (Meissner) Speaking for Unitil, yes, that's correct,  
5 they were not allowed in our recent rate case.

6 A. (Hybsch) Speaking for PSNH, as I understand it, we  
7 agreed not to include them in our cost base for  
8 rate-making purposes.

9 Q. And if you're not successful in recovering those costs  
10 here, will you seek to recover them at a future time?  
11 Or did you agree not to seek recovery at any time in  
12 the future from ratepayers?

13 A. (Hybsch) From PSNH's perspective, I can't answer that  
14 at this time.

15 A. (Meissner) From Unitil's perspective, I don't think  
16 we've agreed to anything on a prospective basis.

17 Q. So then it's possible, if you're not able to recover  
18 them from Verizon, then you might seek to recover them  
19 from your ratepayers in the future?

20 A. (Meissner) I would have to say that's a possibility.  
21 But I really can't answer that question.

22 MS. HATFIELD: Thank you. No further  
23 questions.

24 CHAIRMAN GETZ: Thank you.

1 Ms. Fabrizio.

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

3 **RE-CROSS-EXAMINATION**

4 BY MS. FABRIZIO:

5 Q. I have a series of questions to sort of clarify in my  
6 mind what numbers we're talking about. My  
7 understanding is that your numbers are derived slightly  
8 differently, so I think I'll go one at a time. And Mr.  
9 Meissner, I think I'll start with you.

10 A. (Meissner) Okay.

11 Q. On Page 33 of your testimony, you include as  
12 Condition 7 that Verizon be compelled to pay any  
13 amounts outstanding, consistent with the division of  
14 costs specified in the JOA; is that correct?

15 A. (Meissner) Yes.

16 Q. And that provision that you refer to -- do you have a  
17 page number for that? Here, I think I --

18 A. (Meissner) It begins on Page 48 of 77.

19 Q. Thanks. And the provision that you're referring to is  
20 Provision A, I think, that maintenance trimming shall  
21 be done on a joint basis when both companies have a  
22 need and when it is agreed that both parties will  
23 benefit. The division of cost will be 75 and  
24 25 percent; is that correct?

- 1 A. (Meissner) Just to clarify. The amount that we  
2 provided actually included some amounts of both -- of  
3 maintenance trimming, storm trimming and construction  
4 trimming, because there was amounts in all three areas  
5 that Verizon had not paid. However, the majority of  
6 the amount, the large majority, is maintenance trimming  
7 that would be covered under Section A.
- 8 Q. And the cost division is 50/50 for the storm and danger  
9 tree-trimming; is that right?
- 10 A. (Meissner) Correct.
- 11 Q. Okay. On Page 28 of your testimony, you provided a  
12 table that shows the total arrearages. The total as  
13 July 11th was \$340,748.23. And you've said that that  
14 may be adjusted with recent invoices, as well as  
15 payments received from Verizon; is that correct?
- 16 A. (Meissner) That is correct.
- 17 Q. Now, are you seeking recovery of that full amount?
- 18 A. (Meissner) The adjusted full amount, the 340? If we  
19 adjust the 340 to reflect payments from Verizon and  
20 invoices since July 11th?
- 21 Q. Yes.
- 22 A. (Meissner) Yes, that full amount.
- 23 Q. So you're actually seeking not 25 percent of the  
24 arrearage, but the full --

1 A. (Meissner) That represents Verizon's share of the  
2 arrearage. So most of that is 25 percent. Other than  
3 to the extent we have amounts that are either  
4 construction or storm trimming, it would represent  
5 those percentages. But this is just Verizon's share of  
6 the arrearage, which as you can see, you know, the next  
7 table down is our total. During that same time frame  
8 we spent a total of \$1.7 million.

9 Q. That leads to my next question. Approximately how many  
10 invoices are reflected in this total arrearage number?

11 A. (Meissner) I can't accurately answer your question,  
12 except to say it's generally monthly. So it would be  
13 approximated by the number of months.

14 Q. And what percent of Unitil's total trimming costs are  
15 reflected in the amounts in arrearage, in that  
16 arrearage amount?

17 A. (Meissner) It would be 384,000 divided by 1.7 million  
18 as an approximation.

19 Q. Do you have a ballpark estimate? Is that about  
20 20 percent of total trimming costs for Unitil?

21 A. (Meissner) Yes, that's about 20 percent, looking at the  
22 numbers.

23 Q. And how does Unitil determine when an invoice to  
24 Verizon is appropriate? It appears that you're billing

1 only at 20 percent of the total cost. So how do you  
2 decide when to bill Verizon?

3 A. (Meissner) First of all, we also do have serving areas  
4 that are not Verizon areas, with other local exchange  
5 carriers. So Verizon isn't necessarily contiguous with  
6 all of our franchise areas. So there's areas where  
7 we're trimming --

8 CHAIRMAN GETZ: Mr. Meissner, if you'd  
9 pull the microphone closer, it'd be helpful.

10 A. (Meissner) Our service territory isn't all Verizon  
11 service territory. So there are areas that we trim  
12 that isn't Verizon's areas. So we wouldn't be billing  
13 Verizon for a percentage of those areas.

14 Q. I see. So the approximately 20 percent actually is not  
15 really apples to apples because it's not showing the  
16 total amount of trimming that is done in territories  
17 where Verizon also goes.

18 A. (Meissner) Correct. The 1.7 million number is not an  
19 overlap of just Verizon's areas with our areas. That's  
20 correct.

21 Q. Okay. And how does Unitil determine when to bill  
22 Verizon?

23 A. (Meissner) The way it's supposed to work is we provide  
24 our plans to Verizon in advance of the trimming, which



1 we do, specifying the areas that we're going to trim.  
2 We provide maps and other information. Verizon should  
3 then get back to us, ideally within 30 days, according  
4 to the IOP, and specify whether they're going to  
5 participate or not. And I would say it should be a  
6 cooperative process where we coordinate the trimming  
7 for benefit of both parties. In reality, what happens  
8 is we tend to never hear back. And as we have to  
9 proceed with our own trimming, we do so. And then  
10 after the fact we go ahead and invoice Verizon for what  
11 we believe is reflected under that section of the IOP  
12 as their share of the trimming.

13 Q. So you share the plan, but there's not necessarily a  
14 meeting in the field to go over the mutual need that's  
15 provided in the cost-sharing provision; is that  
16 correct?

17 A. (Meissner) That's correct, because we're generally  
18 unable to get that cooperation from Verizon.

19 Q. I see. Oh, and behind the cost provision you include a  
20 couple of charts. And I just had trouble understanding  
21 Page 50 of your testimony, or the attachments thereof.

22 A. (Meissner) Page 50 of the testimony, this is a diagram  
23 that's in our IOP No. 17 with Verizon. What this is  
24 specifying is the amount that's to be cut. So this is

1 showing an aerial view of a pole with a cross arm. And  
2 you know, the first picture is showing 8 feet in one  
3 direction, that's how much you're supposed to cut, and  
4 then the entire distance to the edge of the road.

5 Q. So what exactly shows what's supposed to be cut? The  
6 8 feet or the entire distance?

7 A. (Meissner) It's in both directions. This is assuming  
8 roadside construction, and it's assuming that the pole  
9 is set some distance off the road. So you're supposed  
10 to clear the entire distance to the road on one side  
11 and 8 feet on the other side.

12 Q. I see. And off-road, you only have to go 8 feet from  
13 the pole in either direction?

14 A. (Meissner) In either direction, because there is no  
15 road in that situation.

16 Q. Okay. I'll turn to Mr. Hybsch. Now, PSNH's number I  
17 see on Page 6 of your testimony. You are seeking  
18 reimbursement of \$506,000?

19 A. (Hybsch) Yes.

20 Q. Could you tell us how that number was derived?

21 A. (Hybsch) Yes. I could refer you to PSNH Exhibit 4P,  
22 which are our response to Verizon's data request that  
23 provided the background as to how that was calculated.

24 MS. FABRIZIO: I'm sorry. How is 4P

1 marked? Was this handed out today?

2 A. (Hybsch) Exhibit 4P. And I can speak to it if it's  
3 easier.

4 BY MS. FABRIZIO:

5 Q. I'm not sure. I'm sorry. I only have 5P, unless it's  
6 attached to your testimony.

7 THE WITNESS: Gary, do you have...

8 MS. FABRIZIO: Okay. Thanks.

9 A. (Hybsch) During 2006, PSNH issued exchange of notices  
10 for a joint trimming plan for 1700 miles of circuit  
11 miles to jointly trim with Verizon. Verizon agreed to  
12 participate in 47 of those 1700 miles. PSNH billed  
13 Verizon \$16,714 for the 47 miles. And then when PSNH  
14 got into its -- as I understand it, our last rate case,  
15 Steve Mullen, New Hampshire PUC utility analyst,  
16 submitted testimony that Verizon should have paid for  
17 the maintenance trimming in 2006, and that the amount  
18 that Verizon should have paid resulted in \$506,000.  
19 And basically, in summary, the calculation was based on  
20 our average cost to trim. We had spent \$4 million -- I  
21 don't know. Roughly \$4 million. And we calculated  
22 25 percent that Verizon agreed to jointly trim. The  
23 maximum additional revenue from Verizon we would have  
24 received is a million dollars. And it was estimated

1 that while Verizon would not probably agree to  
2 100 percent, they would have agreed to something more  
3 than 47 miles. So in conclusion, 50 percent, a  
4 midpoint was chosen. And \$506,000 was agreed to in the  
5 last rate case that we wouldn't recover from our  
6 customers.

7 Q. Thanks. So if I understand it correctly, Mr. Mullen  
8 took the raw number and cut it in half?

9 A. (Hybsch) Yes.

10 Q. And what was the basis of his computation there? Was  
11 there something that he was looking at to come up with  
12 that 50-percent figure or --

13 A. (Hybsch) I am not aware of that.

14 Q. Is it fair to say that's sort of an arbitrary cut?

15 A. (Hybsch) I'm not aware.

16 Q. Okay. And in any event, Verizon was not involved with  
17 that underlying case and was not there to verify the  
18 numbers; is that correct?

19 A. (Hybsch) That's correct.

20 Q. And Mr. Mullen did his calculation for rate-making  
21 purposes in your PSNH's rate case; is that correct?

22 A. (Hybsch) As I understand it.

23 Q. Okay. Thanks. And I'm going to repeat kind of the  
24 series of questions, just the mechanics of how the

1 trimming is invoiced as between PSNH and Verizon.

2 How many invoices does this figure  
3 represent? And I take it this is just one year, in  
4 2006; is that correct?

5 A. (Hybsch) 2006 is correct. And I didn't mean to mislead  
6 you. There were no invoices for the -- submitted to  
7 Verizon for the trimming they didn't agree to  
8 participate in. We only submitted invoices for the  
9 47 miles they agreed to participate in.

10 Q. So the 1-million figure represents trimming that you  
11 did for which Verizon affirmatively agreed was mutually  
12 needed?

13 A. (Hybsch) No. The \$1 million represents the maintenance  
14 tree-trimming PSNH did in 2006 that we didn't get  
15 agreement from Verizon to trim.

16 Q. Okay. And -- hold just one second.

17 And again, does PSNH bill Verizon about  
18 monthly for tree-trimming costs? Is that how it works  
19 with your company?

20 A. (Hybsch) No. The tree-trimming -- there hasn't been  
21 enough joint-ownership tree-trimming for a maintenance  
22 perspective to bill monthly over the last years. It's  
23 basically billed when the trimming is completed, after  
24 Verizon agrees through the exchange-of-notice process,

1 then we would bill them.

2 Q. I see. So your process is slightly different. Do you  
3 submit a plan to Verizon as well as Unitil said it  
4 does, trimming plan --

5 A. (Hybsch) That was the trimming plan, the 1700 miles we  
6 submitted on January 20th, 2006. We did submit the  
7 plan. They agreed to trim 47 miles of jointly-owned  
8 lines of the 1700 miles.

9 Q. Okay. Great. And if you give me one minute, please.

10 MS. FABRIZIO: That concludes my  
11 questions. Thank you.

12 CHAIRMAN GETZ: Thank you.

13 Mr. Del Vecchio.

14 MR. DEL VECCHIO: Mr. Chairman, before  
15 we begin, I'd just like to ask -- Ms. Knowlton will be  
16 doing the cross-examination. But it's about five after  
17 five right now, and I'm not sure how long the Commission  
18 intends to continue. I would ask that our  
19 cross-examination not be accelerated because of the  
20 lateness of the hour. And it may make sense to continue  
21 in the morning so as to avoid the sense of being rushed.  
22 But I would defer to you on this, Mr. Chairman, 'cause I  
23 don't know how late you intend to go.

24 CHAIRMAN GETZ: Well, I think when we

1 laid out the ground rules in advance, we said we didn't  
2 intend to go beyond six on any day. I think what I recall  
3 from your letter in response to estimated times, that it  
4 was 30 minutes, 30 minutes and 30 minutes, which I was  
5 kind of hoping would now be 30 and 30, given there's two  
6 remaining witnesses. But do you have an estimate? I  
7 don't want to rush you either. But I'd like to get as  
8 much done as we can today.

9 MR. DEL VECCHIO: I think it may take us  
10 until 6:00, Mr. Chairman. As you know, the estimates  
11 we've received and given have been estimates, and there's  
12 been a lot of opportunity for folks to go beyond those  
13 estimates. And I think we've been relatively sparse in  
14 our cross-examination. But that said, there may and will  
15 likely be redirect, in any event, I presume. And  
16 therefore, we're likely to go beyond 6:00, as it turns  
17 out. So it may make sense to start this in the morning.

18 (Discussion among Commissioners)

19 MS. KNOWLTON: I would also just add,  
20 maybe off the record, that tonight is Halloween. I'd love  
21 to see my four-year-old and my seven-year-old in their  
22 costumes.

23 CHAIRMAN GETZ: Actually, let's go off  
24 the record.

1 (Discussion off the record)

2 CHAIRMAN GETZ: Back on the record. I  
3 want to start with the examination, and we'll see where we  
4 are at 5:30, and then we'll pick it up tomorrow. Looks  
5 like we've still got work to do. I don't want to juggle  
6 around. I'm not sure what Dr. Peres' schedule is. But  
7 we've got a lot to plow through. And I guess there's an  
8 understanding that there may be some requests about  
9 tomorrow, and we may be into Thursday, anyways. But let's  
10 start with the cross-examination.

11 **CROSS-EXAMINATION**

12 BY MS. KNOWLTON:

13 Q. Good afternoon, Mr. Hybsch and Mr. Meissner. I'm Sarah  
14 Knowlton here today on behalf of Verizon.

15 Mr. Hybsch, you testified earlier this  
16 afternoon that the MOU between FairPoint and Unitil  
17 addressed the major points in your testimony that you  
18 filed here in this docket and in the pole docket; is  
19 that right.

20 A. (Hybsch) I said that pertaining to FairPoint.

21 Q. Right, just pertaining to FairPoint. And you're here  
22 today on behalf of PSNH, supporting the Commission's  
23 approval of the merger that is before it; right?

24 A. (Hybsch) That's correct.



1 Q. Mr. Meissner, is the same true for you, that you're  
2 also here today supporting the approval of the merger  
3 agreement?

4 A. (Meissner) I'm here supporting the approval of the MOU.

5 Q. Okay. And in the MOU, in Section 12 there is a  
6 sentence that reads as follows, quote, As a result, and  
7 subject to the Commission's approval of the terms  
8 hereof -- meaning the MOU -- the electric company  
9 hereby supports the Commission's approval of the  
10 merger, end of quote. Is that a correct reading of  
11 part of Section 12?

12 A. (Meissner) It's a correct reading of part of  
13 Section 12. I think it's not in the context of  
14 Section 12.

15 Q. Does Unitil support the approval of the merger, subject  
16 to the approval of the MOU?

17 A. (Meissner) Yes, that's correct. Subject to the  
18 approval of the MOU, and without waiving its rights to  
19 any other disputed claims under any other agreement or  
20 on any other basis.

21 Q. So, Mr. Meissner, your only dispute in this docket  
22 relates to your claim for payment of money from  
23 Verizon; correct?

24 A. (Meissner) That is correct.

1 Q. And Mr. Hybsch, is that the same for PSNH?

2 A. (Hybsch) Yes, that's correct.

3 Q. Mr. Meissner, the joint ownership agreement between  
4 Unitil and Verizon has never been submitted to the  
5 Public Utilities Commission for its review or approval;  
6 correct?

7 A. (Meissner) That is correct.

8 Q. Mr. Hybsch, is that the same for the joint ownership  
9 agreement between PSNH and Verizon?

10 A. (Hybsch) I can't speak to that.

11 Q. Now, Mr. Meissner, Unitil claims that Verizon owes  
12 money under that joint ownership agreement for  
13 tree-trimming expense; correct?

14 A. (Meissner) That is correct.

15 Q. And sitting here today, you don't know exactly how much  
16 money Unitil believes that it's owed; right?

17 A. (Meissner) I would not be able to reconcile an exact  
18 amount here today.

19 Q. But the time period that you're seeking payment for is  
20 2005 to 2007?

21 A. (Meissner) That is correct.

22 Q. And you didn't provide any invoices or other  
23 documentary evidence other than that table on, I think  
24 it's Page 14 of your testimony, that supports your

1 claim for whatever the unspecified amount is; is that  
2 right?

3 A. (Meissner) That is correct.

4 Q. Does Unitil maintain copies of invoices that it submits  
5 to Verizon?

6 A. (Meissner) Yes, we have copies of all the documentation  
7 that has been submitted to Verizon.

8 Q. So it would have been possible to include those with  
9 your testimony?

10 A. (Meissner) Would have been possible. It fills an  
11 entire box.

12 Q. On Page 29 of your testimony, Lines 2 through 3, you  
13 state, quote, We have no explanation for why certain  
14 amounts have been paid and others have not, end of  
15 quote. Is that a correct representation of that part  
16 of your testimony?

17 A. (Meissner) Yes, that's a correct representation.

18 Q. In fact, Verizon has informed Unitil on multiple  
19 occasions that it disputes the amounts invoiced for  
20 Unitil for tree-trimming. Do you agree with that?

21 A. (Meissner) I agree with that partially.

22 Q. For example, on October 4th, 2005, Verizon sent a  
23 letter to Robert Connor at Unitil stating that he had  
24 reviewed the Unitil invoices from January through April

- 1 of 2005. And Mr. Connor's audit of those invoices  
2 showed that 47.8 percent of the amount invoiced to  
3 Verizon by Unitil was for services not performed on  
4 Verizon's behalf. And that, I would represent to you,  
5 is -- that letter is set forth in its entirety as  
6 Exhibit JFN-5, which is an attachment to Mr. Nestor's  
7 testimony. Are you familiar with that letter?
- 8 A. (Meissner) Are you talking about the letter from Troy  
9 McDonald to Bob Connor?
- 10 Q. Yes, to Mr. Connor.
- 11 A. (Meissner) I am familiar with that letter, yes.
- 12 Q. Okay. And you testified earlier this afternoon that  
13 Unitil wouldn't be billing Verizon where your service  
14 areas didn't overlap; that your service areas are not  
15 the same throughout the entire state; correct?
- 16 A. (Meissner) That would be correct.
- 17 Q. But in fact, in that letter that Mr. McDonald sent to  
18 Mr. Connor on October 4th, 2005, Mr. McDonald indicated  
19 that some of the invoiced amounts that Verizon was  
20 challenging were for locations where Verizon does not  
21 provide service; is that right?
- 22 A. (Meissner) Let me answer the question this way: Yes,  
23 there was tree-trimming that was invoiced for areas  
24 that were not Verizon areas. However, I would point

1 out that all that documentation was provided to Verizon  
2 in January of 2005 showing all the areas we intended to  
3 trim and expecting coordination of our trim plan. And  
4 because there was no effort made by Verizon to  
5 coordinate our trim plan, we inadvertently billed those  
6 areas. But all the information was provided in to  
7 Verizon in advance. And there was every opportunity  
8 for Verizon to identify that in advance as part of the  
9 coordination of our annual trimming.

10 Q. But you billed them anyway.

11 A. (Meissner) Because we didn't realize when we billed  
12 them that it was not Verizon service territory.

13 Q. There were other invoices for locations where only the  
14 electrical space was trimmed; right?

15 A. (Meissner) I would agree that after the trimming was  
16 completed, Verizon decided, upon completion of the  
17 trimming, that they weren't satisfied with the  
18 trimming.

19 Q. And that's as indicated at least in Mr. McDonald's  
20 opinion, that electrical space was the only space that  
21 was trimmed, based on his audit.

22 A. (Meissner) That's what Mr. McDonald said.

23 Q. Yet, there were other amounts for locations where a  
24 Verizon Communications cable was not even attached to

1 the pole line that was trimmed; right?

2 A. (Meissner) And as we indicated back to Mr. McDonald,  
3 that was less than 1 percent of the total. When we're  
4 trimming thousands of sections annually, yes, there's  
5 an opportunity for the contractors' invoices to make  
6 their way through for some poles that did not have  
7 Verizon attachments.

8 Q. On November 18th, 2005, Mr. McDonald wrote another  
9 letter to Mr. Connor. And in that letter he reflected  
10 his results of an audit of Unitil invoices from May and  
11 June of 2005; is that right?

12 A. (Meissner) Let me make sure I'm on the right page.

13 Q. I believe that letter is also encompassed in JFN-5  
14 attached to Mr. Nestor's testimony.

15 A. (Meissner) Can you clarify the date of the letter?

16 Q. Sure. November 18th, 2005. And if you need a copy,  
17 I'm happy to share one with you.

18 A. (Meissner) Okay. I have that in front of me.

19 Q. Okay. And in that audit, Mr. McDonald concluded that  
20 53.5 percent of the Unitil invoices had similar  
21 problems as those with his audit that was the subject  
22 of his October 4th, 2005 letter; is that right?

23 A. (Meissner) Mr. McDonald did conclude that. Yes.

24 Q. And in his letter, Mr. McDonald -- in his November 2005

1 letter, Mr. McDonald indicated that Verizon was  
2 processing and paying those invoices for which it was  
3 in agreement; right?

4 A. (Meissner) He did indicate that, yes.

5 Q. On January 13th, 2006, he sent yet another letter to  
6 Mr. Connor that Unitil -- regarding his review of the  
7 Unitil invoices. And in that letter he indicated that  
8 he was only able to verify \$1,432.55 of the \$47,820.23  
9 that had been invoiced by Unitil; is that right?

10 A. (Meissner) I will answer the question. That is what he  
11 said in his letter, yes. Although, it was erroneous,  
12 as discovered by Mr. McDonald himself, as was his  
13 November 18th letter erroneous, because he did not have  
14 all the exchange-of-notice forms in front of him that  
15 we had submitted.

16 Q. Despite the fact that in that same letter he indicated  
17 that he had spent two days reviewing all of the  
18 invoicing statements of accounts and trim lists, as  
19 well as each hour of every day that had been detailed  
20 on the invoices on the trim contractor's time sheets.

21 A. (Meissner) Well, I mean, I think as Verizon well knows,  
22 three days later Mr. McDonald sent us an e-mail  
23 indicating that this letter was in error and  
24 essentially asked us to disregard the letter because

1 his entire analysis was erroneous.

2 Q. That one analysis.

3 A. (Meissner) January 18th.

4 Q. But he did not disavow his other two analyses, did he?

5 A. (Meissner) No. But we did point out in data responses  
6 in the other docket that the same issue with his not  
7 having all the exchange-of-notice forms in his analysis  
8 was evident in a prior letter as well, November 18th.

9 Q. If you could look on Page 14 of your testimony on the  
10 chart where you have laid out the amounts of money  
11 that, at least as of the time of your testimony, that  
12 Unitil is seeking from Verizon here in this case.

13 A. (Meissner) Page 28?

14 Q. I believe it's Page 14.

15 CHAIRMAN GETZ: Twenty-eight maybe?

16 MS. KNOWLTON: Twenty-eight? My

17 apologies.

18 BY MS. KNOWLTON:

19 Q. Does that chart contain -- let's just start -- I see  
20 that there's amounts that are invoiced on that first  
21 chart for the year 2005; right?

22 A. (Meissner) Yes.

23 Q. Do you know whether those amounts that were invoiced  
24 for 2005 include any of the amounts that had been



1           disputed by Verizon?

2    A.   (Meissner) They do not.  Those amounts were removed and  
3           they were re-invoiced.  And the invoices clearly show  
4           what the original amount was and the adjusted amount.

5    Q.   So that the difference between what was invoiced and  
6           paid does not reflect any of the amounts that were the  
7           subject of Mr. McDonald's October and November letters?

8    A.   (Meissner) Any amounts that we went through and  
9           identified and agreed with Mr. McDonald, we removed  
10          those amounts from the invoicing.

11   Q.   Do you know whether Verizon agrees with the amounts for  
12          the year 2005 on this chart that were invoiced but not  
13          paid?

14   A.   (Meissner) In general, Verizon never agrees with  
15          anything.

16   Q.   So they're in dispute then.  That difference between,  
17          roughly speaking, the \$9800 that was paid and the  
18          \$135,000 that was invoiced, the difference between that  
19          Verizon disputes, to your knowledge?

20   A.   (Meissner) I wouldn't even go so far to say that,  
21          because we just got payment on some of those amounts in  
22          the last month.

23   Q.   Is it possible that they're disputed?

24   A.   (Meissner) There's some amounts that are disputed.  But

1 there's some amounts that Verizon just didn't pay. And  
2 we never really know when Verizon is going to pay or  
3 how much they're going to pay. But they did just pay  
4 some.

5 Q. What about 2006? Are the amounts -- the difference  
6 between the amounts invoiced versus the amounts paid,  
7 to your knowledge, is there any aspect, any portion of  
8 that which Verizon disputes?

9 A. (Meissner) In 2006, to my knowledge, we've never gotten  
10 any communication of disputes. We just never got any  
11 signed exchange-of-notice forms returned.

12 Q. So Verizon's never agreed to it then.

13 A. (Meissner) Verizon's never responded to it.

14 Q. And is it possible that that lack of response is a lack  
15 of agreement?

16 A. (Meissner) That may be. But then again, Verizon, if  
17 they disagree, should be returning the  
18 exchange-of-notice form in 30 days as outlined in the  
19 exchange-of-notice procedure.

20 Q. But you have an obligation, don't you, under one of the  
21 IOPs -- and I'll get to them possibly this afternoon,  
22 if not tomorrow -- to obtain Verizon's agreement prior  
23 to incurring the expense?

24 A. (Meissner) It's impossible to obtain agreement from a

1 party that refuses to cooperate or communicate with  
2 you.

3 Q. There's nothing that would stop you from going to court  
4 to compel them to respond to you, is there?

5 A. (Meissner) In the meantime, we have trimming that needs  
6 to be done, or else we'll be jeopardizing the  
7 reliability of our own facilities.

8 Q. So you decided to proceed on your own and not to go to  
9 court because you're unsatisfied with the response that  
10 you received, and you continue to send the bills for  
11 what you think are the right amounts, when in the past  
12 Verizon certainly indicated it doesn't agree with the  
13 way that you invoice them -- for example, for services  
14 in areas where trimming -- where they don't even  
15 provide service to customers?

16 A. (Meissner) We've continued to do trimming of our  
17 facilities in accordance with a plan that was submitted  
18 to Verizon, and then we continue to bill Verizon for  
19 their share of that trimming, as outlined in the IOP.

20 Q. Would you agree that it is good business practice to  
21 seek substantiation of a claim for payment before  
22 making payment?

23 A. (Meissner) I'm not sure I understand your question.

24 Q. Well, is it a good idea for a company to, before it

1 pays a bill, to substantiate the bill before it submits  
2 payment for it, generally speaking?

3 A. (Meissner) Yes, I think that's good practice.

4 Q. Okay. In the case of a utility that made payment of an  
5 amount that wasn't sufficiently substantiated, that  
6 utility might even risk disallowance of that expense in  
7 a rate case; right?

8 A. (Meissner) You're probably asking the wrong person if  
9 you're asking rate-case questions and disallowance.

10 Q. What is your position again at Unitil?

11 A. (Meissner) Chief operating officer.

12 Q. So you wouldn't know what kinds of expenses might be  
13 allowable on a rate case?

14 A. (Meissner) I know what expenses are allowable on a rate  
15 case. I don't know the basis for disallowance in a  
16 rate case.

17 Q. But it is a good idea to be able to substantiate the  
18 expenses for which you're seeking recovery in a rate  
19 case; isn't it?

20 A. (Meissner) Yes.

21 Q. Now, on Page 30, Lines 19 through 20 of your testimony,  
22 you address the issue of dispute resolution under the  
23 Unitil and Verizon joint ownership agreement. In  
24 response to the question, quote, Does the joint

1 ownership agreement have a dispute resolution  
2 procedure, end of quote, you respond, quote, Not  
3 specifically, end of quote; is that right?

4 A. (Meissner) That is correct.

5 Q. You then indicate that, quote, For most of the issues  
6 that we have outlined, the primary recourse is  
7 litigation, end of quote. And that's Page 30, Lines 19  
8 through 20. Have I read that right?

9 A. (Meissner) Yes.

10 Q. So, despite the fact that Unitil and Verizon disagree  
11 about whether any money is owed to Unitil, Unitil never  
12 filed any legal action against Verizon seeking recovery  
13 of those amounts you claim are due; correct?

14 A. (Meissner) We have not filed legal action.

15 Q. You haven't pursued the primary recourse that is  
16 available to Unitil.

17 A. (Meissner) As I also say in my testimony, I think it's  
18 impractical for most day-to-day operational issues to  
19 be determined in a court of law. I don't believe that  
20 a court can assess the need for a telephone company to  
21 perform maintenance trimming of its facilities or  
22 whether that would be considered good utility practice.

23 Q. But under the MOU that you've entered into with  
24 FairPoint, you certainly have reserved the right to go

1 to court, haven't you?

2 A. (Meissner) We have reserved that right for the IOP and  
3 the JOA in general. But we also have the right for any  
4 provision to take it to the Commission as well.

5 Q. So at least in some cases you believe that a court  
6 could resolve a dispute arising under the JOA.

7 A. (Meissner) Yes.

8 MS. KNOWLTON: I'm about to segue into a  
9 new topic. I'm wondering if it's a good place to stop.

10 CHAIRMAN GETZ: I think -- are you  
11 objecting, Mr. Del Vecchio?

12 MR. DEL VECCHIO: As I said, I would  
13 never do that to the Chairman.

14 MS. KNOWLTON: I'll ask another  
15 question, if that's okay.

16 CHAIRMAN GETZ: Please do.

17 BY MS. KNOWLTON:

18 Q. Back to the chart in your testimony, Mr. Meissner. I  
19 didn't ask you about 2007 on that chart. I believe  
20 it's Page 28. That reflects about \$1600 paid by  
21 Verizon on \$65,000, roughly speaking, invoiced. Do you  
22 know whether Verizon disputes any of the amounts that  
23 have been invoiced and not paid?

24 A. (Meissner) I would assume that they do, in general.

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1 All I can say is that there never seems to be any  
2 agreement from Verizon on what they should pay.

3 MS. KNOWLTON: It's a good place for me  
4 to stop if --

5 CHAIRMAN GETZ: I think this is an  
6 appropriate place to recess for the day. We will resume  
7 at 9:00. We'll pick up with Mr. Brown for a few  
8 questions, and then we'll return to this panel and see how  
9 much progress we make tomorrow. Thank you, everyone.

10 MR. MCHUGH: Just one quick issue; and  
11 that is, if nobody was intending to ask Mr. Smee any  
12 questions about the electric MOUs, we'd prefer not to  
13 bring him back. I don't know if there are any questions.

14 CHAIRMAN GETZ: I have not -- my list  
15 shows 15 minutes or so with Mr. Brown on the one issue of  
16 the most recent broadband plan, finishing with this panel,  
17 Mr. Nestor, Dr. Peres, Ms. Baldwin and then Mr. Pelcovits.

18 MR. MCHUGH: That's fine.

19 CHAIRMAN GETZ: And then I believe  
20 there's need to nail down the one issue of -- is it  
21 someone from Hanover that --

22 MR. MCHUGH: Ms. Griffin.

23 CHAIRMAN GETZ: -- that BayRing wants to  
24 examine? And that's what I have --

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MR. McHUGH: That's fine.

CHAIRMAN GETZ: -- to finish off the  
proceedings.

Okay. Then we'll close for today.  
Thank you, everyone.

(Hearing adjourned at 5:30 p.m.)