

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DT 13-144**

**NORTHERN NEW ENGLAND TELEPHONE OPERATIONS, LLC  
D/B/A FAIRPOINT COMMUNICATIONS-NNE**

**Petition for Authority to Construct and Maintain Telecommunications  
Cable Over and Across New Hampshire Public Waters**

**Order *Nisi* Granting License**

**ORDER NO. 25,561**

**August 6, 2013**

**I. SUMMARY OF PETITION**

On May 13, 2013, Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE (FairPoint) filed a petition pursuant to RSA 371:17 requesting a license to construct and maintain aerial plant over and across the public waters of Sagamore Creek in Portsmouth, New Hampshire. FairPoint reported that this relocation of facilities is being performed at the request of the New Hampshire Department of Transportation (NHDOT) due to the reconstruction of the bridge crossing over Sagamore Creek.

Following correspondence<sup>1</sup> from and communications with Commission Staff, FairPoint filed revisions to its petition on May 25 and 31, 2013. On July 25, 2013, Staff filed a memorandum with the Commission recommending that the license be granted.

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<sup>1</sup> Staff deficiency correspondence of May 14, 2013.

***A. History***

According to the petition, FairPoint must relocate its facilities, which are currently located in a conduit system parallel with the bridge that is being rebuilt, to an existing pole line crossing the creek in order to continue serving FairPoint customers.

***B. Crossing Location and Construction***

According to the petition, FairPoint proposes to relocate its facilities, consisting of one aerial fiber optic cable, to an existing pole line located along NH Route 1A. The aerial fiber optic cable will be permanently relocated to poles on Shaw Road and Sagamore Avenue. The petition states that this relocation is necessary to continue FairPoint's telecommunications service to its New Hampshire customers. Specific information regarding the creek crossing and pole attachments is set forth as follows:

NH Route 1A over Sagamore Creek (bridge No 198/034) in Portsmouth, NH, between pole 59/45 and pole 59/56; poles located in front of 14 Shaw Road (north side of crossing) and 955 Sagamore Ave (south side of crossing).

FairPoint provided attachments to its petition depicting the technical and design information and proposed construction of the crossing. The petition and attachments describe the configuration of the proposed crossing as well as the clearance and sag requirements for the crossing and show that sag and tension calculations were done pursuant to applicable National Electrical Safety Code (NESC) requirements.

### ***C. Regulatory Requirements***

According to the petition, permits from the New Hampshire Department of Environmental Services (NHDES), the New Hampshire Department of Transportation (NHDOT), and the United States Army Corps of Engineers are not required for this project.

### ***D. Property Rights***

The NHDOT, in conjunction with the City of Portsmouth, is rebuilding the bridge crossing over Sagamore Creek and has requested that FairPoint relocate its existing facilities from a conduit system that runs parallel with the bridge to an existing pole line that crosses the creek.

### ***E. Public Interest***

According to the petition, the proposed communication cable will not substantially affect the rights of the public in the public waters of Sagamore Creek. FairPoint also indicates that minimum safe line clearances above the water surface and affected shorelines will be maintained at all times and that the use and enjoyment by the public of Sagamore Creek will not be diminished in any material respect as a result of the overhead line and cable crossing.

## **II. SUMMARY OF STAFF REVIEW**

After reviewing the petition, Commission Staff filed a memorandum on July 25, 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 Leszek Stachow, dated July 17, 2013.

### III. COMMISSION ANALYSIS

Under RSA 371:17, utilities and corporations petition the Commission for a license to construct and maintain cable, conduit or poles and associated wires and fixtures over, under or across any public waters of the state, whenever such facilities are necessary to meet the reasonable requirements of service to the public. Public waters, as defined in RSA 371:17, include all ponds of more than 10 acres, tidewater bodies, and such streams or portions thereof as the Commission may prescribe. The NHDES is assigned responsibility under RSA 271:20 for preparing, maintaining, and publishing an official list of all public waters in the state. The body of water listed in the instant petition is included in the official list, which is maintained at [http://des.nh.gov/organization/divisions/water/dam/public\\_waters/index.htm](http://des.nh.gov/organization/divisions/water/dam/public_waters/index.htm).

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 public waters, as required for approval under RSA 371:20. 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 forth 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 for the installation of the proposed crossing from any federal, state, and local authorities having jurisdiction. Finally, inasmuch as NHDES is responsible by statute for maintaining the official list of public waters, and given NHDOT's oversight of

railroads, roads, and bridges, we require that notice of the proposed crossing be sent to NHDES and NHDOT. We also require notice of the crossing to be sent to the City of Portsmouth.

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/2013/13-144.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 cable and other lines over and across the public waters described in its petition and depicted in its filings; and it is

**FURTHER ORDERED**, that FairPoint shall construct, operate and maintain the approved crossing, including any future alterations, to conform with the requirements of the National Electrical Safety Code, in accordance with N.H. 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 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, no later than receiving the permit or executing the agreement or 30 days from the date of this Order *Nisi*, whichever occurs first; and it is

**FURTHER ORDERED**, that FairPoint shall provide a copy of this order to the: (i) City Clerk of Portsmouth, New Hampshire; (ii) New Hampshire Attorney General and the owners of the land bordering on said public waters at the location of the crossing, pursuant to RSA 371:19; (iii) the New Hampshire Department of Environmental Services; and (iv) pursuant to RSA 422-B:13, the New Hampshire Department of Transportation and the Office of Secretary, U.S. Department of Commerce, by first class mail, no later than August 16, 2013, and to be documented by affidavit filed with this office on or before August 30, 2013; and it is

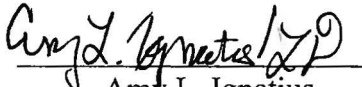
**FURTHER ORDERED**, that FairPoint shall cause a summary of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than August 16, 2013, and to be documented by affidavit filed with this office on or before August 30, 2013; and it is

**FURTHER ORDERED**, that all persons interested in responding to this Order *Nisi* shall 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 August 23, 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 August 30, 2013; and it is

**FURTHER ORDERED**, that this Order *Nisi* shall be effective September 5, 2013, unless FairPoint fails to satisfy the publication and notice obligations set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

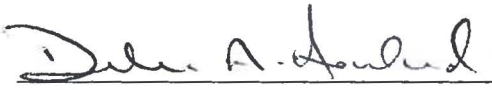
By order of the Public Utilities Commission of New Hampshire this sixth day of August,  
2013.

  
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Amy L. Ignatius  
Chairman

  
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Michael D. Harrington  
Commissioner

  
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Robert R. Scott  
Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director