

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

DT 11-248

**FairPoint Communications, Inc.  
Municipal Property Tax Surcharge**

**OBJECTION TO  
NHMA PETITION TO INTERVENE**

NOW COMES Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE ("FairPoint") and respectfully objects to the New Hampshire Municipal Association, LLC ("NHMA") Petition to Intervene. In support of this objection, FairPoint states as follows:

On November 15, 2011, FairPoint filed a tariff revision seeking to implement a surcharge to cover all or a portion of property taxes that it anticipates will be assessed by New Hampshire municipalities for the April 1, 2011 through March 31, 2012 tax year. FairPoint's filing asserted that at the time of the filing it had received invoices from 44 municipalities and that an additional 45 had indicated that they would likely soon bill FairPoint. On information and belief, all of these municipalities are members of NHMA.

On November 28, 2011, the Commission issued an Order in which it suspended the tariff filing and scheduled a hearing to address the propriety of temporary rates, pursuant to RSA 378:27, and to take preliminary statements on any of the issues of note. Furthermore, the Order provided that parties seeking to intervene in the proceeding should do so on or before December 9, 2011 by petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding. On December 8, 2011, NHMA

timely filed a Petition to Intervene on behalf of its 233 member cities and towns.

The NHMA Petition states three principal grounds for intervention:

- that FairPoint's surcharge is an effort to blame municipalities for an increase in customer rates, and to build legislative support for reinstating the property tax exemption;
- that NHMA requires the aid of the commission to command FairPoint to disclose information that municipalities need to assess poles and conduits accurately; and
- that NHMA members are rate-paying customers of FairPoint who will be affected by any surcharge.

Rule Puc 203.17 provides that "the commission shall grant one or more petitions to intervene in accordance with the standards of RSA 541-A:32." RSA 541-A:32, I, provides that the presiding officer shall grant one or more petitions for intervention if, among other things:

(b) The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(c) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

NHMA's petition fails on both prongs. In regard to the first prong, NHMA has not identified any "rights, duties, privileges, immunities or other substantial interests" affected by this proceeding. It is undisputed that municipalities now have the authority to levy the tax. It is similarly undisputed that the municipalities exercised that authority and levied a new tax on FairPoint. Those facts are not at issue in this proceeding. Nothing in the proceeding record even suggests that FairPoint is interested in assigning "blame" for the surcharge, nor is tax policy the Commission's concern.

The tax bills speak for themselves, and whatever position the parties may have in this regard, this is not the forum to either attack or defend them. This proceeding is not intended to

be an exercise in public relations, and to the extent that NHMA sees it as such, the Commission should not commit other parties to an expenditure of time and resources in a fruitless endeavor. The issue of municipal property taxes is a political question that is outside the purview of the Commission; one with which it should not be involved.

For similar reasons, the Commission should decline NHMA's invitation to enlist it as the enforcement agent for conducting property assessments. NHMA alleges that its members have been hindered in their ability to assess taxes, an allegation belied by the fact that over 100 municipalities have in fact issued bills already. More fundamentally, the Commission is not the proper forum for disputes over property assessments, or to assist municipalities in discovering information relevant to those assessments. Property taxes are set in the first instance by local governments and reviewed, if at all, by either the Board of Tax and Land Appeals, *see* RSA 76:16-a, or the Superior Court of the county in which the municipality is located, *see* RSA 76:17. The Commission is not empowered to adjust tax rates and assessments set by the municipalities.

Finally, NHMA's intervention as ratepayers does not serve the public interest. NHMA alleges that its members will be "affected" by the surcharge, but NHMA has proffered no evidence to establish how the interests of its members are any different from all other ratepayers. Furthermore, assuming that each of the municipalities is billed under one billing account number, the 25 line billing cap ensures that no municipality will see its bill increase more than \$24.75 per month as a result of the tariff revision. This can hardly be considered a "substantial interest" for purposes of RSA 541-A:32, I.

## CONCLUSION

By its Petition, NHMA has signaled its intention to promote arguments and positions that are irrelevant to the issues as articulated in the Order of Suspension and which are not reasonably connected to the tariff filing. NHMA's participation in this proceeding will only serve to interfere with the orderly and prompt conduct of this proceeding and will contribute nothing of relevance to the record that is not already known. The interests of justice will not be served by NHMA's participation. FairPoint respectfully requests that the Commission deny its Petition for Intervention.

Respectfully submitted,

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

By Its Attorneys,  
DEVINE, MILLIMET & BRANCH,  
PROFESSIONAL ASSOCIATION

Dated: December 14, 2011

By: 

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### **CERTIFICATE OF SERVICE**

I hereby certify that a PDF copy of the foregoing Objection was forwarded this day to the parties by electronic mail.

Dated: December 14, 2011

By: 

Harry N. Malone, Esq.