

State of New Hampshire Public Utilities Commission

CRS 16-219

Northern New England Telephone Operations, LLC

Town of Hampton's Comments and Written Request for Hearing

NOW COMES the Town of Hampton in the above entitled matter and says:

1. Although the Petition of Northern New England Telephone Operations, LLC. in this matter for licenses to maintain utility cables over and across public lands and waters of the State of New Hampshire was filed with Commission on February 2, 2016, the Town of Hampton did not receive any notice of these proceedings until a copy of the Commission's Order *Nisi* No. 25,949 was received on October 7, 2016 under a cover letter dated October 5, 2016 from Robert D. Meehan of Fairpoint. Said Order *nisi* has afforded only until October 17, 2016 for the Town of Hampton to provide its comments and/or to file a written request for a hearing. Given the length of time this matter has been pending, the complexity of the subject matter involved, and the uncertainty of the ownership of the land involved in Hampton, the time frame afforded to the Towns to respond is unreasonably short.
2. Order 25,949, which is dated September 30, 2016, is an exercise by the Commission of its authority under RSA 371:17 to issue licenses to construct and maintain "a pipeline, cable, or conduit or a line of poles or towers and wires and fixtures thereon over, under, or across any of the public waters in this state, or over under, over, across, of the land owned by this state." (Emphasis added).

3. Only one property is listed in the list attached to the Commission's Order No. 25,949 as being within the Town of Hampton, namely: "Tide Mill Creek" from manhole numbers "44 to 45."
4. In the short amount of time available to the Town before October 17, it cannot be ascertained for certain that the land that is crossed by the Fairpoint infrastructure from manhole numbers "44 to 45" is actually public waters of the state or land owned by the state. In the first place, the coordinates provided in the list for item #17 would place this line on the private property of the St. James Building Association located at 77 Tide Mill Road in Hampton. This coincides with the recorded dated January 9, 1987 recorded in the Rockingham County Registry of Deeds at Book 2789, Page 2060, attached hereto as Exhibit A. Moreover, the marsh land located on the east of Tide Mill Road is owned by the Town of Hampton. See Plan D-36393. Attached hereto as Exhibit B, recorded in the Rockingham County Registry of Deeds on June 9, 2010 showing the land to the east of the access road to the Treatment Plant, which is now part of Tide Mill Road, as being owned by the Town of Hampton. According to Hampton Department of Public Works personnel who have attempted to locate manholes marked 44 or 45 on the ground, there are none with such numbers to be found in this vicinity; engineers for the Town of Hampton have contacted Fairpoint officials to attempt to ascertain the precise location of the infrastructure involved, but so far so answers have yet been received.
5. Accordingly, there is a serious question as to whether the location of the Fairpoint infrastructure at the only location involved for Hampton qualifies for an exercise of jurisdiction on the part of the Commission under RSA 371:17.

6. Even if the length of conduit from manholes 44 to 45 over Tide Mill Creek do run across represent “waters of the State” or “land owned by this State” so as to vest the Commission with licensing authority, the Commission’s Order No. 25,949 exercising that authority is deficient in that it does not address the issues of taxation that are pertinent under N.H. RSA72:23, which pertains to the taxability of lands, buildings, and structures located on land owned by the State of New Hampshire or by a New Hampshire city, town, district, or village district.
7. The telecommunications poles and conduits here involved are considered real estate under RSA 72:8-a, and the valuation of such property is based on its value as real estate. However, unless said property is declared to be taxable under an “agreement” satisfying the requirements under RSA 72:23, I, then said poles and conduits cannot be taxed as they should be by municipalities such as the Town of Hampton. See Verizon New England, Inc. v. City of Rochester, 151 N.H. 263 (2004), wherein our Supreme court noted that:

According to the plain language of the statute, leases and other agreements which permit the use or occupation of public property must provide for the payment of properly assessed real estate taxes. The statute does not include an exemption for private companies that use or occupy public property to provide a public service. Therefore, we conclude that, irrespective of the type of service to be provided, the legislature intended for leases and other agreements that permit the use or occupation of public property to include a provision requiring payment of properly assessed real estate taxes.

151 N.H. at 266-67.

8. If RSA 371:17 applies to the infrastructure in Hampton from manholes 44-45 in Hampton, then the granting of licenses therefor by the Commission under 371:17 would represent the equivalent of a pole licenses issued by Towns governing bodies and their Planning Boards under RSA 231: 160-a and 231:161 et seq.

9. Licenses for poles and conduits for Fairpoint in the past have included the language of RSA 72:23 to allow them to be taxed. See, for example, the pole license under RSA 231:161 from the Town of Hampton dated May 2, 2011 attached hereto as Exhibit C. Please note that on April 1, 2013, the Hampton Board of Selectmen amended all permissions/licenses previously given in any form or manner to Fairpoint for its infrastructure or that of any of its predecessors to be located in Town highways or rights of way or public grounds. See Exhibit D attached hereto.
10. The license purported to be granted by the Commission under Order No. 25,949 fails to include the requisite language of RSA 72:23 to enable the taxation of these poles and conduits which otherwise would be taxable.
11. For all the above reason, the Town of Hampton objects to the Commission's Order Nisi No. 25,949 and requests a hearing thereon.

WHEREFORE, the Town of Hampton requests that the Commission:

- a. Not allow its Order *Nisi* No. 25,949 dated September 30, 2016 to be effective on October 30, 2016;
- b. Instead, take into account the aforesaid comments and objections of the Town of Hampton and conduct a hearing on whether or not the Commission has jurisdiction over "Tide Mill Creek" in Hampton from manholes 44 to 45 ;
- c. Determine that if the Commission does in fact have jurisdiction to issue licenses under RSA 371:17 over "Tide Mill Creek" from manholes 44 to 45 that it only should proceed to issue such licenses if they include the language of taxability under RSA 72:23; and
- d. Grant such and further relief as may be just.
- e.

Respectfully Submitted,

Town of Hampton,

by its Town Attorney

DATED: October 17, 2016



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CERTIFICATE OF SERVICE

I hereby certify that an original and six copies of the above Town of Hampton's Comments and Written Request for Hearing have this day been hand delivered to the Public Utilities Commission Executive Director and that copies of same have been sent electronically to the service list.



Mark S. Gearreald, Esq.