

THE STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

CRS 16-219

NORTHERN NEW ENGLAND TELEPHONE OPERATIONS, LLC.

**Petition For Licenses To Maintain Utility Cables Over And Across Public Lands
And Waters Of The State Of New Hampshire**

**THE MUNICIPALITIES' RESPONSE TO
NORTHERN NEW ENGLAND TELEPHONE OPERATIONS LLC'S (d/b/a
FAIRPOINT COMMUNICATIONS - NNE) REPLY TO THE COMMENTS OF
THE TOWNS OF BARRINGTON, BELMONT, HOLDERNESS, JEFFERSON,
MEREDITH, MERRIMACK, SUNAPEE, WATERVILLE VALLEY
and THE CITY OF LACONIA**

NOW COMES the Towns of Barrington, Belmont, Holderness, Jefferson, Meredith, Sunapee and Waterville Valley, and the City of Laconia, by and through their attorneys, Mitchell Municipal Group, P.A., and in responding to Northern New England Telephone Operations, LLC's ("FairPoint") Reply ("*Reply*") to the comments submitted by the municipalities, state:

1. Contrary to FairPoint's apparent belief, the municipalities are not requesting that the PUC consider or render a decision as to whether any of FairPoint's property which is located on, over or below state owned land or water located within their communities is taxable. See *Reply*, ¶4. Pursuant to RSA 72:23, I, the state owned property is exempt from taxation. Under the statute as interpreted by the courts, FairPoint's property will also be exempt *unless* the license authorizing the use of the state property contains the taxing language required under the statute. See *Northern New England Telephone Operations, LLC d/b/a FairPoint Communications - NNE v Town of Acworth*, Consolidated Docket No. 2012-CV-100 (Merrimack County Superior Court)(hereinafter "FairPoint Litigation") The municipalities only ask that the language be included in the Commission issued licenses so that FairPoint's taxable property does

not escape taxation.

2. The municipalities do not dispute that RSA 72:8-a exempts FairPoint's wires, fiber optics, switching equipment and "other equipment" from taxation as real property, while its poles, towers, and conduit are taxable. To the extent FairPoint's crossings identified in its license requests are supported by towers or poles, those structures are taxable. In addition, there is no dispute that FairPoint's *use of public property*, whether state or town owned, is subject to taxation to the extent its use is authorized by an agreement that contains the statutory taxing language. RSA 72:23, I; *Northern New England Telephone Operations, LLC d/b/a FairPoint Communications - NNE v Town of Acworth*, Consolidated Docket No. 2012-CV-100 (Merrimack County Superior Court). FairPoint argued in the FairPoint litigation that its property could not be taxed because the town-issued licenses did not contain the taxing language; the court therein agreed. FairPoint now seeks to prevent the Commission from including the taxing language in the Commission's state-issued licenses; this would allow FairPoint to claim in future tax abatement cases that the municipalities could not assess its use of the state-owned lands and water because those licenses do not contain the taxing language.

3. FairPoint's claim that the Commission should not include the taxing language because the Order *Nisi* requires it to obtain all local permits is completely without merit. See *Reply*, ¶5. The municipalities have no authority to issue a license for FairPoint to use or occupy state-owned land or waters; only the PUC does. FairPoint's use of the public state-owned land and waters will escape taxation unless the licenses contain the taxing language.

4. FairPoint's contention that the language the municipalities requested be included in the licenses is "overly broad and flawed" similarly lacks any merit. See *Reply*, ¶6. The cited language is the language which is required under RSA 72:23, I.

October 26, 2016

For the foregoing reasons, the municipalities respectfully request that the taxing language required pursuant to RSA 72:23, I be included in the licenses issued to FairPoint.

Respectfully submitted,

**THE TOWNS OF BARRINGTON,
BELMONT, HOLDERNESS,
JEFFERSON, MEREDITH,
MERRIMACK, SUNAPEE,
WATERVILLE VALLEY
and THE CITY OF LACONIA**

By Their Attorneys,

MITCHELL MUNICIPAL GROUP, P.A.

Dated: Cct 26, 2016

By:



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Certificate of Service

I hereby certify that pursuant to Puc 203.02(a), a copy of these *Comments* has been forwarded to the Service List and Mark S. Gearreald, Esquire, via email this 26th day of October, 2016.

By:



Judith E. Whitelaw