

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DT 13-068**

**NORTHERN NEW ENGLAND TELEPHONE OPERATIONS LLC  
d/b/a FAIRPOINT COMMUNICATIONS – NNE**

**Petition to Construct and Maintain Temporary Telecommunications  
Cables across a New Hampshire Railroad**

**Supplemental Order *Nisi* Granting License**

**ORDER NO. 25,521**

**June 10, 2013**

**I. SUMMARY OF PETITION**

On March 4, 2013, Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE (FairPoint) filed a petition pursuant to RSA 371:17 (petition) requesting a license to temporarily construct and maintain an aerial plant crossing a state-owned railroad in the town of Somersworth New Hampshire. The location of the crossing is a railroad property known as NH North Coast Railroad. The crossing located in Somersworth is a railroad acquired by the State of New Hampshire and subject to RSA 371:17 and RSA 373:1-a. On April 16, 2013, in response to feedback from Staff, FairPoint submitted revisions to its petition. On April 19, 2013, Staff filed a memorandum with the Commission recommending that the license be granted. On May 10, 2013, the Commission issued Order *Nisi* No. 25,508 approving FairPoint's request which, among other things, ordered FairPoint to provide a copy of the order to the Town Clerk of Somersworth, the New Hampshire Attorney General and the owners of the land bordering on railroad at the location of the crossing, and the New Hampshire Department of Transportation by first class mail, and to publish a summary of the Order *Nisi* in a statewide newspaper of general circulation, all no later than May 20, 2013.

On June 5, 2013, FairPoint filed an expedited motion to extend the notice and publication dates and schedule (motion). In its motion FairPoint claimed that due to a clerical error, it had failed to meet any of the notice and publication requirements and requested that the Commission extend the notice and publication deadlines. In addition, FairPoint requested that the Commission waive Puc 203.07(e) and grant the motion on an expedited basis before the 10-day period for other parties to respond had expired. FairPoint reasoned that no parties intervened in the original proceeding and there is sufficient time for interested parties to file comments.

### ***History***

According to FairPoint's petition, the Maine Department of Transportation, in conjunction with the New Hampshire Department of Transportation, will rebuild a bridge over the Salmon Falls River, between Somersworth, New Hampshire and Berwick, Maine. FairPoint stated that the project is described more fully in FairPoint's petition for a public water crossing in Docket No. DT 13-052 now pending before the Commission. As a result of this project, FairPoint stated that it is required to temporarily relocate its telecommunications facilities over a state-owned railroad.

The petition states that during the bridge reconstruction period, FairPoint will temporarily relocate its facilities to an existing pole line crossing the railroad tracks to continue delivery to its customers in New Hampshire and Maine. FairPoint indicates that upon completion of the bridge reconstruction project, FairPoint will remove its temporary aerial cables over the railroad tracks and permanently relocate these cables underneath the railroad track.

### **A. Crossing Locations and Construction**

According to the petition, FairPoint proposes to temporarily erect and maintain telephone plant extending from telephone pole number 42/1 in Somersworth, New Hampshire, to telephone pole number 42/2 in Berwick, Maine. FairPoint states that the facility will be designed to provide telecommunications services to customers in New Hampshire and parts of Maine.

According to the petition, the proposed crossing will be constructed, maintained and operated by FairPoint, in accordance with National Electrical Safety Code (NESC) standards. FairPoint provided attachments to its petition depicting the technical and design information and proposed construction of the crossing. The petition and attachments describe the configurations of the proposed crossing, as well as the clearance and sag requirements, and show that sag and tension calculations were done pursuant to applicable NESC requirements.

***B. Property Rights***

According to the petition, the proposed crossing will be placed between two existing utility poles in the existing public right-of-way. Subsequent to filing the petition, FairPoint Communications attested to Staff that there is sufficient clearance for FairPoint's cable at the state-owned railroad crossing.

***C. Public Interest***

According to the petition, the proposed communication wires will not substantially affect the rights of the public in the public right-of-way.

**II. SUMMARY OF STAFF REVIEW**

After reviewing the petition, and following subsequent communications with FairPoint, Staff filed a memorandum on April 19, 2013, stating that the proposed construction and sagging designs are in conformance with the applicable sections of the NESC. Staff recommended

approval of FairPoint's petition, subject to certain conditions related to ensuring the safe operation and maintenance of the proposed crossing. *See* Staff Recommendation of Les Stachow dated April 19, 2013.

### III. COMMISSION ANALYSIS

RSA 371:17 requires utilities and corporations to petition the Commission for a license to construct and maintain cable, conduit or poles and associated wires and fixtures over, under or across any of the land owned by this state, whenever such facilities are necessary to meet the reasonable requirements of service to the public.

Based on the information presented in FairPoint's petition and Staff's memorandum recommending approval of the crossing, we find the proposed crossing necessary for FairPoint to meet the reasonable requirements of reliable service to the public, as required by RSA 371:17, and that the requested license may be exercised without substantially affecting the public rights in the affected area, as required for approval under RSA 371:20. We authorize FairPoint to construct the crossing over the railroad tracks in a manner which will not impact any existing or anticipated uses of the railroad tracks, and that the use of the railroad tracks by the railroad or the public will not be diminished as a result of the overhead line crossing. We find the crossing is in the public good and therefore approve the petition on a *nisi* basis, subject to the conditions recommended by Staff, and contained in the ordering clauses set out below.

Our decision is issued on a *nisi* basis in order to provide any interested party the opportunity to submit comments on FairPoint's petition or to request a hearing. We note that FairPoint is responsible for obtaining any and all other permits or agreements for the installation of the proposed crossing from any federal, state, and local authorities having jurisdiction.

Finally, given NHDOT's oversight of railroads, roads, and bridges, we require that notice of the proposed crossing be sent to NHDOT. We also require notice of the crossing to be sent to the Town of Somersworth.

The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2013/13-068.html>.

**Based upon the foregoing, it is hereby**

**ORDERED *NISI***, that subject to the effective date below, FairPoint is authorized, pursuant to RSA 371:17 *et seq.*, to construct, maintain, and operate fiber optic and other lines over and across the state-owned railroad described in its petition and depicted in its filings; and it is

**FURTHER ORDERED**, that FairPoint's expedited motion to extend the notice and publication dates and schedule is hereby granted; and it is

**FURTHER ORDERED**, that since no party intervened regarding FairPoint's petition, FairPoint's request for a waiver of Puc 203.07(e) is granted; and it is

**FURTHER ORDERED**, that all construction and future alterations of the approved crossing shall conform to the requirements of the National Electrical Safety Code, in accordance with N.H. Code Admin. Rules Puc 433.01 and Puc 1303.07 and all other applicable safety standards in existence at that time; and it is

**FURTHER ORDERED**, that FairPoint cooperate fully with pole owners to ensure that all pole attachments on these poles comply with the NESC and state law; and it is

**FURTHER ORDERED**, that FairPoint submit any future proposed alterations to the crossing license granted herein at least 60 days prior to any such alteration(s); and it is

**FURTHER ORDERED**, that PSNH shall maintain proper clearances between its cables and those adjacent to it at all times across the entire span pursuant to NESC 235C2b and 235H; and it is

**FURTHER ORDERED**, that FairPoint shall file copies of all permits or agreements, if any, required by the New Hampshire Department of Environmental Services, the New Hampshire Department of Transportation, any other federal, state, or local authorities, and any of the affected municipalities for the crossing, in this docket no later than 30 days after receiving the permit; and it is

**FURTHER ORDERED**, that FairPoint shall provide a copy of this order to the: (i) Town Clerk of Somersworth, New Hampshire; (ii) New Hampshire Attorney General and the owners of the land bordering on railroad at the location of the crossing, pursuant to RSA 371:19; and (iii) the New Hampshire Department of Transportation; by first class mail, no later than June 17, 2013, and to be documented by affidavit filed with this office on or before June 24, 2013; and it is

**FURTHER ORDERED**, that FairPoint shall cause a summary of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be to no later than June 17, 2013 and to be documented by affidavit filed with this office on or before June 24, 2013; and it is

**FURTHER ORDERED**, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states

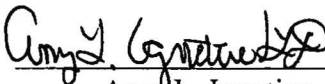
the reason and basis for a hearing no later than June 20, 2013 for the Commission's consideration; and it is

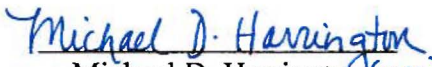
**FURTHER ORDERED**, that any party interested in responding to such comments or request for hearing shall do so no later than June 24, 2013; and it is

**FURTHER ORDERED**, that this Order *Nisi* shall be effective June 26, 2013, unless FairPoint fails to satisfy the publication obligation set forth above or the Commission provides otherwise by order.

**Based upon the foregoing, it is hereby**

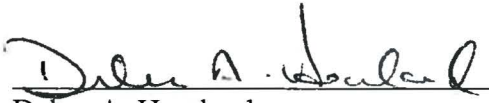
**ORDERED**. By order of the Public Utilities Commission of New Hampshire this tenth day of June, 2013.

  
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Amy L. Ignatius  
Chairman

  
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Michael D. Harrington (KWS)  
Commissioner

  
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Robert R. Scott (KWS)  
Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director