

**THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 11-248

NORTHERN NEW ENGLAND TELEPHONE OPERATIONS LLC

Tariff Regarding Municipal Property Tax Surcharge

**Order Suspending Tariff
and Scheduling Temporary Rate Hearing**

ORDER NO. 25,293

November 28, 2011

On November 15, 2011, Northern New England Telephone Operations, LLC (NNETO) filed a tariff change seeking to implement a surcharge to cover all or a portion of property taxes that they estimate will be assessed by municipalities during the April 1, 2011 through March 31, 2012 tax year. The tariff and supporting documents, as well as subsequent docket filings, other than information for which confidential treatment is requested or granted, is posted to the Commission's website at www.puc.nh.gov/Regulatory/Docketbk/2011/11-248.html.

According to the filing, until recently NNETO and other telecommunications providers were exempt from property taxes on their telephone poles and conduits.¹ The exemption was withdrawn by the New Hampshire Legislature effective July 1, 2010 and, as a result, municipalities may now charge property taxes on NNETO's poles and conduits. NNETO's filing indicates that it has received invoices from 44 municipalities and that an additional 45 have indicated that they will likely soon bill NNETO. NNETO projects that approximately 230 municipalities ultimately will assess property taxes on its poles and conduits.

¹ Although the filing cites the tax obligation on telephone poles and conduits as imposed pursuant to RSA Chapter 76, the specific obligation arises from RSA 72:8-a with the repeal of the related exemption previously set forth in RSA 72:8-b as of July 1, 2010.

As a result of the above, NNETO submitted proposed tariff pages to institute a surcharge on customers' bills to recover all or a substantial portion of the amount of municipal property taxes billed to NNETO for telephone poles, conduits, and use of municipal right-of-ways. The surcharge is proposed to be applied on a per access line basis following the same methodology as the application of the E911 surcharge. According to the filing, the surcharge would not be applied on more than 25 lines per customer billing account. The proposed rate of the surcharge is \$0.99 per line, per month up to the 25 line limit. NNETO requests, pursuant to RSA 378:6, IV, that the new tariff pages be permitted to become effective on December 1, 2011.

The Commission does not agree that NNETO's proposed tariff pages fall under the provisions of RSA 378:6, IV. Instead they are more appropriately addressed under the provisions of RSA 378:6, I(a).² Accordingly, NNETO's proposed tariff pages are hereby suspended, pending the Commission's investigation and shall not take effect on December 1, 2011. Recognizing, however, that there is a substantial financial impact to NNETO from the imposition of these taxes, we will address this filing in as expeditious a manner as is practicable under the circumstances. As such, we will schedule a hearing for the purpose of determining whether a charge – either the proposed surcharge or some other charge – should be implemented on a temporary basis pending the Commission's investigation. Also at that hearing, the Commission will address any requests for intervention and will accept statements of initial positions of NNETO, Staff and any intervenors.

² RSA 378:6, IV pertains to “[a]ny tariff for services filed for commission approval by a telephone utility, except a tariff reviewed pursuant to RSA 378:6, I(a).” RSA 378:6, I(a) pertains to “any investigation of a rate schedule which represents a general increase in rates and the decision thereon.” According to *Webster's II New College Dictionary* (3d ed. 2005) one definition for “representing” is “[t]o be the equivalent of” and the first two definitions of “general” are “[r]elating to, concerned with, or applicable to the whole or every member of a class or category” and “[a]ffecting or characteristic of the majority.” The proposed surcharge tariff is not for any particular service, but rather is the equivalent of a rate increase affecting all or a majority of the telephone utility's retail customers or every retail residential or business telephone exchange line and public access line (except those in excess of 25 lines per customer billing account), as well as such lines that are provided at wholesale to resellers.

The filing raises, *inter alia*, issues related to the amount of municipal taxes to which NNETO is subject, whether it is appropriate to recover the taxes it pays through the proposed surcharge, the treatment of the taxes on a going-forward basis for those taxes not yet assessed, the propriety of capping the application of the surcharge at 25 lines, whether the tax expense has been allocated properly, such as between line charges and pole attachment charges, regulated and non-regulated services, and intrastate and interstate charges, and whether other general ratemaking principles apply. Parties have the right to legal counsel, at their own expense.

Based upon the foregoing, it is hereby

ORDERED, that the proposed tariff pages for a municipal property tax surcharge be, and hereby are suspended, pursuant to RSA 378:6, I(a), pending further investigation and order of the Commission; and it is

FURTHER ORDERED, that a hearing be held to address the propriety of temporary rates, pursuant to RSA 378:27, and preliminary statements on any of the noticed issues, be held before the Commission located at 21 S. Fruit St., Suite 10, Concord, New Hampshire on December 14, 2011 at 1:30 p.m.; and it is


FURTHER ORDERED, that, immediately following the hearing, NNETO, the Staff of the Commission and any Intervenors hold a Technical Session to review the filing and allow NNETO to provide any amendments or updates to its filing; and it is

FURTHER ORDERED, that pursuant to N.H. Code Admin. Rules Puc 203.12, NNETO shall notify all persons desiring to be heard at this hearing by publishing a copy of this Order of Notice no later than December 2, 2011, in a newspaper with general circulation in those portions of the state in which operations are conducted, publication to be documented by affidavit filed with the Commission on or before December 14, 2011; and it is

FURTHER ORDERED, that pursuant to N.H. Code Admin. Rules Puc 203.17, any party seeking to intervene in the proceeding shall submit to the Commission seven copies of a Petition to Intervene with copies sent to NNETO and the Office of the Consumer Advocate on or before December 9, 2011, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding, as required by N.H. Code Admin. Rule Puc 203.17 and RSA 541-A:32,I(b); and it is

FURTHER ORDERED, that any party objecting to a Petition to Intervene make said Objection on or before December 14, 2011.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of November, 2011.




Clifton C. Below
Commissioner



Amy L. Ignatius
Commissioner

Attested by:



Debra A. Howland
Executive Director