STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

February 4, 2008 - 1:15 p.m.
Concord, New Hampshire DAY I

RE: DT 07-011
VERIZON NEW ENGLAND, ET AL:
Transfer of Assets to FairPoint Communications, Inc. (Hearing regarding the Settlement Agreement filed by FairPoint, Verizon and the NHPUC Staff)

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

ChristiAne G. Mason, Clerk

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

Reptg. Verizon New England, et al:
Victor D. Del Vecchio, Esq.

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

Reptg. One Communications:
Ted Price, Esq.

Reptg. the N.H. Telephone Association:
Paul J. Phillips, Esq. (Primmer, Piper...)

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

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. 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.

I N D E X

PAGE NO.

E X H I B I T S

EXHIBIT NO.	D E S C R I P T I O N	PAGE NO.
NECTA/Comcast 84p	Joint Petitioners' Motion to Approve Modified Transaction	10
NECTA/Comcast 85P	Stipulation among FairPoint, Communications, Inc., Verizon New England, Inc. and the Vermont Dept. of Public Service	10
NECTA/Comcast 86P	State of Vermont Public Service Board Order regarding Docket No. 7270 (12-21-07)	10
NECTA/Comcast 87p	State of Maine Public Utilities Commission Order regarding Docket No. 2007-67 (02-01-08)	10
FairPoint 78P	Settlement Agreement among the Joint Petitioners and the N.H. Commission Staff	premarked
FairPoint 79P	Stipulation Agreement among the Joint Petitioners and the Maine Commission Staff	premarked
FairPoint 80P	Stipulation Agreement among the Joint Petitioners and the Vermont PSB Staff	premarked
FairPoint 81HC	Project Nor'easter - Changes to Discovery Model for "Revised Base Case" (HIGHLY CONFIDENTIAL)	premarked

P R O C E E D I N G S

CHAIRMAN GETZ: Okay. Good afternoon, everyone. We'll open the hearing in docket DT 07-011. The Petitioners in this docket and Staff filed on January 24 a Settlement Agreement proposing supplemental conditions in this proceeding. A secretarial letter was issued that day setting a procedural schedule for considering the filing, which led to the hearing this afternoon.

The first order of business, let's take appearances please.

MR. McHUGH: Good afternoon, Mr. Chairman, Commissioners Below and Morrison. Pat McHugh, from Devine, Millimet & Branch, on behalf of FairPoint Communications. With me at counsel table is Attorney Frederick Coolbroth, Attorney Kevin Baum, from Devine, Millimet. And, we have Walter Leach, Peter Nixon, and Lee Newitt from FairPoint with us as well.

CHAIRMAN GETZ: Good afternoon.

CMSR. MORRISON: Good afternoon.

CMSR. BELOW: Good afternoon.

MR. DEL VECCHIO: Good afternoon, Mr. Chairman, Commissioner Morrison and Commissioner Below. Victor Del Vecchio, representing Verizon. And, with me at counsel table is Robert Kenney and Stephen Smith.

CHAIRMAN GETZ: Good afternoon.

CMSR. MORRISON: Good afternoon.

CMSR. BELOW: Good afternoon.

MR. PHILLIPS: Good afternoon, Mr. Chairman and Commissioners. My name is Paul Phillips, from the law firm of Primmer, Piper, Eggleston & Cramer, PC, here on behalf of eight independent incumbent local exchange carriers who are members of the New Hampshire Telephone Association.

CMSR. BELOW: Good afternoon.

CMSR. MORRISON: Good afternoon.

CHAIRMAN GETZ: Good afternoon.

MR. PRICE: Good afternoon. I'm Ted Price, representing One Communications.

CHAIRMAN GETZ: Good afternoon.

CMSR. MORRISON: Good afternoon.

CMSR. BELOW: Good afternoon.

MR. MANDL: Good afternoon, Chairman and Commissioners. I'm Alan Mandl. I'm here representing the New England Cable & Telecommunications Association and Comcast Phone of New Hampshire.

CHAIRMAN GETZ: Good afternoon.

CMSR. MORRISON: Good afternoon.

CMSR. BELOW: Good afternoon.

CHAIRMAN GETZ: Other parties to the proceeding make their appearance this afternoon?

MR. RUBIN: Good afternoon. Scott Rubin, representing the International Brotherhood of Electrical Workers and the Communications Workers of America. To my left is Randy Barber, our consultant, and also here from IBEW are Robert Erickson and Glenn Brackett.

CHAIRMAN GETZ: Good afternoon.

CMSR. MORRISON: Good afternoon.

CMSR. BELOW: Good afternoon.

MS. HATFIELD: Good afternoon, Commissioners. Meredith Hatfield, for the Office of Consumer Advocate, on behalf of residential ratepayers. And, with me on behalf of the Office are Rorie Hollenberg and Ken Traum.

CHAIRMAN GETZ: Good afternoon.

CMSR. MORRISON: Good afternoon.

CMSR. BELOW: Good afternoon.

MS. FABRIZIO: Good afternoon, Commissioners. Lynn Fabrizio, on behalf of Staff. And, with me at the table today are Kate Bailey, of the Telecom Division, John Antonuk and Randy Vickroy of Liberty

Consulting, and David Goyette of the Telecom Division.

CMSR. BELOW: Good afternoon.

CMSR. MORRISON: Good afternoon.

CHAIRMAN GETZ: Okay. Good afternoon. Before I inquire about any preliminary matters and if there's any agreement on how to proceed this afternoon, let me just point out that our plan for conducting the hearing this afternoon is to go to roughly 3:00, take a recess for 20 to 30 minutes, and then go for another period of 90 minutes to two hours, and then we would close the hearings for today, and then resume tomorrow morning, probably at 10:00, because we have some other combination of meetings and conference calls that we have to address first thing tomorrow morning.

So, with that in mind, are there other preliminary issues that we need to address, before we're hearing about a recommendation by the parties on how to proceed this afternoon? And, Mr. Mandl has risen first.

MR. MANDL: Yes. Thank you, Chairman. My clients have marked for identification four documents, three of which are referred to in the Settlement filing, at Page 3 of that filing. Those are the December 21st order of the Vermont Commission, a stipulation entered into with the Vermont Department of Public Service, a reference to the Maine proceeding, which, at the time the Settlement was filed, they had gone through a deliberative phase, but an order had not been issued. On Friday of this past week, that order from Maine was issued. We've included that as an exhibit. And, last, but not least, we've included a portion of FairPoint's revised proposal in Vermont, which I believe is also referenced on Page 3 of the Settlement.

I rise to ask as a preliminary matter that those documents be admitted. I understand, from the Petitioners, that they would like to have their panels explain the Settlement first, but to defer cross-examination of those individuals until a later point in this hearing. And, since my cross-examination of the wholesale witnesses may require some reference to these documents, I'm asking that they be marked for identification and admitted at this time as a preliminary matter.

CHAIRMAN GETZ: My understanding is some of those documents are attached to the stipulation, the filing of January 23. But is there any objection to marking these, the documents enumerated by Mr. Mandl, for identification?

MR. McHUGH: We have no objection, Mr.

Chairman.

CHAIRMAN GETZ: And, then, it's just a question of which numbers to attach to those exhibits?

MR. MANDL: I'm sorry. Those are marked as "Exhibits NECTA/Comcast Phone 84P" through "87P".

CHAIRMAN GETZ: Okay. Well, then, we will mark them as described by Mr. Mandl.

(The documents, as described, were herewith marked as Exhibits NECTA/Comcast Phone 84P through 87P, respectively, for identification.)

CHAIRMAN GETZ: Is there anything else?

MS. FABRIZIO: Mr. Chairman, I would just remind the Commission that during the course of discussions material that is considered confidential and/or highly confidential may be raised and the room would have to be cleared at that time.

CHAIRMAN GETZ: Okay. All right. Anything else, Mr. McHugh?

MR. McHUGH: No, Mr. Chairman.

CHAIRMAN GETZ: Okay. Well, let me raise one item. There was a letter filed by the Consumer Advocate, Ms. Hatfield, addressing the issue of the updated model. Did you get the information you needed to prepare for this afternoon?

MS. HATFIELD: Yes, we did receive the updated model, Mr. Chairman.

CHAIRMAN GETZ: Okay. All right, then, so there will be a panel, that's the proposal, Mr. McHugh?

MR. McHUGH: It is, Mr. Chairman, I think as Mr. Mandl was starting to point out. What we would propose is to put on a panel of Mr. Leach, Mr. Nixon, Kathryn Bailey, and Mr. Vickroy, who's on behalf of the Staff, and Mr. Smith from Verizon, have them explain the Stipulation, as well as Maine and Vermont briefly. There may be some confidential information that Mr. Leach would address at sort of the end of that presentation. I would ask, if possible, to defer cross, then move on with a network and quality of service panel, and then a wholesale panel.

CHAIRMAN GETZ: Okay. Is there any objection to proceeding in that manner? Mr. Mandl.

MR. MANDL: We have no objection to that. I think there may be some issues during cross-examination of the initial panel, just regarding some of the basics of the Settlement Agreement. And, we're happy to defer those questions, but I just want to make it clear that no rights are being waived by not asking those questions following their explanation.

CHAIRMAN GETZ: You will not be waiving any rights if you don't ask any questions before I call on you to ask questions.

MR. MANDL: Thank you.

CHAIRMAN GETZ: So, we can assume that for purposes of these hearings. Okay. If there's nothing else, then you can call the witnesses and conduct the direct examination.

MR. McHUGH: Thank you, Mr. Chairman.

CHAIRMAN GETZ: It's a new day and a new year, so we're going to swear in the witnesses, the entire panel again.

(Whereupon Walter Leach, Peter Nixon, Stephen Smith, Kathryn Bailey and Randall Vickroy were duly sworn and cautioned by the Court Reporter.)

WALTER LEACH, SWORN

PETER NIXON, SWORN

STEPHEN SMITH, SWORN

KATHRYN BAILEY, SWORN

RANDALL VICKROY, SWORN

DIRECT EXAMINATION

BY MR. McHUGH:

Q. If we could maybe, Mr. Chairman, for the record, I suppose starting from maybe my left, and going down, introduce -- provide your names and titles and affiliations please.
A. (Bailey) My name is Kate Bailey, and I'm the Director of Telecommunications at the Public Utilities Commission.
A. (Leach) I'm Walter Leach, Executive Vice President - Corporate Development, for FairPoint Communications, Inc.
A. (Smith) Stephen Smith, Vice President - Business Development, for Verizon's Telecom group.
Q. Mr. Vickroy.
A. (Vickroy) Randy Vickroy, Senior Consultant at the Liberty Consulting Group, specializing in corporate finance and financial affairs.
A. (Nixon) Peter Nixon, President, FairPoint.

MR. McHUGH: Very good. Thank you. And, Mr. Chairman, we've premarked for identification the New Hampshire Stipulation as "FairPoint Exhibit 78 Public", we've premarked for identification the Maine -- amended Maine Stipulation as "Exhibit 79 Public", we've premarked for identification the Vermont Stipulation with the Department of Public Service as "80 Public", and then we've also premarked "Exhibit 81 Highly Confidential", a model run scenario, which Mr. Leach will get into a highly confidential session at the end is what we would propose.

BY MR. McHUGH:

Q. With that, if I could start and ask Mr. Leach and Ms. Bailey to walk us through the Stipulation, the New Hampshire Stipulation, provide some background, and we'll start from there.

A. (Leach) Okay. I'll start, before we get into the New Hampshire Stipulation, I wanted to mention that or remind the group that there were two similar stipulations that have already been executed in Maine and Vermont. There are some global conditions that were included in those two stipulations that are included in the New Hampshire Stipulation. At the end, after we complete our process of explaining everything that's in the New Hampshire Stipulation, I'll come back and just point out any differences that are included in the Maine Stipulation or the Vermont Stipulation. So, we'll come back to that at the end. The intent here is to provide not 100 percent of everything that's in the agreement, but all the material conditions. And, then, certainly, we'll be available for questions, if there are any, after we wrap up our initial presentation.

I want to start with what are described as the "Financial Conditions", in provision Paragraph Number 2 of the Stipulation Agreement. Under "Capital Expenditures", FairPoint has agreed to capital expenditure amounts in New Hampshire. FairPoint has agreed to a level of $52 million in capital expenditures over the first three years on average in New Hampshire. In addition, we have committed to an additional $49 million a year in years four and five. Now, to create an incentive to assure compliance with that commitment, there's also a provision that effectively says, if there's any shortfall, any meaningful shortfall each year relative to those amounts, that there will be a penalty or a calculation made that basically says "a separate adder that is equal to 50 percent of the total shortfall toward our capital -- will be applied towards either our capital expenditures requirements or then any applicable state program for telecommunications infrastructure support as approved by the Commission. So, basically, if we don't meet our capital expenditure commitment, there will be a penalty at which point FairPoint would have to contribute some additional dollars either to a proposed FairPoint plan or to a state entity as deemed or determined by the Commission. And, that's an annual test over the five-year period. In addition to that test, there is a final test at the end of the five-year period that has a similar kind of penalty or provision in place to assure compliance by FairPoint, because there was a -- basically, there was a need that there be absolute assurance that capital expenditures would be spent that had been committed as part of the negotiation.

That all falls under a --

CHAIRMAN GETZ: I'm sorry for interrupting, but this is going to be an objective self-enforcing penalty that won't require any hearing on the behalf of the Commission, is that correct?

WITNESS LEACH: That's correct. It's all spelled out and understood up front.

CMSR. BELOW: Yes. You just, I think, said that's an "annual test" with regard to the capital expenditures. But looking at the Settlement at 2.1.6, on Page 8, I think it says "any shortages carry over past the end of the five-year period" then this requirement would apply. Maybe it's the previous paragraph. Could you just elaborate on the difference between the annual test and at the end of the five-year period?

WITNESS LEACH: Yes, sir. The 2.1.5, just before the provision you were referring to, is where there is an annual test. Basically says, to the extent any shortfall in the minimum required amount occurs, then FairPoint would be required to make the same sort of penalty payment available. So, there's an annual test each year, and then there's kind of a wrap-up test at the end of five years.

CMSR. BELOW: Okay. Thank you.

WITNESS BAILEY: Can I just add one thing? Under the provision in Paragraph 2.1.5, it says a penalty applies, the Commission ultimately approves how the money gets spent. And, so that might require a process. But the amount doesn't require a process.

CHAIRMAN GETZ: Thank you.

BY THE WITNESS:

A. (Leach) Moving onto the next condition, which is a condition that has to do with reductions on dividends that would be paid by FairPoint Communications, Inc. to its shareholders. And, this is a global kind of a restriction that has been included in all three states. Basically, stipulates that, beginning with the first full quarterly dividend paid after the closing date, FairPoint shall reduce its aggregate annual dividends by 35 percent. That's effectively a $49.7 million reduction each year. And, FairPoint shall not be allowed to subsequently increase that dividend amount until our leverage has dropped to a predetermined level. This is later in the agreement, but effectively the level is down to a leveraged amount of 3.5 times for three consecutive quarters. So, the question might be "what's magic about "3.5 times"?" And, the answer to that is, in today's environment, an investment grade company is deemed to have leverage in the 3.5 range. So, the expectation was there would be a requirement that we reduce the dividends, and that they not be allowed to be increased until after our leverage has gotten down to a 3.5 level for three consecutive quarters.

Now, there's a second and related provision, which I refer to as a "dividend stopper", and that's a separate test that says "FairPoint shall not declare or pay any dividends on its common stock at the end of any fiscal quarter during which that leverage ratio exceeds 5.0 or the Interest Coverage Ratio is less than 2.5." So, that's a separate test that says right after you close, you have to drop your dividend by this $50 million a year amount. You have to utilize those proceeds to basically pay down debt. You can't increase your dividend again until you reduce your leverage to kind of an investment grade level. And, then, in addition to that, if the numbers don't hold up and your leverage actually increases above where you expect it to go, if it hits 5.0, you have to stop all dividends and not pay any dividends thereafter, until you get your debt back below 5.0.

There is now a -- moving onto a third financial condition that's related to dividends, and that is the concept that we kind of introduced across all three states early on, and that was that FairPoint would limit the cumulative amount of payments of dividends basically to amounts that were not more than its Cumulative Adjusted Free Cash Flow. Effectively, what that means is we will not be paying dividends if they weren't generated by the business and generated in a fashion after everything else was covered, in terms of operating expenses, capital expenditures, taxes, interest, debt service, etcetera. And, this was put in to assure that we weren't cannibalizing the business, i.e. paying out more in dividends than were being generated by the Company. And, so, that's a condition that we've agreed to that's consistent across all three states as well.

Staying in the financial arena, there is a provision about "Debt Reduction". There was concern across all three states about the projected leverage following the merger. And, as a result of that, we've agreed to Condition 2.3, which says "Beginning in the first quarter of 2009, FairPoint will agree to pay the higher of $45 million annually or 90 percent of the annual Free Cash Flow" to be applied to reduce debt that's related to the merger. This number was a little higher in the New Hampshire Agreement than in the other two states, it was only 35 million in the other two states. New Hampshire basically looked -- the Staff looked at the amount of savings coming from the dividend reduction, which was almost $50 million per year. And, they basically said "strikes us that it makes sense that you're going to apply all that to debt reduction anyway, to go ahead and increase your minimum annual required debt reduction amount to $45 million or 90 percent of Free Cash Flow, whichever is greater."

Now, the 90 percent concept came out in discussions in the other two states, where they looked at the financial model. They basically said "we understand you're applying all your Free Cash Flow to pay down debt, but you don't have a loan agreement that requires you to do that. And, therefore, for us to be, "us" in terms of staff, to be comfortable that your debt will go down as you indicate in your projections, we actually want you to commit to apply that Free Cash Flow to pay down debt, because that's what your model says, but we had not officially committed to do that." So, this basically just makes the model tied directly to the conditions to the extent a 90 percent of the Free Cash Flow will be used for that purpose.

Now, these financial conditions do have a termination date. And, the next provision deals with that date. And, that date then ties to the point at which FairPoint reduces its leverage to three and a half times, and then again deemed to be an investment grade level, and have held it there for at least three consecutive quarters. And, if that occurs, then the obligations that I just described, the dividend stopper, the no dividend increase and the cumulative dividends not exceeding Free Cash Flow, those provisions go away, and the $45 million or 90 percent cash flow sweep go away. With the concept being, once we've de-levered the Company enough to get to an investment grade kind of standard, that those were not deemed to be necessary going forward.

However, if we get down to three and a half times for three quarters, are relieved of this obligation, but then bounce back up to 4.0, then there is what I refer to as a "springback" provision, where these financial conditions would then take effect again. And, that would occur, if we paid it down for three consecutive quarters to 3.5, we get relieved of the conditions, but then we have a following three consecutive quarters where we're over 4.0, the same conditions spring back. We can't increase the dividend, we have to use 90 percent of the Free Cash Flow to pay down debt, or 45 million, whichever is higher, and the dividend stopper basically stays in place. So, there's effectively a mechanism here to cause us to want to pay down debt and to want to keep it paid down. If not, then we have these restrictions that kick in and force us to keep amortizing debt if the leverage isn't and doesn't stay in the 3.5 range.

In any event, if -- these conditions would end after the end of ten years, either when -- by meeting the three and a half times they go away, or in no event would they last beyond ten years, if they sprung back to us because of going above 4.0 at a future point.

From here, let me move onto the working capital adjustments. The working capital adjustment is the mechanism by which Verizon agreed to contribute money back to FairPoint. The reason we use this mechanism is it's already built into the Merger Agreement. There's a working capital adjustment requirement that's in place today, where we have to true up the working capital amount that came with the business, so that became the logical place when Verizon agreed to contribute money back to the Company, that was the most logical place to do that. This is a condition that's consistent across all three states, in that Verizon will increase Spinco's working capital by the amount of $235.5 million over and above the working capital requirement that was already in place based upon the current Merger Agreement. And, that amount is and must be used to immediately pay down debt or otherwise avoid debt that we would otherwise incur. It effectively looks like a reduction in the purchase price, for all practical purposes, to FairPoint. Has a net effect of dramatically reducing debt right out of the gate, over and beyond what was first projected in our Discovery Model. So, that was one of the significant concessions that Verizon made along the way.

Item number 2, an additional working capital contribution is unique to New Hampshire. This is the only state where Verizon is doing this. And, they are making an additional working capital contribution of $25 million at the closing and $25 million due on the second anniversary of the closing, effectively a total of $50 million. This $50 million again goes into a separate account. It is not utilized to pay down FairPoint bank debt following the merger. In fact, it's specifically allocated to make, in New Hampshire, capital and operating expenditures in excess of the minimum expenditures necessary to meet the requirements described earlier, the capital expenditure requirements, and the broadband requirements, which I'll get to in a moment.

So, the practical application of this is, if there are network infrastructure problems that FairPoint wasn't aware of, maybe couldn't have been, couldn't have otherwise known, but they surface after the merger, then these dollars are available for fixing those items. If it's something that's known up front, like the Pinkham Notch capital expenditure requirement, the Raymond Exchange repairs, then that's not what this fund is designed for. And, I believe it really gets back to the Commissioners' concern that FairPoint not leave -- excuse me, that Verizon not leave the state without assuring that a quality network is left behind. And, therefore, it's an additional $50 million uniquely put in an account for that purpose, to handle any unexpected items.

The expenditures must be approved. We will submit a plan, and it must be approved by the Commission. And, again, the expectation is it's for surprises and things that we're not aware of. If everything is working exactly as expected and there are no surprises, then we would also submit a plan for how that money could be used to expand infrastructure for the benefit of the state, whether it's more fiber or whatever we jointly believe makes sense in terms of how to spend the money. All interest earned along the way also stays in the fund and can only be used for this purpose. So, it's truly money that Verizon is committing, it's isolated, it has a very discrete use, and can only be used for that purpose in the State of New Hampshire.

From here, I'd like to move onto the

Credit Agreement or the Debt Agreement Review. Again, this is consistent across all three states, and we agreed verbally up front, in part of our early submittals, that the entities would not -- the Verizon assets that we are acquiring in this merger, that none of those businesses would guarantee or otherwise be liable for any of the debt of the parent company. So, that is a condition that we've worked into the Stipulation. We've also agreed across all three states that none of the assets will be pledged to secure the debt at the parent company.

As a reminder, all of the debt that is related to the merger will again happen up at the parent company. The operating entities will not have any debt applied to them, and they will not guarantee the debt of the parent company, nor will any of their assets be encumbered by the debt of the parent company. And, this is just an agreement in the Stipulation that specifies what we had agreed to do up front.

As relates to the Credit Agreement, we've also agreed that there will be no effective limitations on how much capital expenditures can be -- how much CapEx can be spent. We have provided the bank group with our total capital expenditure requirements, both the recurring upfront amounts for broad -- excuse me, the upfront amounts for broadband, as well as the recurring amounts over time via the five year commitment that we've made in New Hampshire. So, we've laid out every capital expenditure requirement that we expect to have across all three states, and have assured that the loan agreement allows us to make those capital expenditures.

Beyond that, we also have a provision that allows us to even spend more capital expenditures than that amount, if we deem it appropriate to do so. And, those amounts would just come out of what's called the "restricted payments" basket or money that would be used for other issues, but not affect capital expenditures. So, effectively, there is no limit on capital expenditures. And, we know that was a concern to the Staffs across all three states, as we described in the financing agreement.

Now, I won't do it right now, but in a confidential session I will talk about the changes between the Credit Agreement that's in place today, versus the commitment letter that was provided a year ago, when the transaction was announced. I can say on the public record there are no material changes that have a material impact on the financial condition of the Company, but there are some changes that are a little different than what we talked about in the commitment letter, and I'll be very specific about that in a confidential session.

The reason we need to keep that confidential is the Credit Agreement, even though there is a group of banks who have committed to provide the financing, it's very common, and they'll be doing it here, they will actually go out and syndicate the total financing required by offering it to a number of banks and trying to get the most competitive offer from those banks. It's very important, especially given the fairly ugly credit environment that we're in today, because of the subprime problems and some other issues, it's very important that the bank keep all the terms confidential before it goes out to the market, in order to get the best possible deal for the Company. So, that's why we have some confidentiality issues to deal with here.

Now, we have provided Staff a copy of the near-final version of the Credit Agreement, but we also agreed that it would be important that there be an ability between now and the final Credit Agreement for the Commission to kind of have one final look, to make sure that there have been no material changes in what Staff last saw, versus the actual agreement. The agreement has not been signed yet. It will be signed shortly. And, so, we have agreed to a provision that creates a process whereby the Commission will be provided the final copy, and have a chance to determine if there's any change in a material enough fashion that it would want to hold a hearing to describe the changes. We certainly don't expect that to happen, but we don't think it's unreasonable that the Commission have a chance to take one final look at the agreement before we close.

With that, Kate, I think we go to the broadband topic.

A. (Bailey) Okay. So, starting on Page 15, with the broadband commitment. FairPoint has agreed to provide broadband availability, which is defined as "no less than one and a half Mbps out to 22,000 feet, and 768 kbps after that, to 75 percent of the access lines within 18 months of the closing date. And, then, within 24 months of the closing date, they will provide broadband availability to 85 percent of the state's access lines. And, then, within 60 months, they will provide broadband availability to 95 percent of the state's access lines. And, they have agreed to a minimum of 75 percent broadband availability in the UNE Zone 3 exchanges, which are the most remote exchanges in the state.

They have agreed to expend at least $56.4 million to get to this 95 percent target. Part of that is an increase in their capital, part of that was already part of their capital, and part of that was the broadband plan that we talked about at the prior hearings. If they don't spend the money, then, according to Provision 3.6 -- well, they're obligated to spend it. So, if they get to 95 percent and it doesn't cost that much, then they have to keep going and spend it.

None of the funds that are contributed by Verizon, the $50 million, can be used to get to this 95 percent number. So, if they need more than $56.4 million to get to 95 percent broadband availability, they have to do that without tapping into the $50 million that Verizon is contributing.

In Paragraph 3.7, FairPoint has committed to maintain all the prices and speeds offered by Verizon for broadband Internet, including the

Verizon FiOS product. So, FairPoint will continue to offer that service, but under a different name after the cutover. They have agreed to continue stand-alone DSL service for two years for a price not to exceed $37 a month and indefinitely, but the price won't increase by more than 15 percent a year for stand-alone DSL. If it's bundled with other services, we don't have an agreement on the price.

FairPoint has agreed to adhere to all rates, terms and conditions for Verizon's "for life" customers that exist at the time of the closing. And, they will keep the Verizon 768 kbps and 3 Mbps price available to customers for the next two years -- for two years after the closing date. So, if they deploy DSL in an area that's never had it before over the next two years, the customers will get these prices.

They will provide broadband reports on how they're progressing on their expansion every six months, beginning six months after the closing date, and the Commission will ultimately approve the information that's required on that report. If FairPoint does not achieve these commitments, they will pay a $500,000 penalty for each percentage point off the target that they are. So, if at 18 months they're at 74 percent, and that data will be reported in the monthly reports, then they'll have to pay a $500,000 penalty to the Telecommunications Planning and Development Fund, which is a fund that is under the Department of Resources and Economic Development and the Telecommunications Advisory Board. If, at the end of 60 months, they haven't achieved the 95 percent target, then they pay $500,000 per percentage point off the goal every six months, until they achieve the 95 percent.

As we talked about at the initial hearings, they have agreed to a third party monitoring, and the scope of work is attached as Exhibit 1. There is one revision to I believe it was Staff Exhibit 61 that we produced, this scope of work document in the original hearings. And, that was in the very first paragraph. In the middle of the paragraph there was an odd sentence that said "we think there might be benefits, even if this doesn't cut over, to getting started ahead of time." And, we replaced that sentence with two sentences: "The state regulators recognize that FairPoint is already developing and testing its systems, and that commencement of Liberty's work before a decision is rendered may prove useful in the event the transaction is ultimately approved. Although the transaction may or may not be approved, the state regulators believe that the potential benefits of Liberty beginning work sooner justify that the work will be unnecessary if the transaction is rejected."

CHAIRMAN GETZ: So, you're discussing now Section 4 of the Settlement Agreement about the Transition Service --

WITNESS BAILEY: Yes. I apologize.

CHAIRMAN GETZ: -- Agreement and cutover?

WITNESS BAILEY: Yes. Yes.

BY THE WITNESS:

A. (Bailey) And, so, Exhibit 1 is the scope of work that Liberty is performing for the monthly cutover monitoring work. And, they file monthly reports, which are available on the Commission's website. And, then, Section 4.2 just says that FairPoint agrees to pay for this work.

A. (Leach) I'll pick up on 4.3. There was some concern expressed, and this is true across all three states, about what might happen if we stayed within the Transition Services Agreement for a longer period than expected. And, again, the Transition Services Period is when Verizon is performing a lot of the back office infrastructure -- back office services that FairPoint is not yet ready to take on. I might remind the Commissioners that we have moved the cutover date, the date at which we cut over off their systems on to our own systems, from an end of May date to an end of July date. And, then, given that -- not "given that", but related thereto, we agreed to put in place two backstops, should we have an extended period of operating under the TSA agreement. One backstop was provided by Capgemini, which is the primary vendor providing consultant services for the back office infrastructure implementation. A second backstop was provided by Verizon. In both cases, these are deemed to be deferrals, not forgiveness, of TSA payments, but basically create -- relieve any cash flow burden by continuing to have to pay payments for being on the Transition Services Agreement longer than expected.

Let me describe the first one under 4.3.1, which is the Capgemini backstop. Capgemini, in the event that the cutover does not occur within the nine month period, Capgemini has agreed that it would pick up payments due for the tenth month, the fourteenth month and the fifteenth month following the closing. So, if we go into the tenth month, and the TSA payment is due to Verizon, FairPoint would not pay it, Capgemini would pay it. And, in return for that, FairPoint would issue a preferred stock instrument to Capgemini in the amount of the payment that they made to Verizon. So, effectively, Capgemini pays it and takes preferred stock from FairPoint to cover that remittance. It's preferred stock that does not require any cash interest payment, but it does accrue with what's called a "PIK", a payment-in-kind sort of interest accrual, and it accrues at a rate of 6.75 percent during the first year. So, Month 10 comes along, and we're still in the Transition Services Agreement, Capgemini makes the payment, FairPoint does not have to make the payment.

Move forward for another three or four months, then we'll come back to Verizon, because Capgemini also has the same obligation for Months 14 and 15, if we stay into the -- or, work under the Transition Services Agreement that long, they would also have to make payments for those two months. Effectively, it's about a $50 million commitment that Capgemini is making over the three year period. If they end up holding preferred stock, after the first year the interest rate moves from 6.75 percent to 8.75 percent. That preferred stock is only redeemable to the extent that, both before and after redeeming it or buying it back from Capgemini, FairPoint's leverage ratio is less than 4.5 times. So, effectively, Capgemini is funding those three months, and will not get reimbursed until the leverage of the Company has dropped down below 4.5. And, that provides a cushion against any cash flow requirements during the Transition Services Period.

BY MR. McHUGH:

Q. Mr. Leach, before you go onto the Verizon deferral, I just wanted to clarify. The payment-in-kind portion of the Capgemini, that's the issuance of preferred stock at the rate of whatever the percentage is called for in the agreement, is that right?

A. (Leach) That's correct.

Q. Okay. I just wanted to make sure we're clear. Thank you.

A. (Leach) Okay. Moving onto 4.3.2. If the cutover has not occurred prior to end of the tenth month, this is the date at which Verizon will agree to defer the TSA payment that otherwise would be due to Verizon. And, they will make that deferral for months 11, 12, and 13.

They would only be required to defer those payments if the last quarterly -- at the last quarterly financial reporting date our leverage was above 4.75 times, if that was the case, and if we were still under the TSA, then Verizon would have to defer as many as three months' worth of TSA payments, and that's months 11, 12, and 13.

If those payments are deferred, they get paid back. First of all, they are deferred with interest, and the interest is the 2-Year Treasury Bond rate, plus 25 -- let me back up for a moment. Shall bear interest at the -- I'm sorry, at the Term Loan rate, whatever the rate is on the Term Loan, plus 25 basis points. And, they would have to be paid back whenever the leverage ratio is at or below 4.7 times at the end of any quarter.

So, effectively, we have $100 million between the two facilities, roughly 50 million from each, of deferrals, if we were to find ourselves on the Transition Services Agreement longer than month 10 -- excuse me, longer than month 9. With that, Kate.

A. (Bailey) Okay. The next section deals with several reports that FairPoint has agreed to file. Paragraph 5, FairPoint has agreed to file monthly reports beginning 30 days after the closing date that tell us about the human resources or the staff that FairPoint will be acquiring, with specific focus on the adequacy of technical skills for workers who are placed in new positions, either six months before the closing or a year after the closing. And, those reports will continue on a monthly basis for the first year.

After the first year, we will get the reports on a semi-annual basis, unless their service quality starts to decline. In the event the service quality is not adequate, and by that I mean at least two service quality measures are less than 95 percent of what they should be for three consecutive months, or even if one is less than 90 percent of the applicable standard for one month, then the monthly reports will resume, so that we can make sure that they are not cutting staff at the expense of service quality.

Paragraph 6 talks about different financial reports that will be in a format that will be approved by the Commission, both on a quarterly and an annual basis.

Paragraph 7 talks about a Cost Allocation Manual, which shows how FairPoint will allocate the costs between the subsidiaries and affiliates and the three states, and they will provide that to us.

And, with that, Peter will cover Paragraph 8.

A. (Nixon) Good afternoon. A couple points and elements on the retail service rates. Section 8.1, a couple points that I'd like to point out and highlight here. The first is FairPoint will continue to offer residential retail customers a stand-alone -- a residential basic local exchange service product. Excuse me. And, two, is that, for a period of five years, FairPoint will not increase their local exchange retail rates that would take effect before the end of five years. And, coincident with that, the agreement is that the Commission would not seek to decrease those same rates also for that same period. So, essentially, it's a mutual stay-out, if you will, for a period of five years.

And, then, secondly, 8.2 is that FairPoint would agree to continue on the comparable sales and service options that Verizon offers today at the time of closing. And, the two elements there that would be important is that we would only offer those services and sales opportunities that are included in those that FairPoint is receiving under the Merger Agreement. So, for instance, we're not getting the wireless business as part of the merger, so we cannot offer those services, as an example. And, second is, for explanatory purposes, during the TSA there are certain services that we will not be able to get that are elements of an integrated system, providing that we will offer on a post-TSA basis, an example of that would be electronic billing and bill payment, and even electronic ordering. Those are just unique that we cannot provide during the TSA, but we, of course, will provide following the TSA.

And, with that, I think, Walt, you were going to touch on 8.9. Excuse us while we do a chair move here.

A. (Leach) This is Provision 8.9. The issue here was there was -- there was a concern that, from a cost of capital perspective, FairPoint would have a far different cost of capital than would Verizon, and therefore it didn't seem reasonable or fair that ratepayers in a future rate case be -- end up with a different rate because of the capital structure of FairPoint versus Verizon. So, we've added a condition to minimize the impact from our capital structure, should there be a future rate case. And, 8.9 basically says "In the first general rate case for rates to become effective after the period referenced" earlier, which is effectively a five year stay-out, that "the cost of capital shall be no greater than would result from a hypothetical capital structure supporting an investment grade rating for the debt component of the capital structure." So, no matter what our debt rate is, we've agreed, for that first rate case, to use the rate of debt that an investment grade company would have such that the ratepayers would not be harmed by our capital structure versus Verizon's capital structure.

A. (Bailey) Can I cover 8.10, because that's important to me? Paragraph 8.10 effectively says "Unless the FCC or a court of competent jurisdiction says otherwise, the regulatory status of basic telephone service doesn't change just because technology changes." So that FairPoint has agreed that, unless the FCC or another court says -- takes jurisdiction over telephone service, if they, just for example, changed their whole network to an IP platform, they would not come in and say "Well, that's Voice-Over Internet, so you don't regulate us anymore."

Section 9 deals with wholesale services. And, for a period of three years following the closing date, FairPoint will continue to provide all the wholesale services that Verizon provides at close, and they won't ask for an increase in the rates to take effect during the first three years. And, similarly to the retail provision, Staff is agreeing that we won't -- the Commission won't seek to decrease the unbundled network element rates for the first three years after closing.

FairPoint has agreed to file with the Commission on a confidential basis all commercial agreements with the 271 terms. And, we have agreed that three years after closing, if FairPoint wants to, it can petition the Commission for a waiver of this requirement.

The signatories agreed also to adopt the terms in the CLEC Settlement Agreement, which are attached to -- as "Exhibit 2" to this Agreement. And, those were taken out of the CLEC -- the 3-CLEC Settlement Agreement. FairPoint also has agreed to adopt Verizon's wholesale and access tariffs, and that they will file them pursuant to state law.

And, finally, FairPoint agrees to an

independent audit of its performance assurance plan, which is the backsliding plan that Verizon has in place right now, to make sure that the service quality that they provide to wholesale customers is at least equivalent to the service quality that they provide to retail customers. And, the idea is that they're going to simplify this plan with the three states sometime hopefully before June 2010. But, if they don't do that, then they will be subject to an audit on the old performance assurance plan. If they do do that, then we'll look at how the new performance assurance plan is operating after that.

And, finally, one month after the closing date they will file a monthly status report on their progress in putting together a Pole licensing and Administration Group, which is something that we heard a lot about in the pole docket, that I think will help to facilitate transfers and moves and licensing for third party attachers.

Section 10 deals with network quality. And, FairPoint will begin making monthly progress reports on its network improvement immediately or 30 days after closing, until they file a full plan, which is expected to be filed three months after Cutover, but no later than August 1st, 2008, whichever is earlier. They have agreed to abide by the service quality metrics that were ordered in the Bell Atlantic/NYNEX merger order that were established by NARUC. We have two exceptions that I believe will make the reporting and the monitoring more accurate and better, a better way for us to see the impact on customers.

Those service quality requirements are in Exhibit 3. And, if you want to just quickly flip to that, I'll show you the two that are different than the NARUC standards, well, than the way Verizon reports them now. It's on the very last page of the Settlement Agreement, Paragraph 3.7 and 3.8. Customer trouble reports right now are measured in Maine only on network customer trouble reports. So, if there's an outside plant trouble or if there's a central office trouble, those get counted in the customer trouble report rate. The way we measure them in New Hampshire includes anything that a customer could call in and complain about or report a trouble on, including inside wire, customer premise equipment. And, so, the standard for us is a little bit higher, because those calls get counted. FairPoint has agreed to count it the way that they count it in Maine, which is really what we need to focus on, is how the network is doing. And, so, they agreed to change the standard. The standard is 2.0 customer trouble reports per 100 access lines is the way we measure it now, and the Maine standard is 1.08. And, so, they have agreed to do that with a 1.58 surveillance level. And, on central offices or exchanges where they have -- where they miss, where their customer trouble report rate for network troubles is greater than 1.58 for three months in a row, then they're going to give us a plan about how they're going to fix it, to the extent that it's not already in the network improvement plan. And, then, they also agreed to be measured on held orders, which they get measured on, and we have been monitoring Verizon, but without a metric or a penalty, and they agreed to that.

And, then, the penalties that they will pay are $7,500 per percentage point missed from the standard. And, the Agreement has a transition from Verizon's performance to the standard for the standards that aren't being met today that sort of breaks it up into three year increments, but we're going to start measuring it from July of this year. So, it's a sixth for this year, another third for next year, they have to get another third better. And, then, another third better a year after that, and then a sixth better by July of 2011. So, they have to be fully compliant with the NARUC standards by July 2011.

Yes, and there's one other change. The way we measure -- the way Verizon measures installation for service, they count all the -- all the service orders, that it might include call waiting or call forwarding, and what we really want to focus on is how long it takes a customer to get dial tone service. So, FairPoint has agreed to measure just how long it takes to get dial tone and DSL service installed. And, we're going to develop a standard for that after this is -- in the next six months or so. And, to the extent that we can't agree, then we'll ask the Commission to resolve the dispute. So, there are some important service quality provisions that FairPoint has agreed to.

Another incentive to make sure that they continue to maintain good service quality is, after January 1st, 2009, if they don't meet the standards by 90 percent, then they will be subject to an independent management and operations audit. They have agreed to, shifting to Paragraph 10.7, the double poles issue, FairPoint has agreed to address the double pole situation and get the -- reduce the number of double poles to less than 500 within 24 months. But, in the first six months after close, they're going to come up with a detailed inventory, so that we have an accurate account for all the double poles. And, then, within two years after that plan, they will get the number down to 500.

They have agreed to consequences if they don't meet these, this commitment. And, if they have between 100 and 1,000 poles more than the 500 that are sort of the normal course of business that you would expect a utility to have, because they have 60 days to transfer the wires and remove the old poles.

So, if they have between 100 or 1,000 in excess of the number that they have committed to, they have to set aside $1,000 per pole, and we expect them to spend that within the next year. Then, there's penalties that apply if it's more than 1,000 poles over what they should have. So, if it's 1,000 to 2,000 poles, they set aside $1,000 per pole for all the poles, but, for the first 1,000 poles, they don't pay a penalty on. The next 1,000 to 2,000 poles, they pay a 10 percent penalty, and that goes to the Telecom Planning and Development Fund. And, the penalties ramp up the more poles they have over the 500 level.

They have committed to use the set aside money within a year of July 31st, 2010. July 31st, 2010 is the "no later than" date to get down to the 500 number. And, then, if they have to set aside money, the $1,000 per pole, that has to be used by July 31st, 2011. And, if you want to look at Section 10.7.6, if they don't use the money by then, then they have to give the money that they didn't use to the Telecommunications Planning and Development Fund. They still have to get rid of the poles, and they may be subject to fines for failure to follow a Commission order.

CHAIRMAN GETZ: Is it fair for me to conclude that the value of the set-aside in your mind is that then it deprives them of any monetary benefit of not fulfilling its responsibility with keeping the pole count down?

WITNESS BAILEY: I think that's right. In my mind, what the set-aside does is ensure that they put the money aside to get the pole removed within a year. And, if they have to set aside money because they have so many poles over the target number, then they also have to give some of that money to somebody else. But the set-aside money we believe will be enough to ensure that they can get that work done within the next year.

CHAIRMAN GETZ: Okay.

BY THE WITNESS:

A. (Bailey) Now, Mr. Leach will cover "Limits on Business Acquisitions".

A. (Leach) Okay. Thank you, Kate. We're onto Section 10.8, "Limits on Business Acquisitions". There was a concern that FairPoint not pursue additional acquisitions until three different things have happened. Number one, until we got through the Transition and Cutover process, so there were timing limitations that were put in place. Number two, there was a concern about doing acquisitions before we got our leverage reduced down below certain levels. And, then, number three, there was a concern about doing acquisitions if we weren't meeting service quality metrics that had been agreed to up front. So, this section basically describes how those limits work in terms of doing future business acquisitions. There are two broad tests, the first being financial limits on those acquisitions, the second being meeting service quality metrics before we could do any acquisitions.

So, let me start with the financial

ones. And, if you look at 10.8.1.1, it basically says "no acquisitions from the closing date through the first year in an amount greater than $100 million." Then, the next provision, 8.1.2, between years one and three, no acquisitions greater than $250 million, and only if your leverage has not exceeded four and a half times. So, we now have a dollar limit and a leverage limit. Then, go on to 8.1.3, for the period three years to five years, we've now -- we now can do a $500 million acquisition, but only if our trailing Leverage Ratio does not exceed 4.75 times. And, then, the last is for a period beyond five years, we couldn't do an acquisition exceeding $750 million, unless our ratio was below 4.75. So, we worked in timing elements and we worked in leverage elements to prevent the Company from doing a major acquisition tied to those two, those two metrics.

How do you count the 2 -- the 100 million or the 250 or the 500 million? It's on an aggregate basis. So, you could do, if you're within the $500 million time frame, for example, you could do two $250 million deals or one 100 and one 400 million, but you can't do an aggregate. You can't do 100 during the first period, and then 500 in the second period.

This is a cumulative aggregate total, which is the way the limit is calculated.

Now, those limits don't stay forever, they do go away, at a point in time that's described in 10.8.1.6. And, that basically says the financial limits, which do not yet dealing with the quality of service limits, but the financial conditions cease to be effective after we have reduced our leverage for at least three consecutive quarters to 4.0 or better. Or, number two, at the time that the dividend-affecting provisions of this Agreement end.

Now, you may recall earlier I talked about the provisions that said you had to sweep cash, you couldn't increase your dividends, etcetera. Those actually required a 3.6 leverage test, even tighter than this. So, there are two different ways, two different ways to cause these to cease to be effective, and they're both related to reducing our leverage significantly.

Now, the second conditions or limitations on business acquisitions have to do with making sure we're meeting quality of service metrics. And, this gets to Provision 10.8.2. Basically, it says "we cannot do an acquisition exceeding $100 million in aggregate until we've achieved four consecutive quarters of at least 95 percent of the standards for each of the measures set forth in Exhibit 3 that are known as of the date of this agreement, and at least 90 percent of those standards that are to be determined after a date hereof."

So, the first question is, why are there two different standards? One is the 95 percent is applied against metrics that have been or could have been measured historically so we know what we have to achieve there. The other two are for metrics by which the standard is still to be determined, because it's not information that's been tracked in the past. So, we've agreed that we will work with Staff, trust them to set a reasonable limit, and that's the limit that we'll have to meet going forward. But, because of the unknown factor there, there's a little more room in terms of the 95 percent versus the 90.

Now, moving onto 10.8.2, there are two exceptions that allow us to do an acquisition even if all of the service quality standards are not yet met. So, there are two ways that we could still do that. 10.8.2.1 deals with the first of those. And, in this case, the intent is, if we are missing the metrics, but we can present a remediation plan with funding that's acceptable to the Commission, then, in their sole discretion, they could determine that such acquisition could occur. So, it's a true "trust me", if you will, in terms of us providing a plan and the Commission deeming that it's acceptable and allowing us to move forward with the acquisition.

After presenting the plan, if the Commission takes no action within 60 days of the filing, that remediation plan will be deemed satisfactory, and FairPoint shall be deemed, for purposes of this business acquisition limitation, to be in compliance with the service quality limits. So, if it's very clear we're on a track to meet the metrics, and we've set aside the money and all the plan makes sense to the Commission, then, and only then, they could agree to allow us to make an acquisition that might otherwise not be allowed by the provision.

Now, there's one other exception to this rule, and this has to do with the provision 10.8.2.2. If we are in non-compliance with the service quality metrics, and, remember, in every case we still have to meet the financial metrics that were the first part of this whole provision, but, if we're not meeting the service quality metrics, we have one mulligan, if you will, one freebie that we can do, up to $500 million, but we would have to meet the financial test and we have to meet the transition increments for -- related to the new quality of service plan. Remember, we have a three-year period by which we have to meet certain standards to get up to the 95 percent threshold. You know, the quality of service that's there today didn't happen overnight, it kind of -- it took a while to get to where it is today. It can't be fixed overnight. So, we have agreed to a three-year period to get the standards back up to the level that's acceptable. But there are thresholds along the way. And, those thresholds would have to be met in order for this 10.2 -- excuse me, 10.8.2.2 provision to allow us to do an acquisition, if we're not otherwise meeting the metrics that have been set out.

Now, if we decide to do either of these, it's a decision the Company can make. But, if we're still not meeting the standards, then the penalties double over what is currently in place, if we've not met the standards that are required at the time. And, that's dealt with at the very end of paragraph 10.8.2.2. Basically, it says "If FairPoint elects to close one of these acquisitions, its service quality penalties shall be doubled for each sub-standard metrics" until we've met all the tests. So, there's a pretty painful process for us to go through if we do want to do an acquisition and we don't have the quality of service metrics that are required of us.

Now, when do these go away? They do have a sunset provision, and that's 10.8.2.3. And, it indicates they "shall end when FairPoint has achieved a period of four consecutive quarters of 100 percent of the applicable standard on all service quality measures except for one may be at least 80 percent of the applicable standard", if we have one kind of outlier, but we're doing everything else right of that 100 percent of the expected or set standard.

So, that's the limitation on acquisitions. I'll move to Paragraph Number 11, on governance. There was a strong desire that we have a board of directors that had substantial representation from the northern New England area, given the importance of that region to the Company. As you've heard me say a number of times, over 80 percent of our business, over 80 percent of our customers, over 80 percent of our assets will be in the three northern

New England states. So, it was deemed appropriate that we have a significant representation on the board from individuals with strong ties to northern New England. So, we have agreed to this condition. It says "In addition to the four directors residing in New England" today, by "today" I actually mean "as of the closing", there will be a total of four northern New England directors. We will make a very good faith effort to attract at least one more from the northern New England region. That would give us five of the nine. As long as that person meets our corporate governance guidelines, and that we would make a good faith effort to remain -- excuse me, to maintain that same aggregate representation from the northern New England region on the Board of Directors. So, number one, we'll work very hard to find a fifth director from this area. And, number two, over time we'll work hard to maintain that relationship of the northern New England directors to the balance of the directors.

A. (Bailey) Section 12 talks about -- well, it limits FairPoint's ability to pledge or guarantee any Northern New England assets in the next transaction. The first, Section 12.1, says that, if another state, Maine or Vermont, requires FairPoint to create a separate subsidiary, then they will agree to create a separate subsidiary for this Commission, if this Commission requests them to do so. Then, the rest of the provisions prevent FairPoint from using Northern New England assets and the Northern New England financial resources inappropriately to support other acquisitions or operations. For example, in future acquisitions -- in future acquisitions, the banks will have to look at that acquisition on a stand-alone basis, and they can't look at -- look at the assets in Northern New England as a guarantee.

Section 13 contains many boilerplate settlement agreement provisions. First provision says that "Staff agrees to all the conditions in this Agreement and we support it", and we do. The other sort of unique provision is 13.6, which says, if regulatory approvals by the FCC or the Maine Public Utilities Commission or the Vermont Board are subject to conditions, then you have an opportunity to quickly look at the conditions that are imposed by those other regulatory boards and decide whether the conditions in this, if you issued your order first, if they needed to change. And, we're asking that if, once you issue your order, if there's another order that hasn't been issued, that you take a look at that order within three days of its issuance and decide whether our order, you're order, would need to be amended.

And, that completes our summary of the agreement.

WITNESS LEACH: At this point, I was planning to provide a quick overview of the differences in the other two states versus the Stipulation?

MR. McHUGH: Go ahead. Yes, please.

CHAIRMAN GETZ: Please proceed.

BY THE WITNESS:

A. (Leach) Let me start with Maine. Maine was the first state to -- whereby we reached a negotiated settlement with Staff. In that particular settlement, that was the first time that Verizon agreed to a couple of concessions. One was the $235.5 million capital contributions, effectively a price reduction of that amount. But, in Maine, they also agreed to a $12 million forgiveness of debt from FairPoint that we otherwise owe them per the Merger Agreement. So, they effectively made a concession of 247 and a half million dollars, otherwise that would have represented the amount of debt, an incremental amount of debt on the books following the merger. So, a substantial reduction from Verizon in that part.

Item number 2, we also agreed to a dividend reduction. Again, it wasn't as high as we agreed to in -- I'm sorry, getting ahead of myself. We agreed to a dividend reduction of 35 percent, or $49.7 million a year. In addition to that, we agreed to debt reduction, an annual amount of $35 million a year, or 90 percent of the Free Cash Flow generated each year. And, again, that's the number that we agreed to a higher number here in New Hampshire. We agreed to a minimum of $45 million a year, versus 35, I think, in Maine.

Similar to the capital expenditure commitment in New Hampshire, we had a three year capital expenditure commitment in Maine, that was about $48 million a year, but stopped after three years. New Hampshire is the only state where we actually extended that capital expenditure commitment out to five years.

In terms of broadband, we agreed to a 90 percent addressability level in Maine, which we expected would cost us about $40 million over the five year period. And, like New Hampshire, if we can do it for less than that, we have to contribute the difference to a Telecom Authority Fund, called "Connect

Maine" in that particular state.

There was one thing unique to Maine, versus the other two states. There had been an AFOR, if you will, a rate case in process for a number of years. Seven years, in fact, they had not been able to settle this rate case. It did not have to be settled as part of the approval process, but FairPoint concluded we wanted it settled. So, we reached an agreement with the -- with the Utility Commission to resolve a rate case that had been outstanding for a number of years. In our view, that's not really a benefit that they got from the transaction. What that is is a final catch-up, in terms of where they expected rates to be versus where they had been before. But we did agree to an $18 million a year decrease in rates, as a result of that AFOR settlement, and basically entered into a five-year agreement, whereby there would be a stay-out or no changes in rates beyond that.

There was also a unique condition we agreed to that benefits all three states. And, that is, there was concern at that time about, again, an extensive period of time under the Transition Services Agreement. We were not able to hammer out an agreement for these deferral mechanisms that we ultimately were in New Hampshire. So, in lieu of that, we basically said -- the Commission there was worried about $100 million more of potential Transition Service Agreement payments. We basically said "Look, let's take that, if that were to happen and you take that $100 million forward for five years at an 8 percent rate, it looks like it's a $150 million problem five years down the road." So, what we agreed to do is, at the end of 2011, if our leverage test wasn't down to 3.6 times, again, that's kind of that magic investment grade rough level, if leverage wasn't at that level by end of 2011, we would pay off an incremental $150 million of debt in 2012. And, if we didn't do that, the first day of 2013 we had to suspend our dividend until we refinance the debt.

And, the thought process here was that the staff there was concerned about the refinancing that they were looking at in years 6, 7, or 8. And, if our leverage was too high, they didn't want to wait right until the last minute, didn't want the Company to wait until the last minute to refinance, instead but wanted to -- wanted to get us to move more quickly than that. So, that's why they gave us the leverage threshold that we were down to 3.6 times, then there wasn't a leverage concern; if we were over that, they wanted us to effectively either reduce debt by 150 or refinance the bank debt and to hold our hand to the fire. If we didn't do that, then we were required to suspend dividends.

This benefits all three states. It effectively causes us to make sure we don't allow our leverage to get too high. And, it also allows us, if our leverage is not below 3.6, to take steps earlier than we might otherwise have to to refinance the existing debt.

That describes what happened in Maine. Vermont is a little shorter discussion. We had the same sort of capital expenditure commitments in Vermont, 40 to $41 million only over the first three year period. Broadband there was a little different, and this was true across all three states. Each state had some very unique issues that were very important to them that they wanted to make sure they got just what they wanted on those particular issues, versus some others. Broadband was one of those points that were -- that was very important to Vermont, but not in terms of addressability, not 90 percent versus 95 percent. What was important to them was that 50 percent of their markets have universal coverage, meaning that every customer in that market could, if they wanted it, could subscribe to a broadband product. So, we agreed, over a three-year period, to get 50 percent of the exchanges that would be served by Verizon today, FairPoint after the merger, that we would get 50 percent of those exchanges to a 100 percent coverage level, and that met the parameters that were important to Vermont.

So, while New Hampshire has this 95 percent threshold in five years, Vermont -- excuse me, Maine has 90 percent, there is no threshold in Vermont after 2008, which is only 80 percent, because they're more concerned about universal coverage in those particular markets. So, that was a little bit of a change to the broadband issue in Vermont.

There was one other item that was unique to Vermont, and it's called the -- it's called a "PEP Plan", which is a Performance Enhancement Plan. They were very concerned about quality of service issues. And, they wanted to make sure that the Company, if there were quality of service issues, the Company didn't upstream all the cash to the parent company to service debt, but, in fact, made sure there was some cash left behind to deal with potential quality of service issues.

And, the way that the PEP Plan worked is it was a three-year program. And, if, during each of those years, you didn't meet some fairly rigid quality of service metrics, tighter than what Verizon has in place today, then you'd have to set aside as much as 12 and a half million dollars during that given year for remediation purposes; 10 million in the form of cash, dropping it in a segregated bank account, two and a half million more in the form of reserving our credit facility, such that, in total, we had 12 and a half million dollars committed to the remediation -- a remediation of what caused us to miss these service quality metrics. So, over three years, if you kept triggering the maximum misses, then you would set aside 12 and a half million dollars for each year over three years, or a total of 37 and a half million dollars.

Now, you can immediately start using those funds. If you set aside funds in 2008, you submit a remediation plan and you start spending the money to fix issues in 2009, the same thing in 2010. But, if at any point in time, at any year-end, you have money sitting there that you haven't spent, half a million of that gets forfeited to the Vermont Telecom

Authority. We have assumed we're going to trigger these misses at least two, if not all three years.

So, we're assuming we'll set aside, at least during the first couple of years, $10 million. And, we also assume we won't have spent it all yet. And, if that case occurs, you basically have to forfeit a half a million dollars at the end of '08, another half at the end of '09, and another half million at the end of '010. And, then, if you still haven't spent all the money, you have one last forfeiture of a million dollars, that's kind of at the end of the program.

We have assumed, for financial reporting purposes, that we will miss these metrics and pay basically the maximum penalty of a half a million a year, for three years, plus the final million, effectively it costs us two and half million dollars of forfeited penalties. But, beyond that, we do expect to use all the money or, at the end of the third year, it gets reimbursed back to FairPoint, if, in fact, or once you meet the quality of service metrics.

So, the net implication we believe is a net effect of about two and a half million dollars in forfeited amounts, and probably some front-end loading of some capital expenditures to fix things we probably otherwise would not have fixed until years 4, 5, or 6, because of the incentive now to get things fixed more quickly.

There's a second piece to the PEP Plan that has to do with broadband commitments. And, that is -- let me back up for a moment. The PEP Plan is also incremental to an existing quality of service plan that's in place today, but those penalties basically go to customers. So, that one didn't get replaced, it stays in place, but this new plan was put in place in order, again, to assure money was reinvested in any infrastructure requirements that might be needed for remediation efforts.

The second half of the PEP Plan had to do with meeting broadband commitments. We have commitments at the end of '08, '09, and '010, with '010 being an 80 percent threshold. You have to -- 80 percent of your customers have to have access to a broadband product. If you miss those in any year, it's a million dollar penalty. We have every expectation of being able to hit those delivery objectives, so we have not assumed any penalty related to that.

And, then, in the final year, this is a year in which Vermont wants 50 percent of the exchanges to have 100 percent coverage. And, there are about 100 exchanges or so, so you basically have to get -- I'm sorry, there are about 50 exchanges, so you've got to get to about half of those, if I'm saying that right, Mike?

MR. BROWN: 82 exchanges, we have to get 50 percent --

CHAIRMAN GETZ: Whoa, whoa, whoa. Wait.

MR. McHUGH: He got ahead of me there, Mr. Chairman. Mr. Leach, we can clarify that at the break.

WITNESS LEACH: Okay.

CHAIRMAN GETZ: Well, just for the record, can we get that gentleman's name in the transcript?

MR. McHUGH: Michael Brown.

MR. BROWN: It's Michael Brown.

WITNESS LEACH: I apologize, I was looking for one of these [indicating a nod of the head].

BY THE WITNESS:

A. (Leach) Basically, we have to get half of the exchanges to this 100 percent addressability level. If not, each exchange would create a penalty of $350,000. So, if we're ten short by the end of '08, we have three and a half million dollars, with a maximum penalty of $9 million. Our expectation, however, is that we expect to achieve this objective. We've already got a staff in Burlington working hard on this, so we have every expectation that we will meet the broadband delivery requirements, and don't have any assumptions in the model for paying any penalties related to that.

And, that basically highlights the differences in Vermont and Maine, versus New Hampshire.

CHAIRMAN GETZ: Was there anything further in the way of direct, Mr. McHugh?

MR. McHUGH: No, Mr. Chairman. At this time, we would, unless the Commission certainly has questions, we would propose to go to a highly confidential session, where briefly Mr. Leach can explain some of the changes in the financial picture, as well as introduce FairPoint Exhibit 81 Highly Confidential for identification.

CHAIRMAN GETZ: Ms. Hatfield.

MS. HATFIELD: Mr. Chairman, I would suggest that we wait and do that during the last panel, because we will have confidential questions, and it just seems like it might make sense to do that with the last panel.

MR. McHUGH: That's no problem with us, Mr. Chairman. We're doing this for the Commission's understanding, that's all.

CHAIRMAN GETZ: Mr. Del Vecchio, did you have anything for the panel?

MR. DEL VECCHIO: No, Mr. Chairman.

CHAIRMAN GETZ: And, Ms. Fabrizio, did you have anything in the way of direct?

BY MS. FABRIZIO:

Q. I would like to ask, Ms. Bailey, generally your role in this agreement and your position on the agreement. Can you summarize that for the benefit of the Commission?

A. (Bailey) Sure. My role, as Director of Telecommunications, was to see if we can reach an agreement that the Staff could support and say that "we believe that the transfer of Verizon's assets to FairPoint is in the public interest." And, we have -- I believe we have achieved that goal, and that the transfer of Verizon's assets will be in the public interest, the transfer to FairPoint.

In addition to having a company that wants to be here and wants to invest in New Hampshire, they have committed to capital expenditures for the next five years in a declining business. They have committed to achieving broadband goals of 75 percent, 85 percent, and 95 percent availability throughout the state. They have committed to consequences if they don't achieve the goals. They have committed to improving service quality, and they have committed to consequences if they don't achieve the service quality goals. And, they have agreed to limit future acquisitions if they don't achieve service quality.

They have agreed to have a strong northern New England representation on their Board of Directors. They have agreed to -- well, Verizon has agreed to an additional $50 million to spend in New Hampshire, for FairPoint to spend in New Hampshire, over and above all the commitments that FairPoint has agreed to in this agreement. They are going to clean up the double pole situation. They have agreed to stable local exchange rates for the next five years, and agreed to DSL rates for the next two years. They have agreed to network and infrastructure improvement, and $340 million in investment in New Hampshire over the next five years.

So, for all of those reasons, I believe that the Settlement Agreement makes this transaction in the public interest.

MS. FABRIZIO: Thank you, Mr. Chairman.

BY MS. FABRIZIO:

Q. I'd also like to ask Mr. Vickroy if he could summarize very briefly his role in development of this agreement and its terms.

A. (Vickroy) My role has been to advise the Commission Staff regarding the various proposals and throughout the settlement discussions, regarding what the potential future financial viability of the Company would be, based on both what the Company has projected and the various settlements that have been entered into.

MS. FABRIZIO: Thank you.

CHAIRMAN GETZ: Well, did you have something else, Mr. McHugh?

MR. McHUGH: Actually, I do. Just one clarification, Mr. Chairman, for Mr. Leach.

BY MR. McHUGH:

Q. I think you said, when the started out the Vermont discussion, that there was "no broadband threshold in Vermont beyond the year 2008", and I just want to clarify, I think you meant "2010", is that correct?

A. (Leach) That's correct.

MR. McHUGH: That's it, Mr. Chairman.

Thank you.

CHAIRMAN GETZ: Well, let me get an idea in terms of cross-examination, we may be getting close to a time where it would make some sense to take a break before we start the cross. But, Mr. Phillips, will you have questions for the panel?

MR. PHILLIPS: I have just one or two questions.

CHAIRMAN GETZ: And, Mr. Price, will you have questions?

MR. PRICE: One or two as well.

CHAIRMAN GETZ: Okay. And, Mr. Mandl?

MR. MANDL: For this panel, I do have a few questions.

CHAIRMAN GETZ: Okay. And, then, I assume, Mr. Rubin, Ms. Hatfield, you'll have some questions?

MS. HATFIELD: Well, I was actually under the impression that we weren't doing cross on this panel, but that actually these witnesses were being called back for the fourth and final panel, is that not correct?

MR. McHUGH: That's what we were proposing, Mr. Chairman. So that, after this panel, the cross would be deferred, we would bring them back later in the proceedings, and then move, after this part, to introduce Mr. Nixon, Mr. Smee, and Ms. Bailey for the sort of network quality of service panel before subject to cross-examination.

CHAIRMAN GETZ: Okay. I was just trying to get a judgment of whether it would make sense to get some of the questions out the way, but may it's better. The recommendation is just go to the second panel. Does anybody have any serious issues with that process? Mr. Phillips?

MR. PHILLIPS: Mr. Chairman, I really just have one question, and I think it's more of a clarification question. And, I believe I can get it out of the way pretty quickly.

CHAIRMAN GETZ: Well, let's do it then.

CROSS-EXAMINATION

BY MR. PHILLIPS:

Q. Mr. Leach, in your testimony, both with reference to the New Hampshire Settlement Agreement and with the Maine Stipulation, you used the figure "3.6 Leverage Ratio" for a trigger for certain events. And, in both of the documents that you referenced, the number is "3.5". I wonder if you could just clarify whether you meant 3.5 or 3.6?

A. (Leach) Yes, we use -- let me look at the actual document. We use each number for a different purpose. Yes, thank you. For clarification purposes, the "3.5" is the level by which we can be relieved of the financial obligations, basically, the cash flow sweep, the restriction on improving -- excuse me, increasing dividends, and the cumulative -- the requirement that dividends not exceed cumulative Free Cash Flow. So, the 3.5 level basically says, to be relieved of those, you have to be at 3.5 for three consecutive quarters.

The "3.6" refers to the agreement in Maine that, if we don't have our leverage below 3.6 by 2011, we would pay off 150 million of debt. So, I apologize. So, the 3.5 was for the first point, the 3.6 was just for the debt repayment obligation in 2011.

MR. PHILLIPS: Thank you. That's all I had.

CHAIRMAN GETZ: Well, is there anything else then that can't wait until we excuse this panel and recall later?

(No verbal response)

CHAIRMAN GETZ: All right. Well, hearing nothing --

CMSR. BELOW: I have a few

clarifications that I think might be helpful just to go ahead and get out of the way.

BY CMSR. BELOW:

Q. On Page 9 of the Settlement Agreement, at 2.2.2.1, talks about "using funds that would otherwise be available to pay dividends but for the restriction set forth in Section 2.2.2 to repay debt related to the Merger until such restriction set forth in 2.2.2 is removed." Would that be based on a quarterly -- a fiscal quarter reporting, such that, once the interest -- well, to the two ratios, the Leverage Ratio and the Interest Rate Coverage Ratio dropped below the specified level, then that restriction would be removed?

A. (Leach) Yes, sir. This comes right out of the loan agreement, so it doesn't refer back to 2.2.2. Following the end of any fiscal quarter, there's a one-time test. If it exceeds 5.0, you have to suspend dividends. If you go down to 2.2.2.1, that basically says when you suspended them, now you have to use that cash that would otherwise have been paid out in dividends to pay down debt, until the next quarterly reporting date that puts you under the 5.0 level. So, it's a single snapshot for one quarterly reporting

period.
Q. And, then, in that subsequent quarter, you wouldn't have to use that to repay debt, it would be redirected?
A. (Leach) That's correct. Maybe by example: At the end of the first quarter of a given year we're at 5.1, we have to suspend dividends, and use the money over that quarter to pay down the debt. At the end of the second quarter, if we're now at 4.9, we're below the 5.0, then we're allowed to pay dividends again.
Q. Okay. On the next page, at 2.3, the "Debt Reduction" commitment, can you characterize how that compares with what you were proposing before any of the three settlements?
A. (Leach) Yes. We had not committed to any actual debt required amortization amounts in our model. We showed all the Free Cash Flow paying down debt over time, but we had actually not committed to use the dollars for that purpose. And, that was really the genesis of this condition in Maine, and now in New Hampshire.
Q. Okay. Likewise, on Page 15, at 3.4, where there's the commitment to "expend at least $56.4 million within 60 months of Closing on broadband infrastructure in New Hampshire", could you just characterize that or compare that with what the commitment was presumed before the

settlement?

A. (Leach) Yes, sir. The 56.4 is made up of two pieces. It's made up of $40 million, which is what we have committed to spend over five years, and $16.4 million, which represents what we call the "Initial Broadband Plan", where we would -- whereby in each state we said, you know, within the first 20 -- 20, 24, 28 months, we were going to spend a significant amount to kind of get the broadband -- get the broadband moving. The 16.4 is a million or two higher than where we first started. And, the $40 million is 15 million higher than what was first presented in our Discovery Model. So, it's roughly 15 plus, well, something in the 16 to $17 million range higher.

Q. Okay. On Page 21, in the middle of Paragraph 7, there's a discussion about "FairPoint submitting" -- "submission shall include a detailed budget pro forma of charges to and from affiliates for the three-state operations for 2008." And, is that submission to be within six months of close? I think it's not -- I think I surmise that from something else that was stated. But what is the intention with regard to when that submission would take place? I think it may have come from the previous page. There's a reference to

"Within six months after the Closing Date".

A. (Leach) Yes.

MS. FABRIZIO: Commissioner Below, if I could help out here, just in the interest of time. I think, in Paragraph 7, as you probably noticed, I think the third sentence starts with "Within six months after close, Telco will submit an amended CAM", that, combined with the sentence beginning in the middle of the paragraph on the next page, "FairPoint's submission shall also include", we intended that to be linked.

CMSR. BELOW: Okay.

BY CMSR. BELOW:

Q. And, is that, Mr. Leach, is that your understanding?

A. (Leach) Yes, sir. Within six months after the close, yes, sir.

Q. Okay. On the next page, 8.2, it refers to FairPoint agreeing to make "the same or comparable sales and service options that Verizon makes available as of the Closing Date", with certain exceptions. Is there any chance that Verizon might materially change their sales or service options between now and the Closing Date?

A. (Smith) I can answer that, no, we are running the business in the ordinary course. We have no plans to make changes to our sales and to our service offerings.

Q. Okay. On 8.9, on Page 24, you were referring to, I think this was -- Mr. Leach, you were testifying on this, that the intent was not to disadvantage New Hampshire ratepayers based on a significant different capital structure by FairPoint. However, this only really addresses the cost of capital for debt. But your statement was with regard to the overall capital structure. I guess my question is, this doesn't really address what the cost of capital might be for the equity portion of the Company? That was the intent of the settling parties not to really address that particular point, except with the goal that some of the financial parameters would suggest that it might be investment grade?
A. (Leach) This was specifically designed to just address the cost of debt, because we believe the actual -- the cost of equity, FairPoint's cost of equity, versus what's publicly available by Verizon, actually results in a lower cost of equity for FairPoint than Verizon. So, we basically ignored that and said "let's just deal with the debt component."
Q. Okay.
A. (Bailey) And, to add to that, the last sentence in that paragraph is supposed to mean that we aren't agreeing,

in this Agreement, about what the capital structure should be. So that, just because we're saying that we should use an investment cost, an investment grade cost of debt, we wouldn't necessarily use an investment capital structure, because FairPoint may have a much higher percentage of debt than an investment grade company. So, we weren't precluding that argument in a future rate case.

Q. And, on the Board of Directors provision, on Page 32, 11.1, there's reference to "a good faith effort to maintain the same aggregate representation from northern New England". I just am curious what the intention of the parties was as to how far into the future this might reach, because, in theory, five or ten years or further out, FairPoint might merge or join other companies and might have a much larger geographical base. What's -- Would anybody care to comment on that?

A. (Leach) My sense is, the intent of that was to represent, as long as we were predominantly a northern New England company, we would try to maintain a relationship with the Board of Directors over that time frame. And, if that changed over time, then we wouldn't be predominantly northern New England, if that were to happen, and I don't know that it would. But the intent was, as long as we looked like we're heavily northern New England oriented, we ought to have a Board of Directors makeup that parallels that ownership kind of position.

Q. And, of course, that recognizes that future -- such future mergers or acquisition would be subject to review by the Commission pursuant to our statutory authority. Ms. Bailey?

A. (Bailey) I don't have anything to add, and I agree with that.

CMSR. BELOW: Okay. Thank you. That's all the clarifications I had at this point.

CHAIRMAN GETZ: Mr. Leach.

WITNESS LEACH: I'm sorry. I'd like to make one clarification on the cost of equity question. I think what I said is that "we believe that FairPoint's cost of equity is less than Verizon's", that's a misstatement. The combined cost of capital, because they have so much more equity in their capital structure than does FairPoint today, that the combined cost of capital for FairPoint was, in fact, a little more attractive than the last publicly disclosed numbers by Verizon, not just the equity component, but the combined cost of capital.

CMSR. BELOW: Okay. Thank you.

WITNESS BAILEY: And, that paragraph is silent on what we'll do with the cost of equity. That will -- We'll argue about that in the rate case.

CMSR. BELOW: Okay.

CHAIRMAN GETZ: All right. Let me make sure I know where we are at this point. So, the proposal is to excuse this panel, have a second panel come and be available for or conduct the direct examination. At the end of that second panel, then Mr. Leach will offer his confidential material? What's the -- I wasn't understanding how that was supposed to work.

MR. McHUGH: Based on the request from the OCA, what I think we can do is excuse this panel, Mr. Chairman, then have a panel dealing with service quality and network issues, and then that's really going to be open for cross-examination. And, then, followed by a wholesale issues panel. And, then bring this panel back for cross and any final redirect that may be necessary.

CHAIRMAN GETZ: Okay. But when would we be getting to Mr. Leach's direct highly confidential?

MR. McHUGH: I propose to do it now, but I think the OCA preferred to wait. I was going to have him do it right now.

CHAIRMAN GETZ: Well, I think it's a good time to take a recess. Why don't you talk among yourselves and --

MR. McHUGH: Sure.

CHAIRMAN GETZ: -- come up with a proposal. And, when we get back, I guess we'll see the second panel, and perhaps Mr. Leach. But we will be flexible enough to react to the proposal. And, we'll be back here at 3:30.

MR. McHUGH: Thank you.

(Whereupon a recess was taken at 3:04 p.m.)

CHAIRMAN GETZ: Appears to be a small panel for the second panel.

(Laughter.)

CHAIRMAN GETZ: Mr. McHugh.

MR. McHUGH: At this time, Mr. Chairman, we've agreed to defer the highly confidential and confidential testimony, and to move forward with the testimony for service quality issues, network-based issues. So, we call Mr. Nixon back to the stand, as well is Mr. John Smee from FairPoint. I would also ask, at the end of this panel, I was going to ask for Mr. Brown, Michael Brown, and Mr. Smee to be excused from the proceeding. So, I do want to make it known that if anybody has questions for Mr. Brown, we're happy to have him come up. But we didn't intend to bring him up at this time, or, certainly, if the Commission has questions.

CMSR. MORRISON: Will he be in tomorrow, Mr. Brown?

MR. McHUGH: He was hoping not. He can be, if need be, but we were hoping not. But we can bring him up, Commissioner Morrison, if you might have questions for him?

CMSR. MORRISON: Yes, I think I might have questions for him.

MR. McHUGH: That's fine. Michael?

MR. BROWN: Yes, sir.

MR. McHUGH: Could you come up to the stand please.

MR. BROWN: Yes, sir.

(Whereupon John Smee and Michael Brown were duly sworn and cautioned by the Court Reporter, joining Kathryn Bailey and Peter Nixon as a panel.)

JOHN SMEE, SWORN

MICHAEL BROWN, SWORN

KATHRYN BAILEY, PREVIOUSLY SWORN

PETER NIXON, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MR. McHUGH:

Q. Mr. Smee, if we could start with you. If you could remind everybody of your full name and your title and your job duties at FairPoint please.

A. (Smee) My name is John Smee. I'm Director of Operations for FairPoint, responsible for central office outside plant and technical operations.

Q. And, Mr. Brown, same for you. If you could remind everybody your full name, title and job responsibilities for FairPoint?

A. (Brown) My name is Michael Brown. I'm the Vice President of Access Network Engineering, in charge of the broadband architecture.

Q. And, Mr. Smee, just briefly, could you describe your work with Ms. Bailey, in terms of preparing the SQI, Exhibit 3, which we've attached to the New Hampshire Settlement Stipulation.

A. (Smee) Yes, certainly. We recognize that, under the current arrangement for the quality metrics in the State of New Hampshire, which there are a series of metrics, there is not, in the State of New Hampshire, unlike the State of Maine, a financial penalty associated with not achieving the design target levels for those metrics. We agreed that, as an incentive for the Company, we would work out a financial penalty mechanism, and we adopted the mechanism that the State of Maine uses, a per point basis, $7,500 per point of miss. We also agreed to work on an alteration, an addition of some metrics, which would involve changing, as Ms. Bailey noted earlier, changing from the customer report rate to the network report rate, changing from fully mechanized installation appointments to premise visit appointments associated with POTS and DSL service, changing to the average delay days for held orders. I believe that's it.

Q. And, in terms of working with the Staff and the metrics to be adopted, would that be primarily your responsibility within FairPoint to work with the New Hampshire Staff?

A. (Smee) That is correct. As we move forward for the new metrics for which Verizon does not specifically measure today, which particularly is the POTS and DSL mechanized and premise visit installs, we have no existing data, so we are not absolutely clear on currents levels of achievement in regard to that effort. So, we will collect data as soon as possible after close and/or after Cutover, to determine what the current status is, and then work from that to develop the appropriate metric and the appropriate ramp-up numbers to achieve over the three-year period.

MR. McHUGH: Okay. Mr. Chairman, at this time, unless Attorney Fabrizio has any other direct, I'd make the panel available for questions and cross-examination.

CHAIRMAN GETZ: Okay. Thank you. Mr. Del Vecchio?

MR. DEL VECCHIO: No, sir.

CHAIRMAN GETZ: Mr. Phillips?

MR. PHILLIPS: No questions.

CHAIRMAN GETZ: Mr. Price?

MR. PRICE: No questions.

CHAIRMAN GETZ: Mr. Mandl?

CROSS-EXAMINATION

BY MR. MANDL:

Q. If I could refer you first to Page 19 of the Settlement Agreement. And, specifically, if I could refer you to Section 5.1, where FairPoint has agreed to provide certain monthly reports to the Commission. Could you clarify whether those reports will be publicly available or will they be filed on some confidential basis?

A. (Smee) I am not certain of the answer of that question. They will be filed with the Commission and the Staff. And, I would make a presumption, but I don't know that with certainty --

A. (Nixon) If there are names associated with them, of course, it will be on a confidential basis. If we don't have names associated with them, we'd make them available to the Staff to make available to the parties as they deemed appropriate.

Q. Thank you.

A. (Bailey) So, you're saying, without names, it wouldn't be confidential?

A. (Nixon) We would try to make the universe large enough again to keep there from being what I would call your normal personnel type confidentiality that may be required, we'd try to keep that such that we would make that available to the Staff for you to share as appropriate.

A. (Bailey) Well, if it's not marked "Confidential", and he asks, we have to give it to him. My only uncertainty was whether it would contain any confidential information.

A. (Nixon) We would do our best to reduce and not provide

confidential information, so it could be shared.
Q. If I could turn now to Page 25 of the Settlement Agreement, Section 9.5. This deals with FairPoint's commitment to make monthly status reports regarding its Pole Licensing and Administration Group. Could you indicate whether those reports will be considered public, for example, available to attachers to the poles?
A. (Smee) In terms of the reports about the staffing and creation of that License Admin. Group, is that what your question is, sir?
Q. The reports that are required under Section 9.5?
A. (Smee) Yes. To the same degree that the other reports, having to do with the staffing, where confidential personal information, we would do our best to not include that, and, therefore, those reports would be available.
Q. Is there any time limit on how long FairPoint will be submitting these monthly reports relating to the Pole License and Administration Group?
A. (Smee) My understand would be that the License and Administration Group is a requirement for us to perform -- to perform Cutover. The License/Admin. Group is a TSA service available to us. When the TSA is

concluded, we must be operational with our own License/Admin. Group. At that point, we will have concluded reporting on the progress towards the standing up of that group, and would not have to report on it any longer.

Q. So, you'd expect monthly reports through the Cutover date?

A. (Smee) We'd expect monthly reports through the Cutover date, unless and until we reported a month or two, at some point prior to Cutover date, if we were able to say definitively that group is operational, fully trained and ready to go, we wouldn't necessarily file a report the following month simply stating the same thing again for the purpose of filing the report.

Q. Now, the language in Section 9.5 calls on FairPoint to report "regarding progress in putting together its Pole Licensing and Administration Group". Could you explain in a little more detail what type of information might be in these monthly reports?

A. (Smee) A couple of things, a couple, three things would be critical. The staffing, the staffing progress, the training of those individuals who were placed in those functions; the real estate acquisition or designation of real estate, where the office is going to be located; and the assurance that the appropriate records, existing records and forms have been created and are useable for both the group and the customers.

Q. Would you expect that, by Cutover, once FairPoint has taken over, you know, full responsibility for this Licensing and Administration function, that it would have all of the forms that are necessary --

A. (Smee) Yes.

Q. -- and in place?

A. (Smee) Yes.

MR. MANDL: Thank you. No more questions for this panel.

CHAIRMAN GETZ: Okay. Thank you. Then, Mr. Rubin?

MR. RUBIN: I have no questions for this panel.

CHAIRMAN GETZ: Ms. Hatfield.

MS. HOLLENBERG: Good afternoon.

BY MS. HOLLENBERG:

Q. I'll just direct this to the panel. And, if Staff or FairPoint want to answer it, I'll leave it to you in terms of how you want to answer it. Section 10.1 requires FairPoint to provide "monthly progress reports on its network improvement until a full plan is filed

as specified in 10.2." And, I'm wondering, will these monthly progress reports be filed with the Commission through its Executive Secretary or will they be provided directly to Staff?
A. (Bailey) Today, Verizon's quality of service reports are provided directly to Staff. They are not -- They don't go through any docket tracking system. I don't -- This paragraph doesn't say what --
A. (Smee) How we would do it.
A. (Bailey) -- how we would do it. Did you have anything?
A. (Smee) No, no comment. Other than I would expect we would file it directly with Staff.
A. (Nixon) I think it says in the paragraph that we will provide it to Staff.
Q. Okay. So, that's your answer? Okay. Thanks. Section 10.3 -- I'm sorry, 10.2. I skipped over 10.2. Relates to a "full network improvement plan", and that says that "FairPoint shall present to the Commission". And, the same question, will that be filed through the Commission's Executive Secretary or will that be provided directly to Staff?
A. (Smee) My expectation is that that final plan would be a continuation of the previous monthly reports, and it would be presented to Staff, unless otherwise

requested.

A. (Bailey) Well, the words here say "shall present it to the Commission", so I would think that this one would be filed through the Executive Director.

A. (Nixon) Yes.

Q. Is there agreement between the Company and Staff that it will be filed with the Executive Director?

A. (Nixon) There is.

A. (Smee) Yes.

Q. Thank you. All right. Section 10.3 relates to service quality requirements, and refers to Exhibit 3. And, I just have a couple of questions about Exhibit 3 please. Starting with Paragraph 2.3, on the first page, and we touched on this in the technical session, I just -- and someone else may have actually done that, I just want to confirm for the record. There are Transition Increments indicated in Section 2.3. And, I just wanted to confirm that the start dates for each of those increments was January 1 of the year mentioned in each increment?

A. (Smee) That is, I'm looking, yes, the start date on the 2008 year starts with 7/31 or Cutover. The rest of them begin on the anniversary.

A. (Bailey) Well, it's effectively the same thing, I think.

A. (Smee) Right. Absolutely.

A. (Bailey) Because they have to get one-sixth better than Verizon did at the end of the year in 2007 by December 31st, 2008. So, whether you start from January 1st or July 31st or July 1st, they have to be one-sixth better by December 31st, 2008.

Q. And, I guess my recollection was that they started -- my recollection was the Company had said they started on January 1st, and --

A. (Smee) That is correct.

Q. -- improving every year, each year?

A. (Smee) The target date will be -- excuse me, the starting point for the metric will be the metric achieved -- the actual number achieved by Verizon as of December 31st, 2007.

Q. That will be --

A. (Smee) That will be the starting point. By the end of 2008, by December 31st, 2008, the Company will achieve a metric that is -- will have achieved one-sixth better than what Verizon achieved in 2007 --

A. (Bailey) From the standards --

(Multiple parties speaking at the same time.)

BY THE WITNESS:
A. (Smee) And, I think I'll try and say what you were going to say, and if I don't, you've got it. For the standards in which Verizon has missed in 2007. Those that Verizon has made in 2007, the standard is what the standard is.
BY MS. HOLLENBERG:
Q. Okay. Thank you. And, then, Paragraph 3, this is another thing we touched on, just for clarification, that -- the first two sentences in that paragraph reference the word "rules". And, I just wanted you to confirm that by that word you mean the terms of Exhibit 3, and not the PUC rules?
A. (Smee) I'm sorry, are you --
Q. Paragraph 3 of Exhibit 3.
A. (Nixon) Yes.
A. (Smee) Correct. That's correct.
Q. Thank you. And, 3.1 concerns "Service Measurements". The third sentence states "Results will be reported at a central office level, where appropriate". Mr. Smee, again, I think we touched based about this in the technical session. When will results be reported at a central office level?
A. (Smee) For the network report rate measurements.

Q. And, Paragraph 4 concern "Penalties". Will the penalties that are referenced in this section be paid to the General Fund or to customers of FairPoint?
A. (Smee) They will be paid to the customers.
Q. And, have you determined how they will be paid to the customers and will they be paid to individual customers who receive substandard service or will they be paid to all customers?
A. (Smee) Because we're modeling on the Maine plan, they are paid to all customers across the state, regardless of whether they had received -- what level of service they had received.
Q. Thank you. Turning back to the body of the agreement, Section 10.4. That requires FairPoint to -- let me just turn to it. Okay. It says "FairPoint will file reports on a non-confidential basis". And, my question is, will those reports be filed with the Commission through its Executive Secretary?
A. (Bailey) These reports today are filed to my attention.
Q. Okay. So, directly to Staff?
A. (Bailey) Yes.
Q. And, will the reports be posted on the Public Utility Commission's website?
A. (Bailey) We haven't -- We haven't really thought that

far ahead. There is some quality of service reporting on the website. They may be. It's probably a good idea.
Q.   Section 10.5 requires an audit of FairPoint service quality metrics no later than one year after close.
A.   (Bailey) "No earlier".
Q.   Oh, I'm sorry, "no earlier". Yes, I'm sorry. Yes.
A.   (Nixon) "Following Cutover".
Q.   And, in terms of the selection of an independent auditor, it mentions that FairPoint has the ability to submit names. I'm just wondering if that process will be open to other parties?
A.   (Bailey) If the OCA had consultants that they had in mind for this kind of work, we'd be happy to send the RFP to those consultants.
Q.   Thank you. 10.7.1 requires FairPoint to file quarterly reports with the Commission related to double poles. And, will these reports be filed with the Commission through its Executive Secretary or directly with Staff?
A.   (Smee) As it's written, they will be filed with the Commission.
Q.   And, Sections 10.7.2 through 10.7.4 deal with various circumstances if FairPoint fails to meet the requirements of double pole removal. Who will verify

whether or not FairPoint has met the requirements of the 10.7.1?

A. (Bailey) The Telecommunications Division.

Q. And, what will the verification process entail?

A. (Bailey) I believe that we will compare the work that they have done to the inventory, and do the math.

Q. And, I believe, Ms. Bailey, you testified in the general description that there was a certain amount of money that needed to be spent within the next year, and you mentioned "July 31st, 2011". I just wanted to confirm that that was FairPoint's understanding, because I didn't see it, that specific requirement, in the Settlement Agreement?

A. (Nixon) 10.7.6.

Q. Okay. Right. Thanks. And, if FairPoint could, a representative of FairPoint could answer this question. Where is the money for the set asides being funded or how is it being funded?

A. (Nixon) This is the set asides if we fail to meet the pole requirements?

Q. Yes.

A. (Nixon) It would be funded out of FairPoint's general operating expense, general operating revenue, as a set aside of expense.

Q. The reports required by 10.7.6, will those reports be filed with the Commission through its Executive Secretary or to Staff? It just says "will provide".

A. (Nixon) I believe, if it's silent, it would be provided to Staff. But it then does go on to talk about in conformance with a Commission order. So, --

Q. Well, I guess I just wanted to know what your thoughts were?

A. (Nixon) Right now, we intend to file it with Staff.

Q. 10.8 deals with the "Limits on Business Acquisitions". Actually, I'm sorry, I'm not going to go -- I'm not going to ask those questions, I think we're going to do those at a different point. Just one other question, if I may, related to Exhibit 3. The new service standards that will be established after this proceeding are dealt with in 3.2. And, I just wondered whether or not there was any process, in terms of the involvement of the Commission, contemplated for the establishment of these standards? Will the Commission approve them or will they be presented to the Commission at any point in time?

A. (Bailey) I believe that if we -- if FairPoint and the Staff can agree on the standard, we would file a memo with the Commission informing the Commission of the standard that we agreed to. And, if we couldn't agree, then there would probably be a -- there would be a process.

Q. And, in terms of the other reports that we talked about that would be filed directly with Staff, as opposed to through the Commission's Executive Secretary, would there be any process contemplated for those after Staff received them? Would it be the same kind of process that you just described for the new service quality?

A. (Bailey) We aren't planning to report every month on what we see in the FairPoint reports. But, to the extent that a trend developed, as we've done in the past, we may file a memo with the Commission, advising the Commission that there are issues, only to the extent that I think that we've discovered or were concerned about something. If everything were going as expected, then we would review the reports monthly and that would be the end of it. But, if, over time, a trend was developing or FairPoint wasn't meeting its commitments, or to the extent that penalties need to be imposed, I think we probably would file a memo with the Commission.

MS. HOLLENBERG: Excuse me for one moment please.

(Short pause.)

MS. HOLLENBERG: I don't have any further questions. Thank you.

CHAIRMAN GETZ: Thank you.

BY CMSR. MORRISON:

Q. Mr. Smee, if I understand correctly, you're responsible for most of the physical work that has to be done in upgrading the outside networks, as well as the COs?

A. (Smee) That is correct, sir.

Q. Okay. As you look at the team of individuals you have to do this work, you've got to do this in three states, you've got to do it rapidly, you've got short windows to get things done. Do you see yourself expanding that workforce?

A. (Smee) Yes, we do.

Q. The outside --

A. (Smee) The outside plant workforce will be expanded, yes, sir.

Q. So, those are people who do the poles and work in the COs and string copper and things such as that?

A. (Smee) That is correct, sir. We will -- There are two sort of work functions that we're looking at expanding. Traditionally -- We will continue to operate this way. Traditionally, Verizon has separated the outside plant workforce into two organizations, a construction force and an installation and maintenance force. Construction force will definitely be involved in replacing and upgrading plant, and also involved in remedying the double pole issue. The installation and maintenance force will be involved in a couple things. Obviously, the routine day-to-day installers and meeting them in a timely fashion, fixing troubles in a timely fashion. They will also be involved in a proactive work group to help us identify areas where work for the construction -- where engineering and construction forces are needed to remedy situations that are repeatingly -- repetitively causing problems for the customers. So, both groups will be expanded.

Q. In New Hampshire, how many individuals do you see you augmenting the current workforce with?

A. (Smee) Right now, we're looking at around 15 installation and maintenance technicians, and somewhere around 20 or 30 outside plant construction technicians.

Q. Now, will those be ongoing positions or are they going to be, for lack of a better term, temporary?

A. (Smee) Well, I don't know -- you know, in terms of how they are officially hired, I believe we're going to hire them as permanent positions.

Q. Uh-huh.

A. (Smee) You know, the business, and given the fact that we're committing here to two and a half years, in terms of the pole remediation problem and three years in terms of the network remediation problem, they will be permanent employees. And, you know, given the nature of the business, you know, attrition occurs over time, we need to keep the force adequate. Once the work is completed and the network is in better condition, there are fewer troubles, and, therefore, perhaps less work. But we have additional growth opportunities here. So, we will make a judgment at that time, you know, as to whether, when attrition occurs, we would need to backfill and keep the force at the same size that it's going to be early on here.

Q. In regards to the new hires, how long do you anticipate it will take to actually get them up to where they are competent in what they have to do?

A. (Smee) Well, it's about a six month run, from the time, let's say, from the time you post a job effectively, and there are a couple of opportunities where there are numbers of employees inside the Company today who would love to be able to effectively be promoted into those technical positions. So, those jobs, those

opportunities will be posted internally. Once those have been exhausted, we'll also then post for external hirings, some perhaps at the same time. That hiring time line, a month to two months at best, and then four to five months of training to become effective and safe at doing your job.
Q. Thank you. Mr. Brown, I've looked over your network phased plan of installation operations. And, I notice that there's -- you do anticipate going to ADSL2?
A. (Brown) Yes, sir.
Q. How far down the road until that can be seen?
A. (Brown) We're using ADSL2+ today. VDSL2, we're doing some trials with it now in Kansas City. So, we expect, by the time we do deployment, it will be available to us.
Q. So, to be a little bit more clear, when do you see ADSL2 being in this particular network in this state?
A. (Brown) In the fourth quarter of this year we anticipate the MSAN installations taking place.
Q. And, that's a statewide deployment or how many COs do you have will MSANs be in and active in the fourth quarter of 2008?
A. (Brown) I'd have to go back and check my numbers and remember exactly how many it was. I think it was in

the neighborhood of 69 that we would have them in the central offices. But, keep in the mind, there's also several remote terminals that will be in later phases coming in, because there's more of those that we have to hit, so it takes a longer period of time.
Q. So, again, when would you anticipate ADSL would be deployed, actually down to the customer?
A. (Brown) Down to the customer level? We will phase that in as we do a central office in a particular remote terminal that's associated with that exchange. We will begin to offer that service to those customers. So, we anticipate being able to do that in the fourth quarter of this year.
Q. Okay.
A. (Brown) And, then, that will be -- like I say, we'll phase that in as we go.
Q. And, the VDSL will be -- what will be the determining factor of VDSL?
A. (Brown) VDSL2 doesn't have quite the reach factor. So, what we'll use that for mainly is for business purposes. If a business wants a higher bandwidth than what the ADSL2+ can offer, or if they want a synchronous bandwidth, that bandwidth goes both ways, then we'll use that then.

CMSR. MORRISON: Okay. Thank you. That's all.

CHAIRMAN GETZ: Okay. Redirect for this panel on these subject matters?

MR. McHUGH: No, Mr. Chairman.

CHAIRMAN GETZ: Okay. Then, the witnesses are excused from this panel. Thank you very much. Mr. McHugh.

MR. McHUGH: At this time then, we'd ask Mr. Brian Lippold and Michael Skrivan to join the panel to answer questions on wholesale issues.

(Whereupon Brian Lippold and Michael Skrivan were duly sworn and cautioned by the Court Reporter, joining Kathryn Bailey and Peter Nixon as a panel.)

BRIAN LIPPOLD, SWORN

MICHAEL SKRIVAN, SWORN

PETER NIXON, PREVIOUSLY SWORN

KATHRYN BAILEY, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MR. McHUGH:

Q. Mr. Skrivan, I guess we'll start with you. If you could state for the record your full name and again explain your title and job duties for FairPoint, and then we'll move over to Mr. Lippold to do the same.

A. (Skrivan) Yes. I'm Michael T. Skrivan. I'm Vice President - Regulatory for FairPoint Communications. And, my job duties include regulatory responsibility for the Northern New England operations, including compliance of state and federal tariffs and specialized cost studies.

Q. And, Mr. Lippold?

A. (Lippold) Brian Lippold, Vice President of Business and Wholesale Services.

MR. McHUGH: I don't have any direct, Mr. Chairman, and we make the panel available for cross-examination.

CHAIRMAN GETZ: Okay. Ms. Fabrizio, I assume you have no questions?

MS. FABRIZIO: No.

CHAIRMAN GETZ: Mr. Del Vecchio?

MR. DEL VECCHIO: No, sir.

CHAIRMAN GETZ: Mr. Phillips?

MR. PHILLIPS: No questions, Mr. Chairman.

CHAIRMAN GETZ: Mr. Price?

MR. PRICE: I may, but I'd like to ask if Alan Mandl could go first.

CHAIRMAN GETZ: Mr. Mandl.

MR. MANDL: Yes, I do have questions.

CROSS-EXAMINATION

BY MR. MANDL:

Q. If we could start first with a little background. The Settlement in this proceeding was filed on January 23rd, 2008, is that correct?

A. (Bailey) Yes.

Q. And, prior to that time, FairPoint and Verizon had received an order from the Vermont Public Service Board on December 21st, 2007, in which it rejected the transaction, but invited FairPoint to make a revised filing, is that correct?

A. (Bailey) That's correct.

Q. I'm sorry?

A. (Bailey) That's correct.

Q. And, subsequent to the Vermont order, on January 8th, 2008, am I correct that FairPoint made a revised filing with the Vermont Public Service Board?

A. (Nixon) Subject to check, that's correct.

Q. And, on February 1st, following the submission of the Settlement in this case, the Maine Public Utilities Commission issued its order on these transactions, is that correct?

A. (Nixon) That's correct.

Q. And, January 9th of 2008, the Maine Commission held a deliberative session, which preceded its February 1st order, correct?

A. (Nixon) Subject to check.

A. (Bailey) I don't believe there was a written transcript of that. I didn't review a written transcript of that.

Q. I'm sorry?

A. (Bailey) I don't believe there was a written -- I did not review a written transcript of that deliberation.

Q. Right. I would agree with you that there is an audio tape, but not a written transcript. Now, it's fair to say that, in some other respects, FairPoint has modeled this Settlement on terms required by the Maine Commission, is that correct? I'm thinking, you know, primarily to Mr. Nixon, for your general familiarity, that there were a number of provisions in the New Hampshire Settlement that track what was agreed upon or ordered in Maine?

A. (Nixon) I think it's fair to characterize this as we looked at each state, we looked at the unique needs of the state. We have a and arrived at a Settlement Agreement with various -- all but a couple CLECs for an agreement with FairPoint. And, then, as we filed our various Settlement Agreements with each state, we looked at those unique needs. And, so, there may be things that looked like they're common, but we were very careful in designing it for the needs of the state.

Q. Now, there were wholesale or competitive terms and conditions required by the Maine PUC that are not reflected in the New Hampshire Settlement Agreement, is that correct?

A. (Nixon) I believe that's the case.

Q. Is it also true that FairPoint, in its revised filing in Vermont, accepted a number of wholesale or competitive terms and conditions that have not been included in the subsequent New Hampshire Settlement?

A. (Nixon) There were a couple.

Q. If we could turn to Page 24 of the Settlement Agreement. Actually, if we could make that Page 25. And, if I could refer you to Section 9.3. In this section, the parties to this settlement have agreed to the adoption of the 3-CLEC Settlement for purposes of their settlement in this proceeding, is that correct?

A. (Nixon) That's correct.

Q. Now, with regard to Exhibit 2 to the Staff/FairPoint/Verizon Settlement, is Exhibit 2 an

excerpt or a portion of the 3-CLEC Settlement document that was filed and made part of the record earlier in this proceeding?
A. (Nixon) Could you repeat that again. I'm sorry.
Q. Is Exhibit 2 to the Staff/FairPoint/Verizon Settlement a portion of the 3-CLEC Settlement document that was made part of the record earlier in this proceeding?
A. (Nixon) It is.
Q. Mr. Lippold, you testified during the earlier proceedings in this case regarding wholesale and competitive issues, correct?
A. (Lippold) I did.
Q. And, as part of that testimony, did you walk the Commission and the parties through the terms and conditions of the 3-CLEC Settlement?
A. (Lippold) I did.
Q. And, at that time, did you indicate that some provisions of that document, the 3-CLEC Settlement, applied solely to those three CLECs, while other provisions applied to all CLECs, is that correct?
A. (Lippold) Yes, sir.
Q. Okay. Can you point me to any language in your settlement with the Staff which extends all of the terms in Exhibit 2 to all wholesale service providers?

A. (Bailey) I believe that was the intent of Paragraph 9.3.

A. (Nixon) That's correct.

Q. That's not the question I asked. Is there any language, again, given the history of Mr. Lippold's explanation of the 3-CLEC Settlement, that would provide, for example, for three year extensions of interconnection agreements of wholesale customers who did not sign the 3-CLEC Settlement?

A. (Nixon) I would say the first sentence in 9.3.

A. (Bailey) I agree.

Q. There's no express language, though. That's your interpretation of that provision?

A. (Nixon) It's our joint interpretation.

Q. Okay. Well, do you think it would be clearer if this Commission were to adopt specific conditions, in the same manner that Vermont and Maine have done, regarding the extension of interconnection agreements for three years for all CLECs?

A. (Bailey) I don't think it's necessary. I think that this paragraph says that we have adopted the terms as part of this overall agreement that are attached in Exhibit 2, and that provision is contained in Exhibit 2.

Q. Does this exhibit repudiate in any way Mr. Lippold's prior testimony regarding the 3-CLEC Settlement?
A. (Bailey) Yes, I think it does.
Q. How do you square that with FairPoint's obligation to support that settlement, if that's, in fact, what you're doing here?
A. (Bailey) FairPoint is going to give the three CLECs everything it agreed to in their agreement, and they have also agreed with us that they are going to give the CLECs that didn't sign that agreement all the terms that are in Exhibit 2.
A. (Nixon) That's correct.
Q. Is there some terms in that settlement that CLECs don't like? You're proposing that they be bound to them, even though they never agreed to them and may be arguing against them in this proceeding?
A. (Bailey) No, I don't think that's true. I think, if a CLEC wants to invoke one of the provisions that's in Exhibit 2, then, generally, I mean, there's a few provisions in Exhibit 2, like Paragraph 8, that don't really apply, because you don't have to support any settlement agreement to get the terms. But, in order to get a three-year extension, you have to agree to the other terms.

Q. So, for example, my clients have argued that there should be no waiver of the PAP provisions. And, there is a one month waiver contained in this settlement. Would that mean that my clients would be denied three-year interconnection agreement extensions because they disagree with the terms of this document as to PAP waivers?
A. (Bailey) I think, to the extent that the Commission approved this agreement, yes. But your arguments are still before the Commission, so they could reject this agreement from those arguments.
CHAIRMAN GETZ: Well, let me make sure I'm understanding the flow of this, Mr. Mandl. So, basically your position is that your client may not want to adopt or take the -- afford itself of the opportunity that's provided in Exhibit 2, you may want to select some of those pieces a la carte, just you don't want to be bound by the whole agreement? Is that where you're headed?
MR. MANDL: Well, one of the threshold problems is the language in this Settlement document, by wrapping itself around the 3-CLEC Settlement, there's a great deal of ambiguity, in the first instance, as to which provisions apply to the three CLECs and which

provisions apply to all wholesale customers. I take on good faith the representations made by the parties who entered into this settlement. It's just not clear from the document that that's the case.

Then, you have the further issue of kind of the "take it or leave it" approach. We do have some differences of opinion. There are additional issues that we have briefed.

BY MR. MANDL:

Q. And, I guess the next question will be, if we advocate for additional issues, that are not covered by this Settlement, but which were addressed in Vermont and Maine, does that mean that the Settlement provisions, as you characterize them here, can be taken away from us?

A. (Nixon) I don't think anybody is denying your right to petition the Commission for your view. We're saying that this was the result of negotiations. This was the result of negotiations with various CLECs. Many of whom, most of whom have agreed to this. And, it was the result of lengthy negotiations with the Staff. And, the outcome is this Settlement Agreement. Nobody is denying you the right or the prerogative to argue your point. But this, we believe, embodies the best and most comprehensive arrangement between FairPoint and the CLECs to address, by far, the needs that they have expressed, and, in many instances, have gone beyond, and now applies to all.

So, we're, you know, we are -- we believe that, again, this is the result of negotiations. And, we're comfortable and confident with where it stands.

Q. Let's try this another way. Am I correct that, in Maine, the Maine Commission has required three-year extensions of interconnection agreements for all wholesale customers?

A. (Nixon) Subject to check, I believe that's correct.

Q. Would you agree that, in Vermont, the Commission included in its likely conditions three-year extensions of interconnection agreements for all carriers, and that FairPoint, in its revised filing, accepted that condition?

A. (Nixon) Subject to check, that's correct.

Q. Would you agree that, in the Vermont docket, in its December 21st order, the Vermont Commission rejected any suspension or grace period regarding the Performance Assurance Program and that FairPoint accepted that condition that's -- Am I correct that, in its December 21st, 2007 order, the Vermont Public Service Board rejected any grace period for the Performance Assurance Program, and that in its January 8th revised filing, FairPoint accepted transaction conditions that included no such grace period?

A. (Nixon) I'm not sure if they rejected or just failed to deliberate on that specific element. So, I'd have to verify.

MR. MANDL: I do have marked as an exhibit the Vermont order, and assuming that's admitted, it will speak for itself.

BY MR. MANDL:

Q. With regard to the Maine Commission, am I correct that, in its order, Maine simply deferred whether or not FairPoint would receive any type of waiver from PAP obligations until a future filing by FairPoint?

A. (Nixon) I believe they said they did not want to consider it in this application.

Q. Would you agree that the Vermont Public Service Board, in its December 21st order, required that FairPoint adopt a Rapid Response process, and that, in FairPoint's January 8th, 2008 revised filing, it accepted that condition?

A. (Nixon) Subject to check, I believe that's correct. I would also note, if I might, that as we went to each of the states, and we tried our best to find areas of need and of those processes that the Staff believed would help them perform their functions and their deliberations, that was part and parcel of the discussions with and negotiations within each of the states. And, again, I'll let Kate speak for the Staff, but, through these negotiations, that was not included in this. It was, again, part of a long and comprehensive negotiation. And, this is -- And, again, I think it's important for us to talk about what's the unique needs of each state. So, where possible, you look at global arrangements, and then to address the state needs individually I think is very important. The two parties did not believe that that particular requirement, as evidenced by the fact that it's not here, was not required.
A. (Bailey) And, to add to that, we, in the Verizon 271 case, adopted a provision that Maine had imposed for a rapid response process. And, realized after we attempted to implement it, that it was different in New Hampshire, because of the statutory provision in Maine that allows the Commission to designate a decision

maker other than itself, which this Commission doesn't have. So, the Rapid Response Program that was adopted in Maine didn't work here in New Hampshire.

Q. Now, we had also mentioned Vermont. Am I correct that Vermont required, and FairPoint has accepted, the implementation of a Rapid Response process in that state?

A. (Nixon) I believe that's correct, because that -- in those unique circumstances, they believe have made that work.

Q. Would you agree that, when the Vermont Board's order came out, that condition was not the subject of any type of settlement between FairPoint and the Department of Public Service, or any other party to that proceeding?

A. (Nixon) I don't recollect.

A. (Bailey) FairPoint has agreed to adopt Verizon's wholesale tariffs. And, in the wholesale Tariff 84, there is a provision for a fast-track Commission arbitration process, that would apply to carriers who are purchasing elements out of the tariff.

Q. Would the FairPoint witnesses agree that, in both Maine and Vermont, conditions have been imposed under which wholesale customers have the right to seek cost

recovery from the Commission if they incur extraordinary costs as a result of the transition from Verizon to FairPoint?
A. (Nixon) I believe that's correct.
Q. And, no such provision is included in the Settlement with Staff in this proceeding?
A. (Nixon) I believe there are provisions for certain expenses to be recovered in the exhibit.
Q. Which differ from the conditions imposed in Vermont and Maine?
A. (Nixon) It may.
Q. Apart from the conditions that we have just discussed, would you agree that, in this proceeding, NECTA and Comcast have asked the Commission to adopt several additional conditions?
A. (Bailey) I think the record speaks for itself.
Q. This may fall to another panel, you know, in terms of Cutover issues. Would you regard that as something for the first panel?
A. (Nixon) I'd suggest, while Mr. Lippold is here, that if you'd like to do that, this might be an appropriate time to see what your questions are. And, I would hate to have a witness leave and that be the one you're looking for.

Q. Okay. Thank you. In Vermont and Maine, am I correct that the Commissions have required conditions that would allow them to direct a delay in the Cutover, if, based on information provided by the independent monitor and other parties, it believed that a planned Cutover was premature?

MR. RUBIN: I object to the question. I don't believe the Vermont Board has adopted anything other than a rejection of the transaction.

MR. MANDL: Let me rephrase my question.

BY MR. MANDL:

Q. Let's start with Maine first. Talking about Maine only, would you agree that Maine has adopted as a merger condition the right of that Commission to direct a delay in the Cutover, if, based on information from the independent monitor and other parties, it believes that a Cutover would be premature?

A. (Bailey) I have not had an opportunity to review the Maine order, which was issued Friday afternoon.

Q. How about the FairPoint witnesses?

A. (Nixon) I've reviewed it in just the first blush. I would tell you, you know, it's my understanding that this Commission reserves the right within their jurisdiction to raise questions within their authority.

And, I don't -- I do not believe in this case it would be a requirement to put it in the order.
Q. Now, in terms of the Settlement with Staff, am I correct that there is nothing in the "Scope of Work" attachment that gives this Commission the right to direct a delay in a Cutover, if it believes that a Cutover will be premature, based on information provided by the monitor and other parties?
A. (Nixon) I don't believe it's up to me to tell the Commission what rights they do or don't have.
A. (Bailey) And, Staff is pretty reluctant to do that, too. But, to answer that question, or to anticipate your next question, I guess, of course the Commission has that right. And, we don't need to agree that they have that right. They have the right. Their job is to ensure the public interest. And, so, if they have information that they believe will impact customers, significantly impact customers, then, of course, they're going to do something. I would expect that they would do something about it.
Q. But is it fair to say that there is no agreement -- there is no provision in the Staff/FairPoint/Verizon Settlement that expressly states that, that condition?
A. (Bailey) No, because we didn't think it was necessary.

Q. Back to Vermont. Now, we've discussed Vermont's issuance of an order on December 21st, 2007 rejecting the then proposed transaction. And, Vermont setting forth a number of conditions that it said it would likely impose if it were to approve a revised transaction. When FairPoint made its revised filing on January 8th, 2008, did it accept a condition that would allow the Vermont Board to direct a delay in Cutover, if, based on information from the monitor and other parties, it believed a Cutover was premature?
A. (Nixon) I believe, in that case, that was in there. I believe that's true.

MR. MANDL: Thank you. I think you've saved the other panel a couple of questions.

CHAIRMAN GETZ: Well, I'm going to want to follow up on this at sometime, with respect to Mr. Mandl's question about Commission authority to suspend Cutover. There's a discussion on Page 22 of the Maine order, and there's a Final Condition Number 26 of the Maine order deals with this issue. And, I think maybe tomorrow, if everybody has had a chance to respond -- to go through what Maine has said, I'm going to want to hear a response from the Company to what has been proposed in Maine, which actually suggests that the Staffs of all three states also get together to consider what the best way of putting together a process is on suspending Cutover. So, if you could take a look at that overnight night, appreciate it.

Mr. Price, do you have follow-up?

MR. PRICE: No questions.

CHAIRMAN GETZ: Okay. And, while I'm thinking of it, let me just bring up a housekeeping issue. The front door to the building closes at 5:00. We will have someone at our front door until 5:30, so you'll be able to get in and out of the PUC premises. But, if you're going to try to get out and re-enter, then you should probably make arrangements with a friend.

Okay. Mr. Rubin, do you have questions for this panel?

MR. RUBIN: No questions for this panel.

CHAIRMAN GETZ: Ms. Hatfield?

MS. HATFIELD: No questions.

WITNESS BAILEY: Mr. Chairman, could you give me those references again please to the Maine order?

CHAIRMAN GETZ: It looks to be Page 22, and Condition 26 in Appendix C.

WITNESS BAILEY: Thank you.

CHAIRMAN GETZ: Okay. Is there anything

else for this panel then?
(No verbal response)
CHAIRMAN GETZ: Hearing nothing, then you're excused. Thank you. Or, portions of you are excused. What's next, Mr. McHugh?
MR. McHUGH: Mr. Chairman, I just want to make sure, in case I didn't hear, but Mr. Lippold and Mr. Skrivan, I'm asking that they be excused, and that they will not be coming back tomorrow, so just want to make sure the Commission is aware of that?
CMSR. MORRISON: Yes, that will be fine.
CHAIRMAN GETZ: The parties, it appears, have completed their questions for Mr. Skrivan and Mr. Lippold, is that correct?
(No verbal response)
CHAIRMAN GETZ: Hearing nothing, then I take it they may be excused.
MR. McHUGH: Then, Mr. Chairman, we would put the sort of initial panel back on and would make them available for cross, Mr. Leach, Mr. Smith, and whoever from Staff who would like to join the panel.
CHAIRMAN GETZ: Please proceed. Is this the time to address the confidential material or what's the proposal on that issue?

MR. McHUGH: Scott, do you want to do that now or --

MR. RUBIN: Mr. Chairman, we had a brief discussion during the break, and the concern was that I believe the Consumer Advocate and myself have some questions of a confidential nature. And, we didn't know if you wanted to go onto a confidential record more than once with this panel. So, it seemed that perhaps we could do the direct presentation of confidential information and the cross on that all at the same time. I don't know if you want to do that before the public cross.

CHAIRMAN GETZ: So, the suggestion then is to conduct the cross of the panel. When that's done, then go to Mr. Leach's confidential direct, and then, from there, segue into the confidential questions of other members of the panel. That's fine with the Bench.

(Whereupon John Antonuk was duly sworn and cautioned by the Court Reporter, joining Peter Nixon, Walter Leach, Stephen Smith, Randall Vickroy and Kathryn Bailey as a panel.)

JOHN ANTONUK, SWORN

PETER NIXON, PREVIOUSLY SWORN

WALTER LEACH, PREVIOUSLY SWORN

STEPHEN SMITH, PREVIOUSLY SWORN
RANDALL VICKROY, PREVIOUSLY SWORN
KATHRYN BAILEY, PREVIOUSLY SWORN

CHAIRMAN GETZ: Okay. Do I take it correctly there's no further direct at this time of a public nature?

MR. McHUGH: That's correct, Mr. Chairman. So, as far as FairPoint's concerned, the witnesses are available for cross-examination.

CHAIRMAN GETZ: Okay. Then, Mr. Phillips, did you complete your questions earlier?

MR. PHILLIPS: I did. Thank you, Mr. Chairman.

CHAIRMAN GETZ: Mr. Price?

MR. PRICE: Yes. Thank you.

CHAIRMAN GETZ: Mr. Mandl?

MR. MANDL: Just a couple of questions.

CROSS-EXAMINATION

BY MR. MANDL:

Q. Does the panel have before it the Settlement Agreement, including the transmittal letter that accompanied it?

A. (Bailey) The New Hampshire trans --

Q. I'm sorry?

A. (Bailey) The letter that was filed in New Hampshire?

Q. Yes.

A. (Bailey) With the Settlement Agreement?

Q. Yes.

A. (Bailey) I have it.

Q. In the first paragraph of the letter, the January 23rd letter accompanying the Settlement Agreement in this proceeding, it stated that the Settlement, the New Hampshire Settlement, "sets forth supplemental conditions". Can you explain what's meant by "supplemental conditions" and whether there are any other conditions that apply to this transaction than those listed in the Settlement Agreement?

A. (Bailey) I think the intent was to say that this agreement was reached to give the Commission our opinion of how all the issues that we dealt with should be resolved. So, these are conditions that the Staff and the Company support to ensure that the transaction is in the public interest.

Q. I'm trying to understand what's meant by "supplemental". "Supplemental" kind of implies that there might be other conditions that apply to this transaction. And, I'm asking, are there other conditions that apply to this transaction, in your view, or does the Settlement, as filed, represent all

the conditions that the parties are proposing?
A. (Bailey) The latter. I think "supplemental", in this case, means supplemental to what they proposed initially.

MR. COOLBROTH: Mr. Chairman, just for clarification, there was stipulations with the electric utilities, and those request conditions. The record, again, I think, as what Ms. Bailey said, can speak for itself. There are other conditions that have been proposed.

CHAIRMAN GETZ: Mr. Del Vecchio.

MR. DEL VECCHIO: And, if I could just some light. I think these are, as Ms. Bailey just explained, conditions supplemental to the record that the Commission has before it presently, both with respect to the Merger Agreement and the various other agreements that FairPoint and, to some extent, Verizon have entered into.

CHAIRMAN GETZ: Mr. Mandl, is your concern that there may be more out there that you or we are not aware of?

MR. MANDL: I guess what I'm trying to establish is that the Commission's addition of more conditions than what appear in this Settlement may be a fact of life in this case already. And, in other words, if the Commission were to adopt additional conditions, that would be consistent with what we now have, which is this Settlement document and various agreements entered into by Verizon and FairPoint with several other parties. I'm just trying to understand kind of the universe of conditions that's out there right now, and whether it's more than what's in this Settlement document.

CHAIRMAN GETZ: Okay. Well, please proceed.

BY MR. MANDL:

Q. The parties stated in the January 23rd letter that its Settlement was in response to deliberations by this Commission on December 17th. Is that correct? And, I'm referring to Page 2 of the January 23rd letter.

MR. McHUGH: Actually, Attorney Mandl, I believe it's in the first line of paragraph 2 on Page 1 of the letter, if the witnesses could start there. And, the next reference is on Page two, in the first paragraph. The first sentence of the first full paragraph on Page 2.

CHAIRMAN GETZ: So, the pending question then is "what did they mean by those references to this settlement being "in response to the preliminary deliberations"? That's the question?

MR. MANDL: Yes.

BY THE WITNESS:

A. (Leach) Yes. There were several issues in these settlement discussions that were raised and were important to various parties. So, this, the Stipulation that we've signed here, attempted to address as many of those issues as possible that were brought up, whether they were financial, whether they were broadband, whether they were, you know, reporting issues, etcetera. It was just a continuation of the process that raised a number of questions along the way that we were able to negotiate with Staff to reach what we both agreed was an appropriate resolution of those issues.

BY MR. MANDL:

Q. Would I be correct that, during the Commission's preliminary deliberations on December 17th, wholesale and competitive issues were not discussed?

A. (Leach) I don't recall.

A. (Bailey) I don't recall wholesale and competitive issues being discussed. I could accept that subject to check.

Q. If we could turn to Section 13.6 of the Settlement. I'll try to get a page reference for you. Page 36. As of this time, we have a February 1st, 2008 order from

the Maine Commission, which post dates the date of this Settlement Agreement. Would it be fair for this Commission to consider additional conditions required in Maine, by the Maine PUC, in making its own decision in this case?
A. (Leach) I'm sorry, who is that question for?
Q. It's hard to know who to direct it to, because there's so many of you.
A. (Leach) But it also sounds like it was almost a question asking about what we think the Commission should do. So, maybe you should rephrase the question please.
Q. All right. In Section 13.6 of the New Hampshire Settlement, it's provided that the Commission may review an order by the Maine PUC that imposes conditions after the date of this agreement. That's the situation we find ourselves in, given that the Maine order came out on February 1st, and this Settlement was filed on January 23rd. Section 13.6 seems to contemplate further review, if the Commission deems it necessary. Here we are in hearings, it has the order from Maine in front of it. And, I'm just asking, is it fair to say that this Commission may consider what was adopted in Maine in rendering its

decision in this proceeding?

A. (Leach) Yes.

Q. Okay. Thank you. If we could look at Section 13.5, it starts on Page 35 and goes over to Page 36. If the New Hampshire Commission were to impose additional conditions on this transaction, that would not necessarily prevent this transaction from being consummated, is that correct?

A. (Leach) There certainly are conditions that could be imposed that would not cause this not to close, yes.

Q. So, for example, if this Commission were to impose wholesale and competitive conditions that FairPoint found acceptable in Vermont, you would not expect FairPoint to crater this deal in New Hampshire, if those same conditions were applied here?

MR. McHUGH: I object to the form of the question, Mr. Chairman, and ask that he rephrase it please.

CHAIRMAN GETZ: Well, I guess I'm having trouble understanding exactly what you mean by the objection, Mr. McHugh. Is it an objection to the use of the word "crater" or --

MR. McHUGH: That was certainly part of it, but I also don't think the question was articulated clearly in terms of what he's asking FairPoint to respond to.

CHAIRMAN GETZ: Well, I take it, Mr. Mandl, you're asking whether, if the Commission here adopted the Vermont conditions concerning wholesale, whether that would cause FairPoint to exercise its rights under Section 13.5? Is that your question?

MR. MANDL: That's the gist of it, Chairman.

BY THE WITNESS:

A. (Nixon) The important element here for us, and I think this has been said in prior hearings and earlier in this one, is that we take them -- we take a look at all the conditions in the entirety, as you can imagine, and what we would hope we wouldn't do is go through, and I think somebody said earlier, do an a la carte, you know, if then, but when. And, so, the approach is, as this is, I think, trying to say, is that there are conditions, as Mr. Leach indicated a few minutes ago, that could be incorporated as part of an order that might not -- that we might not deem to exercise a withdrawal of the application, but they are in the entirety. And, the important part here, and again I repeat what I said earlier, is that this is a result of a long, very long discussions, negotiations with the Staff to a Settlement Agreement that we believe is comprehensive.

And, even in spite of all that, we acknowledge, in Section 13.6, that if the other two orders came out, there might be elements or part of them that the Commission would like to review and decide on the merits of whether or not they should be either incorporated or what the impact might be. So, yes, and we would encourage that kind review.

But here, you know, we are looking at it in its entirety. And, we believe that this, the Settlement Agreement that the Staff and FairPoint and Verizon have put forth arrives at what we believe is a comprehensive review. And, as Witness Bailey said earlier, demonstrates that it's in the public interest. You know, that's not to say that the Maine order should not be reviewed, and we've provided for that here.

CHAIRMAN GETZ: That's pretty much the answer I expected. Mr. Mandl, do you have additional questions?

MR. MANDL: Just a couple. Thank you.

BY MR. MANDL:

Q. This panel discussed earlier the arrangements with

Capgemini and Verizon regarding TSA payments. You know, for example, the issuance of preferred stock to Capgemini and Verizon's deferral of TSA payments subject to interest. Would those costs be considered transaction costs that FairPoint does not intend to pass through to wholesale and retail ratepayers?

A. (Leach) Yes.

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

CHAIRMAN GETZ: Thank you. Mr. Rubin.

MR. RUBIN: Thank you, Mr. Chairman.

BY MR. RUBIN:

Q. Mr. Leach, could you turn to Page 5 in the Settlement. In Paragraph 1.5, "Cumulative Adjusted Free Cash Flow" is defined as $40 million plus the cash generated from the business after closing. What does that "$40 million" represent?

A. (Leach) The $40 million came right out of the bank agreement. And, it's designed to cover timing and transition issues related to the first few quarters of this transaction. So, it's basically a way to kind of get the Company kind of a head start against meeting the calculation going forward. It's a one-time adjustment. It's not added every year. It's just

added up front, and then you have a cumulative addition to that number as part of the equation explains.
Q. Okay. Now, over on Page 9 of the Settlement, it's Paragraph 2.2.3. And, I can't see if you're there or not.
A. (Leach) Yes, I'm there. I'm sorry.
Q. Okay. That term "Cumulative Adjusted Free Cash Flow" is used as the limit on what FairPoint can pay out as a common stock dividend, is that right?
A. (Leach) That's correct.
Q. Now, in this paragraph, it says "Cumulative Adjusted Free Cash Flow generated after the Closing Date." Taking that phrase as a whole, does that include or exclude the $40 million?
A. (Leach) It should include it.
Q. Okay. And, I'd like to ask Staff that same question. Is that your understanding, that Cumulative Adjusted Free Cash Flow generated after the Closing Date includes that $40 million?
A. (Antonuk) Yes.
A. (Vickroy) Yes.
Q. Mr. Leach, throughout this Settlement Agreement, there are many references to "Leverage Ratios" and "Interest Coverage Ratios". Some of those numbers are shown to

one decimal place, some are shown to two decimal places. As you understand the agreement, if the agreement says, for example, "4.0", is that the same as "4.00"?
A. (Leach) Yes, I would say so.
Q. And, I know that sounds silly, but the real question is, do you intend to round off results? For example, would 4.04 comply with a limit that is 4.0?
A. (Leach) I would assume, and this is typical for bank agreements, when you're talking about leverage tests, etcetera, that a two-digit -- two digits to the right of a decimal point would be the appropriate way to respond to this.
Q. Well, and that was one of my concerns. And, if we have to explore this further in the confidential record, we will. But, when we reviewed the draft of your Credit Agreement, I paid some close attention, and every reference to a Leverage Ratio or a coverage ratio was to two decimal places. And, so, the question in my mind is, is there a difference between an agreement where a lot of those ratios are given to one decimal place, as compared to an agreement where they're given to two decimal places?
A. (Leach) I'm not aware of what the difference would be,

why there would be a difference, no.

Q. So, as far as your concerned, FairPoint will round its results to two decimal places for purposes of compliance with the provisions in this Settlement?

A. (Leach) Sure, we would do that.

Q. And, this question is for Staff, and I'm not sure who wants to take a crack at it. But, in deciding to enter into the Settlement, did you rely on any financial analyses or projections?

A. (Antonuk) We have been working from FairPoint modeling throughout, ever since the case started. We continued to do that. We performed a number of calculations of our own, based upon the various moving pieces as the Settlement went on. And, we also received, I think it was after the Settlement was completed, what I would describe as a "confirming run", that that kind of laid out in summary form an output from FairPoint's model. So, primarily, we did our own analysis, supported by, you know, pretty regular interaction with the FairPoint folks, who were doing modeling of their own and doing modeling at our request.

Q. Okay. Well, let me break that down into some pieces. You said you received a confirming run after the Settlement was entered into. From whom did you receive it?

A. (Antonuk) That actually came in when I was not in the country. So, someone else is going to have to answer that.

A. (Bailey) From FairPoint.

A. (Vickroy) From FairPoint.

A. (Bailey) Through their attorneys.

CHAIRMAN GETZ: Is that what you're asking, Mr. Rubin, just --

MR. RUBIN: Yes.

CHAIRMAN GETZ: Not the specific individuals?

MR. RUBIN: No, just where it came from.

CHAIRMAN GETZ: Okay.

BY MR. RUBIN:

Q. Now, let's go back to the question I asked earlier, which is what did you rely on prior to entering into the Settlement? Was it just your own -- I shouldn't say "just". Was it your own analysis or was it also some information, some confirming analyses, if you will, that you received, excuse me, received from FairPoint?

A. (Antonuk) It was both. And, what we were doing was doing our own analyses, getting the data from

FairPoint, and what we've done on pretty much all the way through the process, that the numbers were matching fairly well. And, I don't think there was ever a point where that was not the case.
Q. Okay.
A. (Antonuk) But we did continue to try to validate what we were doing through getting FairPoint to provide information.
Q. All right. Does Staff intend to submit any of those analyses for the record in this case?
A. (Antonuk) We had no plans to do so.
Q. Okay. Is Staff planning to share any of those analyses with the Commissioners as part of their deliberations in this case?
A. (Bailey) Not if it's not on the record.
Q. Now, when you say you received a "confirming analysis from FairPoint", after you entered into the Settlement -- well, first, can you tell us when you received that?
A. (Vickroy) February 1st was the last one.
Q. I'm sorry, February 1st was the last one? Were there others --
A. (Vickroy) That's the one we're talking about, yes.
Q. Were there others before that?
A. (Bailey) As part of the settlement negotiations and the

process, we were running our numbers and we were asking them to run them. And, so, we saw models that were partially there. But the model that we received on Friday had all of the assumptions that we wanted to look at included. So, that was the most conservative model that we looked at.

Q. Okay. What -- You said that was a "confirming analysis". What did it confirm?

A. (Antonuk) Basically, confirming in the sense that it took our agreement and layered in the most recent available information from Maine and Vermont. "Holistic" is probably a better term than "confirming". It was all the pieces put together. During the settlement, we would be talking about a particular issue, and we would run a strand of analysis maybe on that one particular issue. Every so often we would get a broader run that encompassed more things. I'd say the one that put all the pieces together one final time was this February 1st run that we're talking about now. And, what did it confirm? It confirmed what we had been seeing as we went through the Settlement, which was that the terms that are incorporated in here met our goals in terms of providing what we think is adequate financial security and stability for FairPoint on a going forward basis.

Q. This may be a question for Staff's counsel, because I'm not sure who has seen what. But we were provided this morning with a copy of a two-page output that has the date "February 1st" at the bottom. Is that what you're talking about?

A. (Antonuk) Yes.

A. (Witness Bailey nodding head in the affirmative.)

MR. RUBIN: Mr. Chairman, given the hour, I'm not sure if we'll be going on the confidential record today. I think we will want to make that document an exhibit. And, that's labeled "highly confidential", and we will have questions about it of a confidential nature. I have not -- I do not have those copies with me, since we just received the document this morning, but I will have those copies tomorrow. And, perhaps if we can hold those questions until then?

CHAIRMAN GETZ: Certainly. Is that --

MR. RUBIN: Unless Staff has extra copies. We can go either way.

CHAIRMAN GETZ: Well, I'm taking it then, from what you're saying, that the questions following up on this subject area would be under the confidential record?

MR. RUBIN: Yes.

CHAIRMAN GETZ: Okay. Which means then we'd have to go to that next step. But do you have other questions that are --

MR. RUBIN: I do have other public questions that we can do now.

CHAIRMAN GETZ: Let's do those.

MR. RUBIN: Okay.

BY MR. RUBIN:

Q. Now, Mr. Leach, on Page 10 of the Settlement, the Paragraph 2.3, it says that the $45 million minimum debt repayment is "towards the repayment of debt related to the Merger". FairPoint will have several different types of debt, is that right?

A. (Leach) Yes.

Q. You will have bonds, term loans, a delayed draw credit facility, and a revolving credit facility. Did I cover them all?

A. (Leach) I believe you did, yes.

Q. Okay. Are all of those debt related to the Merger, as is the term is used in the Settlement?

A. (Leach) No, the reference to "debt related to the Merger" is designed to cover debt that is put in place as a result of the transaction immediately closing.

That would include our bank term loan, that would include the bond financing, and that would include a delayed term -- delayed draw facility, which basically is a facility allowed after the first 12 months following the closing, to basically pay for closing related costs, like the infrastructure costs and one-time transaction costs. And, that's all Merger debt, because it happened as a result of the Merger. The debt that's not Merger debt would be the revolver, because the revolver is not related to the Merger happening, it's an extra facility, kind of an insurance policy, if you will, that's set aside and separate from what I would call -- what we concluded to be Merger debt.

Q. All right. Before we go any further, I'd like to ask Staff if you have the same understanding of that phrase in the Settlement?

A. (Antonuk) We do.

Q. Okay. Mr. Leach, to your understanding, does this provision permit FairPoint to borrow money from its line of credit, in order to pay down its long-term debt?

A. (Leach) From its revolving credit facility, yes.

Q. Okay. So, you are not required to actually reduce your total debt by $45 million per year. You are only required to pay down a particular portion of that debt?

A. (Leach) This -- The answer to that is "yes". The additional detail is this really came out of the very first discussion in Maine, where there was a desire to make sure that, as we paid down debt with this extra cash flow, that we didn't pay down the revolver, which could be reborrowed, but, in fact, we paid down permanent debt, because the objective was they wanted us to de-leverage over time. So, it's been -- it's a concept that's been discussed in all three states. And, yes, we could use, if there is a particular point in time where we need to pay down the 45 million, but in that instant we don't have Free Cash Flow, we do have a revolver available for that use.

Q. Okay. So, just -- So, I think I understood your answer, but I want to make sure. To your understanding of the Agreement, you are allowed to borrow money from your Revolving Credit Agreement, in order to meet the $45 million minimum debt reduction in the Settlement Agreement?

A. (Leach) If necessary, yes.

Q. Okay. And, I'll ask that same question of Staff, is that your understanding also?

A. (Antonuk) That's correct. And, on a steady state or normal state basis, we wouldn't expect that to happen. But, if it does, if they do find themselves without Free Cash Flow to do it otherwise, that's a possibility.
Q. Okay. And, there's nothing that prohibits them from doing that, as far as you read the agreement?
A. (Antonuk) Well, there's nothing that directly prohibits them from doing that. But, remember, there are also the leverage ratios that apply. But, as to the debt pay-down itself, there is no restriction on the use of the revolver to pay down the debt.
Q. All right.
A. (Antonuk) But, obviously, that's not going to help them with the ratio issue, which is a primary focus as well.
Q. Okay. Mr. Leach, is there, to your understanding, is there anything in this Agreement that requires FairPoint to reduce its total debt each year?
A. (Leach) The Agreement that you're referring to is the New Hampshire Stipulation?
Q. Yes.
A. (Leach) Would you ask the question again please.
Q. Yes. Is there anything in the New Hampshire proposed Settlement that requires FairPoint to reduce its total

debt each year?
A. (Leach) The way I would answer that is "Indirectly, yes." The revolver is a $200 million credit facility. The payments of $45 million a year ultimately gets you more than $200 million, if you were to use nothing but the revolver. So, ultimately, after, you know, X years of using your revolver, you would have to pay down debt after you could no longer use your revolver.
Q. Okay. And, the revolver is $200 million?
A. (Leach) That's correct.
Q. So, you could go for, what, four years without having to pay down any debt, is that right?
A. (Leach) Well, as I talked about earlier, there are a number of very meaningful incentives for the Company to reduce its leverage. I mean, we're an acquisition-oriented company. And, as I talked about the acquisition limitations, you can't do that without paying down debt. So, there are a number of incentives, including, in the Maine Stipulation, there's a requirement that, if our debt's not down to 3.6 times by the end of 2011, we have to refinance. If we can't pay down 150 million, we have to refinance the debt at that time. So, there are a number of places and provisions that give us an incentive to work hard

to pay down debt.

Q. Yes, I appreciate that. I didn't ask you about "incentives", I asked you about "requirements". And, if we could go back to that. Is there anything in the Agreement that requires FairPoint to reduce its total debt each year?

A. (Leach) Well, there clearly are some major requirements to pay down debt. The first thing that happens is, Verizon is contributing -- is making a working capital contribution of $235 million. That is required to be used to pay down debt. So, for starters, there's a huge pay down debt requirement right of the bat. The second item is the dividend reduction of almost $50 million a year says specifically that's required to be used to pay down debt. So, yes, there are a number of agreements or a number of provisions that deal with the requirement to pay down debt.

Q. Mr. Leach, can you tell me where in this agreement it says that FairPoint must use the $49.7 million from its dividend reduction to pay down debt?

A. (Leach) Paragraph 2.2.1 deals with the dividend reductions. And, that's where it specifies $49.7 million of the dividend cut is what FairPoint has agreed to. The implication there, because, remember, we, in New Hampshire, we took the $35 million a year annual requirement up to 45. And, I mentioned earlier in my responses is that that is because the New Hampshire Staff said "Let's link of those numbers. Let's make the annual debt requirement number closer to what the dividend reduction amount is." So, the implication here was reducing your dividends by $49.7 million. So, let's go ahead and create an amortization requirement of almost that amount, in terms of $45 million, as well.

Beyond that, there are some dividend -- there are some covenants, for example, 2.2.2, that, if certain things happen, make it clear you have to apply those proceeds to pay down debt, even beyond what's implied in 2.2.1.

Q. Okay. If I understand your answer, it says there's an implication or maybe an intention, but there's no written requirement here that says "FairPoint must apply that $49.7 million to debt reduction each year"?

A. (Leach) There is the $45 million, the higher of $45 million or 90 percent of the Free Cash Flow. That's very clear that's got to be applied towards debt reduction.

Q. Well, but we just discussed that that's -- this reduction in some of FairPoint's debt, and that you could borrow money to meet that requirement. So, your total debt might not decrease. Isn't that what you told me?

A. (Leach) That is a possibility. That's not the expectation.

Q. All right. Let's look at, and this is still for Mr. Leach, Page 29 of the Settlement. Where there are, in Paragraph 10.8, there are a number of restrictions on FairPoint's future acquisitions, is that right?

A. (Leach) Yes.

Q. The last restriction on this page, in Paragraph 10.8.1.4, says that FairPoint cannot have acquisitions totaling more than "$750 million" beyond -- and that's in the period five years or more after the closing date, is that right?

A. (Leach) That's correct.

Q. Do you expect that your Credit Agreement will also have restrictions on future acquisitions by FairPoint?

A. (Leach) Yes.

Q. And, if the question I'm asking you requires us to go on the confidential regard for you to answer, please just tell me that and we'll come back to it tomorrow. Can you tell us if your banks will allow you to have

$750 million in acquisitions during the life of those loans?

A. (Leach) I can answer that question, but without going into a confidentiality session, but I'll have to answer it in a general fashion. The Credit Agreement would allow for an acquisition of a -- up to a level that's a different number than this. And, then, we could talk in a confidential session about what that might be. Our expectation as well is that we will refinance the existing Credit Agreement probably within a two or three year period. In our history, we have refinanced our primary credit facility on average every two years. So, the expectation is that this agreement will probably out live the existing Credit Agreement. And, in better credit markets, I would see that this wouldn't be the same kind of restriction versus the Credit Agreement that we have today.

Q. Okay. Did I understand you right that you think you'll probably be refinancing the existing Credit Agreement in probably two or three years?

A. (Leach) Again, it's hard to say where the market's going. But it's very likely we will see an opportunity where a better interest rate or a better condition might be available that would incent us to do that.

There's no reason we couldn't live with the existing Credit Agreement for a number of years. But I think the reality is that there will be opportunities to improve upon that in the next, pick a time frame, two to three or four year time frame.

Q. Okay. Mr. Leach, you spoke a few times this afternoon about the provision in the Maine Settlement, where, if you don't reach that 3.6 Leverage Ratio by year end 2011, there are certain things FairPoint would have to do. One of which might be reduce or eliminate its dividends until it refinances its credit facility. If FairPoint refinanced its credit facility prior to the end of 2011, in your opinion, would that provision have no meaning whatsoever?

A. (Leach) My guess is that that provision, which says "by the end of 2011, your leverage has to be below 3.6 times, or you have to pay down debt by $150 million within the following year 2012, or, if you don't do that, then you have to suspend your dividends." I would, not being an attorney, I would conclude that, if we have refinanced prior to 2011, if 2011 comes along and we're still above 3.6, that that provision would still apply.

Q. Okay. So, you'd have to refinance the debt in 2012, in order to avoid eliminating your dividends in 2,013?

A. (Leach) Yes, or early 2013, before the first dividend payment in 2013.

MR. RUBIN: Okay. Thank you. Those are the public questions I have for this panel.

CHAIRMAN GETZ: Okay. Thank you. Ms. Hatfield. Our intention is to, I think, break for the day at 5:30. I don't know if you want to start now or how much you have or wait till tomorrow, it's up to you?

MS. HATFIELD: I do have quite a few questions, but maybe I could just ask just a couple of clarifying questions that might be helpful.

BY MS. HATFIELD:

Q. In discussing the model runs that were provided, I'm just a little confused, so I wanted to try to get that right. The letter that the OCA filed on the 24th that the Chairman referred to earlier, in response to that letter the Company provided a model run, I believe it was on the 25th. And, I thought that that was the model run that incorporated the Settlement terms, is that correct?

A. (Leach) The model we filed on the 25th, and you're asking would that have incorporated the Settlement terms in the New Hampshire Stipulation?

Q. Yes.

A. (Leach) Yes.

MR. RUBIN: Mr. Chairman, I hate to interrupt a colleague, and I was going to get into this tomorrow on the confidential record, but I think this is important that we can and we should be able to do it publicly. What we were provided by Staff this morning contains assumptions that were not reflected in the model that was provided on January 25th, and could not be reproduced in the model that was provided on January 25th. So, I don't know what we do about that, except to say that we do not have the underlying basis for what Staff provided to us this morning. And, you know, so I echo Ms. Hatfield's concern.

CHAIRMAN GETZ: Well, I'm not sure if there was -- there was a question, a clarifying question, and we haven't heard the concern yet, but --

MS. HATFIELD: Well, actually, Mr. Rubin did -- the reason I'm asking that question is because we asked on the 24th for a model run that would include the assumptions in the Settlement Agreement, so that we could assess the impact of the Settlement on the Company's earlier model runs. This morning we were emailed a document that's not dated -- oh, I'm sorry, that one is dated "January 31st" by Staff, that's what Mr. Rubin was just referring to, which seems to have more assumptions. And, then, we also have been provided by FairPoint, and maybe they plan to discuss this at some point, but FairPoint Exhibit 81 HC that's not dated, that is also output and assumptions from the FairPoint model.

So, the concern is which of these reflects all of the provisions of the New Hampshire Settlement Agreement. And, I thought that Mr. Antonuk testified that they had seen the final on February 1st. So, I guess that just throws a little more confusion for me into this.

CHAIRMAN GETZ: Okay. Well, let me ask this. Did you have other clarifying questions kind of unrelated to this matter of the previous runs and the so-called "confirming run"? Or, is that all you wanted to address now? Because I think, rather than going on some other questions, maybe the better approach is, our intention is to start the hearing tomorrow at 10:00, but it sounds like it would be a better use of everyone's resources is if the parties met off the record to see if we can get a common understanding of these various runs. And, then, if there's some type of request that has to be made to us for some further steps, then we'll entertain that. But I would suggest that the -- that we basically close -- recess the hearings for today, and then have you try to address those questions --

MR. McHUGH: We'll certainly do that, Mr. Chairman.

CHAIRMAN GETZ: -- off the record. Is there anything else then, before we recess for the day?

WITNESS BAILEY: Mr. Chairman, it's not that complicated.

CHAIRMAN GETZ: Well, but if the folks may have the time, and then you can walk through that off the record. Is there anything else?

(No verbal response)

CHAIRMAN GETZ: Okay. Then, we will recess for today, and then resume tomorrow morning at 10:00 a.m. Thank you, everyone.

MR. McHUGH: Thank you, Mr. Chairman.

(Whereupon the hearing was adjourned at 5:27 p.m. and the hearing to reconvene on February 5, 2008, commencing at 10:00 a.m.)