

Bill as Introduced

SB 133-FN - AS INTRODUCED

2011 SESSION

11-0970
10/03

SENATE BILL **133-FN**

AN ACT relative to reestablishing the exemption from property taxation for telecommunications poles and conduits.

SPONSORS: Sen. Carson, Dist 14; Sen. D'Allesandro, Dist 20; Rep. Major, Rock 8; Rep. Griffin, Rock 4

COMMITTEE: Ways and Means

ANALYSIS

This bill reestablishes the property tax exemption for telecommunications poles and conduits.

Explanation: Matter added to current law appears in **bold italics**.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT relative to reestablishing the exemption from property taxation for telecommunications poles and conduits.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Purpose. Telecommunications poles and conduits have never been subject to local property
2 taxation in this state. A specific exemption for these items has been in place since 1998, but the
3 exemption was repealed as of July 1, 2010, and the property will be considered taxable property as of
4 April 1, 2011. In order to ensure that this property does not for the first time become subject to local
5 property tax, and in order to protect New Hampshire taxpayers from having to absorb the costs of
6 this new tax through higher telecommunications bills, this bill is intended to reenact this long-
7 standing tax exemption.

8 2 Reference Corrected. Amend RSA 72:8-a to read as follows:

9 72:8-a Telecommunications Poles and Conduits. Except as provided in RSA [~~72:8-b~~] 72:8-c, all
10 structures, poles, towers, and conduits employed in the transmission of telecommunication, cable, or
11 commercial mobile radio services shall be taxed as real estate in the town in which such property or
12 any part of it is situated. The valuation of such property shall be based on its value as real estate.
13 Other devices and equipment, including wires, fiber optics, and switching equipment employed in the
14 transmission of telecommunication, cable, or commercial mobile radio services shall not be taxable as
15 real estate.

16 3 New Section; Property Taxation; Exemption Added. Amend RSA 72 by inserting after section
17 8-b the following new section:

18 72:8-c Telecommunications Poles and Conduits Exemption. Notwithstanding any other
19 provision of this chapter, any conduit that is not a part of a building and any whole or partial
20 interest in wooden poles, employed in the transmission of communication services that are subject to
21 the tax imposed under RSA 82-A, and owned by a retailer as that term is defined in RSA 82-A:2, X,
22 shall be exempt from being taxed as real estate under RSA 72:8-a.

23 4 Application. RSA 72:8-c as inserted by section 3 of this act shall be considered effective as of
24 July 1, 2010 at 12:01 a.m. and shall apply to the assessment of property taxes under RSA 72.

25 5 Effective Date. This act shall take effect upon its passage.

SB 133-FN - AS INTRODUCED

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SB 133-FN - FISCAL NOTE

AN ACT relative to reestablishing the exemption from property taxation for telecommunications poles and conduits.

FISCAL IMPACT:

The Office of Legislative Budget Assistant is unable to complete a fiscal note for this bill as it is awaiting information from the Department of Revenue Administration. When completed, the fiscal note will be forwarded to the Senate Clerk's Office.

Committee Minutes



STATE OF NEW HAMPSHIRE

HOUSE OF REPRESENTATIVES

Office of the Speaker

MEMORANDUM

TO: Karen O. Wadsworth
House Clerk

FROM: William L. O'Brien
Speaker of the House *WLO*

DATE: March 23, 2011

RE: Temporary Committee Assignments

Please be advised that the following legislators will be appointed to the Committee on Municipal and County Government for Thursday, March 24, 2011:

Rep. Susan DeLemus will replace Rep. Jeff Shackett
Rep. Mark Warden will replace Rep. Beverly A. Ferrante

WLO/sg

cc: House Majority Leader David J. Bettencourt
House Democratic Leader Terie Norelli
Rep. Beverly A. Ferrante, Committee Chair
Rep. Susan DeLemus
Rep. Mark Warden

Phil
 David
~~James~~
 Harry
 Tom
 Kelly
 Harry
 Rep. Susan
 DeLemus
 Ru-301

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Speakers

Hearing Minutes

HOUSE COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT

PUBLIC HEARING ON SB 133-FN

BILL TITLE: relative to reestablishing the exemption from property taxation for telecommunications poles and conduits.

DATE: March 24, 2011

LOB ROOM: 301 **Time Public Hearing Called to Order:** 10:00 am

Time Adjourned: 2:30 pm

(please circle if present)

Committee Members: Reps. *M. Warden (Ferrante), Sterling R. Patten, Lockwood, Accornero, Belange, Burt, Coffey, Copelana, Moore, Munch, * S. DeLemus (Shackett), Stroud, DeStefano, Roberts, Hooper and Tatro. (*Replacements appointed)

Bill Sponsors: Sen. Carson, Dist 14; Sen. D'Allesandro, Dist 20; Rep. Major, Rock 8; Rep. Griffin, Rock 4.

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Sen. Sharon Carson – sponsor –reinstates exemption which has been in effect since 1990. This would otherwise allow new tax this year. Exemption from Communications Service Tax (CST) in 1990 which was to make a level playing field. The tax will be passed onto declining base. Electricity can come only out wires where communication can be from variety of sources.

Sen. Lou D'Allesandro – Support – If this goes into effect will destroy the balance of the - CST Landlines are disappearing by thousands. New tax inconsistent with broadband build out – This bill supported by business community SB 133 is to encourage economic recovery

Rep. Sharon Jasper – Support – on behalf of the Republican leadership in full support of this bill – This will not take money away from local governments – This will add significantly to local landline rates – It will effect the poor and elderly – Will impact business decisions of telecom companies. Ans: This will hasten the loss of landlines – this is different then public roads and other utilities.

Rep. Norm Major – Support – CST was to level playing field between wireless, landline and satellite – Wireless and satellite are not regulated and don't have a duty to serve – Landlines being lost at the rate of 6% per year. Ans: All income from CST goes to state general fund savings of which goes to municipalities.

Rep. Steve Vaillancourt – Oppose – Not a new tax, corporate welfare of the worst kind – Will downshift \$5 to \$10 Million – Average taxpayer in Manchester will pay \$0.03 on the tax rate or about \$8 – There is social contract that we will pay taxes on the same basis – Courts have ruled that poles can be taxed – Will mean \$300,000 to the city of Manchester – There is no reason not to treat

the telecoms other than equally. Ans: Telecoms will not put a separate line to bills for this tax – There will be an increase in your property taxes if you pass this bill – Telecoms will not initiate a rate case for this tax.

Brian Fogg – George Sansoucy P.E., LLC – Opposed – We believe that a pole is a pole is a pole – Value is fair market value – Poles owned jointly by telecoms and electric utilities – Same pole can be valued at \$1,000, \$500, or \$0 depending on whether wholly owned by electric, jointly owned or owned by telecom – All telecoms are taxed by CST but wireless also is taxed on towers so subsidy is to phone pole owners.

Karen Liot Hill – Lebanon City Councilor – Opposed – Understand a need for companies to realize costs – Poles are real property – There is a compelling interest in providing exemptions to elderly, poor, blind and veterans.

***Cordell Johnston** – NH MA – Opposed – Support Rep. Vaillancourt position – His statement that this is socialism is not overstated – This is an exemption for a billion dollar business – Most poles are jointly owned by PSNH and FairPoint – Have a long memo on the constitutionality of this exemption – House rule 44 prohibits reporting out bill if it violates the NH Constitution – Last year legislature voted to not extend the exemption – Have 20 emails from communities around the state – Ans: prior to 1990, telecom paid personal property tax to the state – Municipalities were not invited to making a deal on the CST – Ans: Exemption is interfering with the fare market.

***Nicole MacStay** – Town of Peterborough – Opposed – Are trying to save property taxpayers pennies where ever we can.

***Bill Stafford** – CEO of Granite State Telephone – supports – CST was intended to level the playing field. This is absolutely a new tax – Fact that only NH and PA do not tax poles is a good thing – This is a big deal for our company – We have \$3.8 million of net book value of poles – At \$18.1,000 tax, it is \$68,000 or about a 100% increase in our property taxes – We will absolutely ask for a rate raise and it will represent a 5% rate increase – We were ordered to reduce our rates by 3.5% when CST was enacted to replace personal property taxes – We have about 12,000 poles – FCC controls charge we can recover from cable companies – Will be about 1% of new cost – This will not impact ability to charge license fees for use of right of way – This is a new tax that we will flow through to our customers – Aus – Our gross income is about \$8 million and to add an employee about \$75,000 – Ans: We have 100% broadband deployment and one building FIOS – Ans: Prior to 1990, money was collected through the railroad and public utilities tax which had a tax and surtax – Lost money in 2009 and made \$110,000 in 2010 – VOIP companies do not pay CST.

***Theresa Rosenberge – Roy Drukler – Karen Mead** – FairPoint Communications – Support – Describes company – We are regulated like a monopoly but we are not a monopoly – We are the carrier of last resort – Our infrastructure is the backbone of all telecommunication services – Believe everyone should be treated equally – CST is a gross tax so a pole tax would increase the CST tax base – There is landline competition in 99% of the state – Over last 20 years this issue has come up continually and exemption has been maintained – This is a new tax – We have never kept pole records by municipality but by center – If this bill doesn't go through we will pass it on to customers- This is not corporate welfare, but about infrastructure survival – Ans: FairPoint is losing money – Tax would be \$3-\$30 million depending on assessment method.

David Juvet – BIA – support – This is a new expense if not a new tax.

***Rex Norman** – Town of Windham – opposed – Have spent \$24,000 for an appraisal to be able to tax this property.

(Recess from 12:10 – 1:30 pm)

***Julia Griffin** – Hanover Town Manager – opposed.

Russell Dean – Exeter Town Manager – opposed – Exeter does see this as a downshifting – Ans: \$20,000-\$30,000 impact and any penny helps – Not surprised that Stratham and North Hampton oppose the bill.

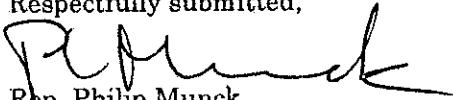
***William Durand** – NE Cable and Telecommunications Association – support – Have 10,000 miles of plant on poles with space rental – Our conduit estimate \$300 - \$400,000 additional taxes.

***Michael Skelton** – Manchester Chamber of Commerce support – We see this as a new tax and a new expense.

James Michaud – Hudson Assessor – no position – All property is appraised whether it is taxed or not per RSA – Hudson's poles are joint owned – Ans: FairPoint poles value would be the same as the PSNH value.

Chris Williams – Greater Nashua Chamber of Commerce - Support

Respectfully submitted,



Rep. Philip Munck
Clerk

HOUSE COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT

PUBLIC HEARING ON SB 133-FN

BILL TITLE: relative to reestablishing the exemption from property taxation for telecommunications poles and conduits.

DATE: March 24, 2011

LOB ROOM: 301 **Time Public Hearing Called to Order:**

Time Adjourned:

(please circle if present)

Committee Members: Reps. Ferrante, Sterling, B. Patten, Lockwood, Accornero, Belanger, Burt, Coffey, Copeland, Moore, Munch, Shackett, Stroud, DeStefano, Roberts, Hooper and Tatro.

DeLunays, Warden

Bill Sponsors: Sen. Carson, Dist 14; Sen. D'Allesandro, Dist 20; Rep. Major, Rock 8; Rep. Griffin, Rock 4.

TESTIMONY

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- 2 Sen. ^{Lox} D'Allesandro - support - If this goes into effect will destroy the balance of the CST. Landlines are disappearing by thousands. New tax inconsistent with broadband build out. This bill supported by business community SB 133 is to encourage economic recovery

CST = Communications Services Tax

Sharon

Rep Jasper - support - on behalf of the Republican leadership in full support of bill. This will not take money away from local governments. This will add significantly to local landline rates. It will affect the poor and elderly. Will impact business decisions of telecom companies.

Ans. - This will hasten the loss of landlines. This is different than public roads and other utilities.

Rep. Norm Major - support - CST was to level playing field between wireless, landline and satellite. Wireless and satellite are not regulated and don't have a duty to serve. Landlines being lost at the rate of 6% / year. Ans. -

All income from CST goes to state general fund some of which goes to municipalities

Rep. Steve Vanhook - oppose - Not a new tax, corporate welfare of the worst kind. Will do ^{ownership} ~~double~~ \$5-10 million. Average taxpayer in Manchester will pay \$0.03 on the tax rate or about \$8.

There is social contract that we will pay taxes on the same basis. Courts have ~~not~~ ruled that phone can be taxed. Will mean \$300,000 to the city of Manchester. There is no reason not to treat the telecoms other than equally.

Ans. - This is nothing more than a socialist scheme. Ans. - Telecoms will not put a

separate line to bills for this tax. There will be an increase in your property taxes if you pass this bill. Telecons will not initiate a rate case for this tax.

✓ Brian Fogg of George E. Sansbury PE - oppose - We believe that a pole is a pole is a pole. Value is fair market value. Poles owned jointly by telecons and electric utilities. Same pole can be valued at \$1,000, \$500 or \$0 depending on whether wholly owned by electric, jointly owned or owned by telecons. All telecons are taxed by CST but wireless also is taxed on towers so subsidy is to ~~the~~ phone poles owners.

✓ Karen List Hill - Lebanon City Councilor - oppose Understand a need for companies to reduce costs. Poles are real property. There is a compelling interest in providing exemptions to elderly, poor, blind and veterans.

✓ Cardell Johnston - NHOA - oppose - support Rep. Vaillancourt's position. His statement that this is socialism is not overstated. This is an exemption for a billion dollar business. Most poles are jointly owned by PSNH and Fairpoint. Have a long memo on the constitutionality of this exemption. House rule 44 prohibits reporting out a bill if it violates the NH Constitution.

Last year legislature voted to not extend the exemption. Have 20 emails from communities around the state. ^{Aug. 1990} Prior to 1990, telecons paid personal property tax to the state. Municipalities were not invited to making a deal on the CST. Ans. Exemption is interfering with the free market.

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SB133 (5)

This will no impact ability to charge license fees for use of rights of way. This is a new tax that we & will flow through to our customers. Ans. - Our gross income is about \$8 million and to add an employee about \$75,000.

Ans. - We have 100% broadband deployment and are building FTOS. Ans. Prior to 1990, money was collected through the Railroad and Public Utilities Tax which had a tax and surtax. Lost money in 2009 and made \$110,000 in 2010. VOIP companies do not pay CST. ~~Ans.~~

|| ✓ * Theresa Rosenberge, Ray Drebber, Karen Heade - FairPoint ^{Communications} - support - describes company. We are regulated like a monopoly but we are not a monopoly. We are the carrier of last resort. Our infrastructure is the backbone of all telecommunication services. Believe everyone should be treated equally. CST is a gross tax so a pole tax would increase the CST tax base. There is landline competition in 99% of the state. Over last 20 years this issue has come up continually and exemption has been maintained. This is a new tax. We have never kept pole records by municipality but by center. If this bill doesn't go through we will pass it on to customers.

~~If we have to~~ This is not corporate welfare but about infrastructure survival. Ans.

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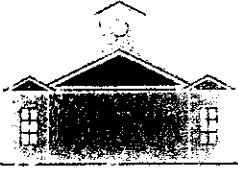
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18 James Michael - Hudson Assessor - no position. All property is appraised whether it is taxed or not per RSA. Hudson's poles are joint owned. ^{Ans -} FairPoint poles value

SB 133 (7)

would be ~~twice the~~ ~~PSNH~~ the same as the
PSNH value.

Testimony



New Hampshire Municipal Association

March 24, 2011

Hon. Beverly Ferrante, Chairman
House Municipal and County Committee
Legislative Office Building, Room 301
Concord, New Hampshire

Re: SB 133—Property Tax Exemption for Telephone Poles and Conduits

Dear Rep. Ferrante:

I write to express the New Hampshire Municipal Association's opposition to SB 133, which would reinstate the expired property tax exemption for poles and conduits own by telecommunication companies. Opposition to this exemption is one of the Municipal Association's standing legislative policy positions.

I apologize for the length of this letter, because this really is a simple issue—there is no principled reason for this tax exemption. It has existed historically simply as a favor to one influential industry. No one can explain why that industry should enjoy a tax exemption for property that, in the hands of someone else, would be fully taxable. However, supporters of the exemption will advance a number of rationalizations to make the issue seem more complicated, and those arguments need to be addressed.

History

Until 1990, the state assessed a *personal* property tax on telecommunication poles and conduits. The tax was paid to the state. During the same period, and continuing to the present, poles and conduits owned by *electric* utilities have been taxed as *real* property; the company pays property taxes to the municipalities in which the poles and conduits are located. *See* RSA 72:8.

In 1990, the state repealed the personal property tax on telecommunication poles and conduits. The same year, it enacted RSA 82-A, the communications services tax (CST), a tax (now 7 percent) on the gross charges for telecommunication services. This is a tax *on the customer*, not on the company.

After the repeal of the personal property tax on telecommunication poles and conduits, some municipalities began trying to tax the poles and conduits as real property. In 1996, the New Hampshire Supreme Court ruled that they could not do this, because the poles and conduits were treated as personal property, not real estate, under New Hampshire law.

In 1998, the legislature enacted RSA 72:8-a, stating that "all structures, poles, towers, and conduits employed in the transmission of telecommunication, cable or commercial mobile radio services shall be taxed as real estate" (thus effectively overruling the 1996 Supreme Court decision). However, at the same time, the legislature enacted RSA 72:8-b, which gave a *temporary* exemption to "any conduit that is not part of a building and any whole or partial interest in wooden poles, employed in the transmission of communications that are subject to the [CST]." That exemption was to last as long as the rate of the CST remained above 4.5 percent, but was to expire, in any event, on July 1, 1999.

The "temporary" exemption under RSA 72:8-b was extended in 1999, 2001, 2003, 2004, and 2005. It finally expired last year, when the legislature killed a bill to extend it again.

The current law

Under the current law in New Hampshire, poles and conduits owned by *electric* utilities are fully taxable as real estate in the municipality in which they are located. That has been the law at least since 1905. Until last year, identical poles and conduits owned by *telephone* companies were exempt from any taxation. If a pole was jointly owned by an electric company and a telephone company, the electric company's share was taxed, and the telephone company's share was exempt. With last year's defeat of a continued exemption, telephone poles are now taxable in the same manner as electric poles.

Taxation of telephone poles in other states

According to a survey done by the legislature in 2003, 48 states tax telephone poles as either real or personal property. In some of those states the tax is imposed at the state level, but in many of those cases, the state shares the revenue with municipalities. Until last year, *only two states—New Hampshire and Pennsylvania—did not tax the poles at all*. Now, to our knowledge, Pennsylvania is the only one.

Pole ownership and use

According to a legislative committee report issued in 2004, at that time Verizon used 505,000 poles in New Hampshire. Of those, 434,000 were owned jointly by Verizon and electric utilities; 15,000 were owned solely by Verizon; and 56,000 were owned solely by electric utilities (with Verizon's equipment attached to them). We understand that these numbers have not changed significantly since then, except that FairPoint bought Verizon's interest in the poles.

Telephone and electric companies routinely enter into agreements allowing other users, including electric, cable, and wireless telephone companies, to attach equipment to the poles. They charge pole attachment fees to these users, and are able to recover a portion of the cost of maintaining the poles through these fees. According to the 2004 committee report, *Verizon was earning \$1.85 million dollar a year in attachment fees at that time*.

The tax impact of eliminating the exemption

No one knows how much the telecommunication companies will pay in additional property taxes with the exemption eliminated. The only "objective" estimate appears in the 2004 study committee report. That report, based on a number of assumptions, suggested that Verizon would pay approximately \$3 million more in property taxes. It is impossible to know how close that is to the actual figure, but it seems fair to conclude that the number will be in the millions of dollars, but not in the tens of millions. Of course, other telephone and cable companies will pay some additional amount as well.

When telecommunication companies begin paying property taxes on their poles and conduits, other taxpayers' bills will be reduced accordingly. If the total amount statewide is only a few million dollars, the effect on an individual tax bill will be minimal—probably a few dollars a year. Similarly, the effect on landline, wireless, internet, and cable bills (assuming the affected companies pass the cost on to their customers) will be minimal. However, the numbers are not what matters; what matters is the principle that the telecommunications industry should not be immune from a tax that everyone else pays.

SB 133 is unconstitutional.

Granting an exemption for poles and conduits owned by telecommunication companies, when electric companies pay taxes on exactly the same property, violates the equal protection requirements of the New Hampshire Constitution. Because this analysis requires a review of some fairly complicated case law, it is included in a separate memorandum, attached to this letter.

A "new tax"?

Many legislators this year are calling for the elimination of all new taxes and fees that were instituted in the last four years. Telecommunications industry representatives are trying to squeeze onto that wagon by claiming that ending the pole exemption has created a "new tax."

We want to believe most legislators are too smart to fall for that. Obviously, there is no "new tax" here. Everyone else pays property taxes. Electric companies have paid taxes on the exact same poles for over a century. The end of the exemption merely means that telecommunication companies will now pay the same taxes that everyone else has paid forever.

The claim of a "new tax" implies that new revenues are being raised, but they are not. Increases in municipal tax revenues occur only when a city or town votes to raise additional funds. Elimination of the pole exemption does not affect the total amount of revenues raised by municipalities—it simply means that pole owners will pay a share of the taxes that *are* raised. Thus, *elimination of the pole exemption will result in a tax reduction for almost all taxpayers.*

Arguments for reinstating the exemption

No one disputes that the poles and conduits owned by telecommunication companies are identical to those owned by electric companies. No one claims there is any principled reason to exempt this class of property from taxation. All of the arguments for continuing the exemption are based on a desire to accommodate the telecommunications industry and its customers.

The cost to telephone customers. In recent years, the most common argument for continuing the exemption was that if landline telephone companies were required to pay taxes on their poles, they would pass the cost on to their customers, and this would disproportionately harm customers who are unable to switch entirely to wireless phone service. In fact, FairPoint claimed last year that the entire cost would be borne by its customers, and it therefore would constitute a tax on "the elderly and low-income."

That is simply not true. Everyone in the industry knows the landline companies will pass much of the cost on to the cable, electric, and wireless companies by raising the fees they charge those companies to attach equipment to the poles. Those companies, in turn, will pass the cost on to *their* customers. Further, FairPoint uses the poles and conduits not only for its landline telephone operations, but for its internet business. Thus, the cost will be spread among landline, wireless, cable, internet, and electric customers.

Even if all of the cost were borne by landline customers, it is unclear why there would be anything wrong with that. Property taxes are a cost of doing business, typically passed on to customers. That is how business works. When one industry is exempt from property taxes, that burden is shifted to other taxpayers. It makes no sense to require *taxpayers* to bear one industry's costs of doing business.

The level playing field. A related argument is that landline phone companies need the exemption to maintain a "level playing field" with wireless companies, because wireless companies operate without poles and conduits, and therefore would escape the tax. Although wireless companies do not own wooden poles, they do own towers, and those towers are subject to property taxes. The wooden poles owned by landline companies were exempt until last year. How anyone could consider that a "level playing field" is a mystery. Further, why should the legislature be in the business of managing competition among businesses? If a business finds a way to operate without a lot of taxable real estate, is it really the state's job to remove that advantage through tax policy?

In any event, this issue does *not* pit landline companies against wireless companies. Representatives of the major wireless companies (as well as the cable companies) have lobbied *for* continuing the exemption. Presumably this is because they recognize that they will bear part of the cost if the landline companies are taxed on the poles. Instead, this issue pits the entire telecommunications industry—all of which has benefited from the exemption—against municipalities and taxpayers.


The "double tax." Another argument is that phone companies are already burdened by the CST, and the pole exemption is necessary to avoid a "double tax." This is nonsense. The CST is paid by *customers*, not by the phone company. The company merely collects the tax for the state. In this respect, it is identical to the meals and rooms tax, the tobacco tax, the gasoline tax, and—most notably—the electricity consumption tax under RSA 83-E, which is *collected* by the electric utility, but *paid* by the customer. Yet no one suggests that restaurants, hotels, convenience stores, gas stations, or electricity poles should be exempt from property taxes.

"Same punts, different pocket." A frequently heard comment is "What difference does it make? We'll pay for it in our taxes or in our phone bill. It's all the same."

That suggestion—that it shouldn't matter whether a business is funded by customer revenue or by tax dollars—is astonishing. The House recently passed, by an overwhelming margin, a bill prohibiting the state from using tax dollars to fund public television. Part of the argument was that taxpayers should not be forced to subsidize a television station. If it is wrong to make state taxpayers spend \$2.7 a year to support a television station, why is it permissible to require local property taxpayers to spend over \$3 million a year to support a telephone company? Why should taxpayer dollars be used to support *any* private business?

For these reasons, I urge the committee to find SB 133 *Inexpedient to Legislate*.

Sincerely,


Cordell A. Johnston
Government Affairs Counsel

SB 133 Violates the New Hampshire Constitution

To: Municipal and County Government Committee

From: Cordell Johnston, Government Affairs Counsel, New Hampshire Municipal Association

Date: March 24, 2011

House Rule 44(d) states:

No committee shall report with a positive recommendation any bill or resolution which would, if enacted, be a violation of any article of the Constitution of New Hampshire The vice chairman or another member of each committee shall review all pending legislation and shall advise the chairman and the members of all legislation before the committee which should be reviewed in terms of this Rule.

SB 133 almost certainly violates the equal protection requirements of the New Hampshire Constitution. For that reason, Rule 44 prohibits a positive committee recommendation on the bill.

SB 133 would grant telecommunication companies a property tax exemption for their poles and conduits, even though electric companies are required to pay property taxes on identical property. According to representatives of the telecommunications industry, the New Hampshire Supreme Court has ruled that such an exemption is constitutionally valid. That is not exactly true.

In a 1997 opinion that was filled with qualifications and conditions, the justices of the Supreme Court stated that such an exemption "appears valid." In a 2007 case, however, the Court issued an opinion that clearly prohibits distinguishing between telecommunication and electric companies for property tax purposes when the properties in question are identical. The latter decision strongly suggests that SB 133 is unconstitutional.

Analysis of this issue requires a thorough examination of both cases.

Opinion of the Justices (Property Taxation of Telephone Poles), 142 N.H. 102 (1997).

This was an advisory opinion in response to a request from the New Hampshire Senate on pending legislation. The bill in question did two distinct (and largely contradictory) things: (1) it provided that poles and wires employed in the transmission of telephone or cable television services would be taxed as real estate; and (2) at the same time, it

provided that such property would be exempt from property taxes if it was used to transmit communications services that were subject to the communications services tax and was owned by a retailer that paid the tax.

The Senate asked the justices two questions: (1) whether the legislation would violate the “proportional and reasonable” requirements of Part II, Article 5 of the New Hampshire Constitution; and (2) whether it would create an “impermissible classification of property” in violation of Part II, Article 6 of the Constitution.

“Impermissible classification of property.” The justices answered the second question first. In doing so, they did not—for reasons that are unclear—address the *exemption* granted by the legislation, including the fact that poles owned by telephone companies would be exempt, while those owned by electric companies would not. Instead, they addressed only whether the *taxation* of telephone poles created an “impermissible classification.” They stated:

[T]he constitutionality of a taxation classification depends upon the physical and functional characteristics of the property itself. . . . [I]t appears that there is significant dispute about the distinctiveness of telecommunications poles and wires. We cannot resolve such factual issues in rendering advisory opinions on legal questions. Further, neither the resolution requesting our advice nor the bill itself provides factual information from which we might question the bill’s classification. We therefore confine our analysis to the facial validity of the bill’s classification.

142 N.H. at 107.

The justices then proceeded to examine the reasonableness of classifying telephone poles and wires as taxable property. They stated, “Although we have no factual information before us, it appears reasonable to assume that telecommunications poles and wires . . . share a connection to the provider’s physical plant.” They concluded, therefore, that *it was reasonable to classify poles and wires as taxable property*. 142 N.H. at 107. Again, they did *not* address the exemption, and did not address the disparate treatment of telephone poles and electricity poles.

“Proportional and reasonable.” The justices next addressed the first question—whether the legislation would violate the “proportional and reasonable” requirements of the constitution. They easily concluded that the *tax* on poles and wires was reasonable. The more difficult question was whether the *exemption* was constitutionally valid.

In considering the exemption, the justices noted once again that “we have no factual information before us,” and “[l]ooking only to the provisions of the bill itself, we conclude that the distinction drawn by the exemption to the proposed tax *appears just.*” 142 N.H. at 108 (emphasis added). The justices reasoned:

Owners of telecommunications poles and wires who are also communications services retailers are responsible for . . . the communications services tax [T]he legislature in its discretion could determine that those owners of telecommunications poles and wires who are responsible for the communications services charge should be distinguished from those owners who are not; the legislature could reasonably view the two groups of owners as being differently situated.

102 N.H. at 108-09. Thus, the court did not find any constitutional violation

The precedential value of that opinion is almost non-existent. More than a dozen times in their opinion, the justices qualified their statements with words like “we have no factual information,” the tax “appears facially valid,” “looking only to the provisions of the bill,” and “a lack of information renders impracticable consideration of all of the provisions of the bill.” The opinion could hardly be more equivocal.

Moreover, the justices’ sole basis for concluding that the property tax exemption “appears valid” was that “owners of telecommunications poles and wires who are responsible for the communications services [tax] could be distinguished from those owners who are not; the legislature could reasonably view the two groups of owners as being differently situated.” What that opinion failed to consider—because the justices did not know it—was that the legislature was about to enact an “electricity consumption tax” that would be imposed on electricity customers and collected by distributors and transmitters of electrical energy in exactly the same manner as the communications services tax. In what presumably was a pure coincidence, that tax, now codified in RSA 82-E, was enacted on June 24, 1997, one day after the Opinion of the Justices was published; however, because of a contingency in the law, it did not take effect until 2001.

This means that the only permissible basis recognized by the justices for distinguishing among pole owners—the fact that some collect a tax on the service they provide and others do not—has since disappeared. There is no practical distinction between the collection of the communications services tax by telecommunication providers and the collection of the electricity consumption tax by electricity providers. The two groups of pole owners are in exactly the same position—yet one is taxed and the other is not.

In short, the Opinion of the Justices, to the extent it ever mattered, has been rendered irrelevant.

Verizon New England v. City of Rochester, 156 N.H. 624 (2007)

This case is far more relevant on the disparate taxation of telephone and electric company properties. It has a complicated procedural history, but can be summarized briefly.

Verizon had obtained licenses from the City of Rochester to place its poles, wires, and other equipment within city rights-of way. In two prior decisions involving the same parties, the Supreme Court had held that the pole licenses constituted agreements for the

use of the right-of-way, creating a property interest that was subject to real estate taxes under RSA 72:23, I(b); this allowed the city to unilaterally amend the licenses to require Verizon to pay real estate taxes for its use of the public ways. (Note: taxation of the use of the right-of-way is a separate issue from taxation of the poles themselves.)

In the 2007 case, however, Verizon contended that it was unconstitutional for the city to require Verizon to pay a tax on the use of the right-of-way when it did not require other utilities—gas, cable, and electric companies—to pay taxes on their similar use of the right-of-way. The Supreme Court agreed: although the city had the right to tax Verizon, it could not single out Verizon for taxation and let the other companies avoid the tax.

The following is the decisive passage from the Court's opinion:

The evidence in the record demonstrates that Verizon uses and occupies the public ways through its pole licenses in a manner indistinguishable from the gas, cable, and electric companies that use and occupy the public ways under "other agreements" with the city. . . .

However, the city does not impose a real property tax upon the other utilities' indistinguishable use and occupation of the public ways. . . .

There is no equal protection violation, however, if the city's selective taxation is reasonably related to a legitimate state interest. Here, the city offers, the record reveals, and we can conceive of, no rational reason for selectively imposing this tax upon Verizon, and not upon other utilities that use and occupy public property in the same manner as Verizon. Moreover, the record fails to indicate that any legitimate governmental interest is furthered by this disparate treatment. Accordingly, we [uphold the trial court's] ruling that [the city's] selective application of RSA 72:23, I, to Verizon is discriminatory and violates our Equal Protection Clause.

156 N.H. at 630-31 (citations omitted).

This decision is directly relevant to SB 133. Just as there was no distinction between the different utilities' use of the right-of-way in Rochester, there is no distinction between the poles owned by telephone companies and those owned by electric companies. The poles are identical—in fact, in most cases, the telephone and electric companies have joint ownership of the poles. They are used in exactly the same manner—almost all of them are used to support both telephone and electrical lines (as well as television cable and other equipment).

There is, therefore, no rational distinction that allows telecommunication companies to avoid taxation on their poles while electric companies pay taxes on their poles. The exemption proposed by SB 133 creates an irrational distinction and therefore violates the equal protection requirements of the New Hampshire Constitution.

Cordell Johnston

From: Judy Silva
Sent: Wednesday, March 02, 2011 12:48 PM
To: Cordell Johnston
Subject: FW: [NHMMA] FW: SB 133

From: nhmma@googlegroups.com [mailto:nhmma@googlegroups.com] **On Behalf Of** Thomas Gaydos
Sent: Wednesday, March 02, 2011 12:30 PM
To: Tom Mahon; Russ Marcoux; nhmma@googlegroups.com
Subject: RE: [NHMMA] FW: SB 133

To all,

We discussed SB-133 at our BOS meeting last night. I reported my discussions with Senator Morse who indicated "it's another tax" and it would "hit the elderly" and after the cost pass through at the PUC would be even higher than the original tax. I also reported to the BOS that we bill on \$3 million of assessments to other utilities that have poles, among them National Grid. This letter was sent to the Senator this morning.

Hon. Senator Chuck Morse,

The Board of Selectmen voted 4-0 at its meeting of March 1, 2011 to urge you to defeat SB-133. The basis of taxation should be equity. In the instance of utilities, Fair Point is the only utility of the many that serve Pelham that currently enjoys an exemption. The majority of the Board agrees that this does not meet the test that we ourselves apply to local property taxes. Frankly, all of the Board members at the discussion had come to the meeting agreeing with your position. However, after considering the degree to which we tax other utilities they all reversed their position. We hope you will do the same.

Please respond if you would like further details of their conversation.

Respectfully,

Thomas Gaydos
Pelham Town Administrator

Cordell Johnston

From: Carlotta Pini [cpini@town.rindge.nh.us]
Sent: Friday, March 04, 2011 11:47 AM
To: Peter Bragdon
Cc: Dave DuVernay
Subject: SB 133

Senator Bragdon,

Hello! I left a message at your office but they said you were in meetings. Hopefully we'll get to talk on Monday, but just in case we don't I am writing to urge you to vote against SB 133 which would reinstate the exemption on poles. We in Rindge were pleased when the exemption expired and started making plans to assess the poles for our 2011 tax year, only to learn that this bill had been introduced. We hope you will consider the following as you form your position on the bill:

- Rindge has been devastated by cost downshifts and revenue cuts in the last two years. We lost \$59,000 in revenue sharing, which was supposed to be "suspended" but is likely gone forever. Governor Lynch's budget proposes additional cost shifting, including eliminating the State's share of the NH Retirement contribution for Police and Fire. Killing the pole exemption would be a small, but much appreciated, gesture.
- Telephone and cable companies are the only for-profit entities in the state that get the benefit of a blanket exemption for a class of property that would be taxed if someone else owned it. The identical poles are fully taxable when they're owned by electric companies. Most of the poles in the state are owned jointly by PSNH and FairPoint. PSNH pays property taxes on its half, but FairPoint's half is exempt.
- Telephone poles are subject to property taxes in 48 other states.
- The claim frequently made by FairPoint, that it would have to pass the cost of the tax on to its landline customers, is false. FairPoint has the ability to pass the cost on to its internet customers, as well as to the cable, wireless, and electric companies that pay fees to FairPoint for attaching equipment to its poles.
- The claim now being advanced by the telecommunications industry, that eliminating the exemption results in a "new tax", is not true. This "new tax" is one that everyone else has always paid.

I appreciate your consideration and look forward to speaking with you about this bill, as well as other legislation including SB 3. Have a good weekend!

Carlotta Lilback Pini
Town Administrator

Town of Rindge
P.O. Box 163
30 Payson Hill Rd.
Rindge, NH 03461

(603)899-5181 x101

www.town.rindge.nh.us

Cordell Johnston

From: NATE CARMEN [natecarmen@msn.com]
Sent: Friday, March 04, 2011 12:14 PM
To: Cordell Johnston
Subject: FW: Senate Bill 133

FYI

Selectman Nate Carmen
Milford, NH

From: natecarmen@msn.com
To: peterbragdon@myfairpoint.net
Subject: Senate Bill 133
Date: Fri, 4 Mar 2011 17:12:05 +0000

Senator Bragdon,

I hope you are well.

Please consider voting against this bill, SB 133.

If you do not have the following background information, I offer it to you here:

--Cities and towns have been devastated by cost downshifts and revenue cuts in the last two years. One bright spot last year was the legislature's refusal to extend the pole exemption. Governor Lynch's budget proposes over \$200 million in additional cost shifting and lost revenue. Killing the pole exemption is one small thing Senators can do for their municipalities and their taxpayers. The benefit to municipalities would be small-estimated at between \$3 and \$10 million-but the gesture would be huge.

--Telephone and cable companies are the only for-profit entities in the state that get the benefit of a blanket exemption for a class of property that would be taxed if someone else owned it. The identical poles are fully taxable when they're owned by electric companies. Most of the poles in the state are owned jointly by PSNH and FairPoint. PSNH pays property taxes on its half, but FairPoint's half is exempt. Obviously, the only purpose for this exemption is to provide a favor to an influential industry.

--Telephone poles are subject to property taxes in 48 other states.

--The claim frequently made by FairPoint, that it would have to pass the cost of the tax on to its landline customers, is false. FairPoint has the ability to pass the cost on to its internet customers, as well as to

the cable, wireless, and electric companies that pay fees to FairPoint for attaching equipment to its poles.

--The claim now being advanced by the telecommunications industry--that eliminating the exemption results in a "new tax"--is just silly. This "new tax" is one that everyone else has always paid. Eliminating the exemption merely recognizes that for years the state has been subsidizing a few big businesses at the expense of the rest of the taxpayers.

Thank you Senator.

Selectman Nate Carmen
Milford, NH

Cordell Johnston

From: Elizabeth Dragon [citymgr@franklinnh.org]
Sent: Monday, March 07, 2011 4:31 PM
To: Cordell Johnston
Subject: FW: SB 133 Pole exemption bill

From: Elizabeth Dragon
Sent: Monday, March 07, 2011 4:29 PM
To: 'jeanie.forrester@leg.state.nh.us'
Subject: SB 133 Pole exemption bill

Hi Jeanie,
Hope all is well~ I know your world must be very busy right now...

I wanted to take a moment and weigh in AGAINST-- SB 133 (Pole exemption bill).
I have been on the Municipal Advocacy Committee for probably 6-8yrs and during that time, more than once we have tried to address this taxation issue. For me this one is simply a matter of Fairness!

Under the current law in New Hampshire, poles and conduits owned by *electric* utilities are fully taxable as real estate in the municipality in which they are located. That has been the law at least since 1905. Until last year, identical poles and conduits owned by *telephone* companies were exempt from any taxation. If a pole was jointly owned by an electric company and a telephone company, the electric company's share was taxed, and the telephone company's share was exempt. **Finally**, that changed last year when the legislature chose not to extend the exemption; now, telephone poles are taxable in the same manner as electric poles. This makes sense!!! Why would one utility be taxable but another be exempt? I never understood and truly believe it was a matter of successful lobbying and not a matter of making good & fair policy.

We have been working with our assessor here in Franklin to send out a tax bill for April 1st but now there is SB133 and if passed it would exempt them once again. It is frustrating because just doesn't make sense as a matter of fairness that telecommunications would be the only ones exempt. Why? When one industry is exempt from property taxes, that burden is shifted to other taxpayers (including other businesses). It makes no sense to require *taxpayers* to bear one industry's costs of doing business.

No matter what argument they provide--they have enjoyed a benefit of being tax exempt-- that most for profit businesses do not. We can't undo the last decade but we can level the playing the field, and put an end to this inequity that has been allowed to go on for too long---- and as a bonus bring in some property tax revenue to communities that is long overdue. I hope when the time comes you will vote against this bill.

If you have any questions or would like to discuss this or any other issue further...as always I am available and happy to give my perspective as a municipal manager in the trenches every day ☺

Eliz

Elizabeth A. Dragon

City Manager
City of Franklin
(P) 934-3900
(F) 934-7413

Cordell Johnston

From: Catherine Grant [admin@kingstonnh.org]
Sent: Tuesday, March 08, 2011 11:15 AM
To: russell.prescott@leg.state.nh.us
Cc: Cordell Johnston
Subject: Pole & Conduit property tax exemption

Senator Prescott: We're writing to request your vote against SB 133, which would reinstate an exemption from property taxes for telecommunication poles and conduits. We know you're very aware of the difficulties towns are facing due to revenue cuts, and more cuts are expected to occur. It may be that the assessment of poles and conduits will be the only increase in valuation that towns will see in this period where there is so little building. There is no reason why for profit corporations such as the telecommunications companies should be exempt from property tax. It's our understanding that poles are taxed in most other states, and even in New Hampshire poles are taxable when owned by electric companies rather than communications companies. We see no need for the towns of this state to subsidize a multi-million dollar industry in this way. The argument that the expense will have to be passed on to customers is erroneous; obviously it would be more fair for the customers who benefit from the services to pay the expenses of the company than it is for all taxpayers to have to pay those costs.

We hope you'll stand for your voters and towns in this matter.

Mark Heitz, Chairman
Peter Broderick
Charles Hart
KINGSTON BOARD OF SELECTMEN

Cordell Johnston

From: Lewis, Greg [Greg.Lewis@lebcity.com]
Sent: Tuesday, March 08, 2011 1:11 PM
To: Cordell Johnston
Cc: Jarvi, Len; Maville, Paula
Subject: Vote "NO" on SB 133 - Response from Sen. Houde

From: Lewis, Greg [mailto:Greg.Lewis@lebcity.com]
Sent: Mon 3/7/2011 4:07 PM
To: Houde, Matthew
Cc: Maville, Paula; Jarvi, Len
Subject: Vote "NO" on SB 133

Dear Senator Houde:

I am writing to you today requesting that, on March 9, 2011, you state your opposition on SB 133 and vote "NO" on behalf of the residents and taxpayers of the City of Lebanon.

SB 133, which would reinstate the property tax exemption for telecommunication poles and conduits, will only serve to further the burden currently being felt by communities across New Hampshire as the State continues to downshift costs and reduce potential sources of local revenue. According to our Assessing Staff, eliminating this exemption could generate an estimated \$131,200 for Lebanon taxpayers, enabling the City to reinstate (or continue) essential services to our residents.

On the State-wide cities' perspective, Governor Lynch's budget proposes over \$200 million in additional cost shifting and lost revenue - a heavy burden on local government, to say the least. We all know that, with State Law being what it is, generating local revenue is a huge challenge. We feel that eliminating the pole exemption is one thing our Senators can do to show a good faith gesture on our behalf.

Some reasoning on our perspective includes the fact that telephone and cable companies are for-profit entities. They benefit from a blanket exemption not shared by the electric companies that occupy the exact type of space - the identical poles for which they pay nothing, are fully taxable when they are owned by electric companies. Further, it's our understanding that poles owned by telephone companies are subject to property taxes in 48 other states.

There is a notion that this exemption should be extended as FairPoint Communication would have to pass the cost of this tax on to its landline customers. If you choose to extend the exemption, the State of New Hampshire will be the entity that will continue to pass the cost of this tax onto its residents. Fairpoint Communications is for-profit. They have means to make money. They also have the ability to share the burden amongst their customers. Customers that include their landline base along with its internet customers, and the cable, wireless, and electric companies that pay fees to them for attaching equipment to their poles.

Eliminating the exemption does not result in a "new tax." Not only has this tax always been continually paid by electric companies, it was paid by telephone companies up until 1990. The difference was that it was paid to the State in the form of a personal property tax. If the exemption is not reinstated, the monies will be paid to local municipalities as a real estate tax and will directly benefit local taxpayers.

3/8/2011

Respectfully submitted,

Greg Lewis, City Manager

Lebanon, NH

Cordell Johnston

From: Barry Brenner [bbrenner@seabrooknh.org]
Sent: Tuesday, March 08, 2011 3:41 PM
To: russell.prescott@leg.state.nh.us; russell@represcott.com
Subject: Senate Bill 133
Attachments: Pole exemption facts.doc

Dear Senator Prescott,

Senate Bill 133 is scheduled for a vote on Wednesday, March 9th. This bill would reinstate the property tax exemption for telecommunication poles and conduits that expired last year.

On January 27th I sent a letter to you indicating the Town of Seabrook's opposition to this bill. At that time the bill had not yet been assigned a bill number.

We would respectfully request that you oppose this bill. Attached to this email is a fact sheet prepared by the New Hampshire Municipal Association which provides background on this matter.

A few thoughts for your consideration:

--Cities and towns have been devastated by cost downshifts and revenue cuts in the last two years. One bright spot last year was the legislature's refusal to extend the pole exemption. Governor Lynch's budget proposes over \$200 million in additional cost shifting and lost revenue. Killing the pole exemption is one small thing Senators can do for their municipalities and their taxpayers. The benefit to municipalities would be small—estimated at between \$3 and \$10 million—but the gesture would be huge.

--Telephone and cable companies are the only for-profit entities in the state that get the benefit of a blanket exemption for a class of property that would be taxed if someone else owned it. The identical poles are fully taxable when they're owned by electric companies. Most of the poles in the state are owned jointly by PSNH and FairPoint. PSNH pays property taxes on its half, but FairPoint's half is exempt. Obviously, the only purpose for this exemption is to provide a favor to an influential industry.

--Telephone poles are subject to property taxes in 48 other states.

--The claim frequently made by FairPoint, that it would have to pass the cost of the tax on to its landline customers, is false. FairPoint has the ability to pass the cost on to its internet customers, as well as to the cable, wireless, and electric companies that pay fees to FairPoint for attaching equipment to its poles.

--The claim now being advanced by the telecommunications industry--that eliminating the exemption results in a "new tax"--is just silly. This "new tax" is one that everyone else has always paid. Eliminating the exemption merely recognizes that for years the state has been subsidizing a few big businesses at the expense of the rest of the taxpayers.

Thank you for your consideration.

Sincerely,

Barry

Barry M. Brenner

Town Manager

Town of Seabrook

3/8/2011

Cordell Johnston

From: Laura Thibodeau [lthibodeau@ci.keene.nh.us]
Sent: Wednesday, March 23, 2011 1:52 PM
To: Cordell Johnston
Cc: Patty Little
Subject: FW: SB133

From: Laura Thibodeau
Sent: Wednesday, March 23, 2011 1:52 PM
To: bevferrante@yahoo.com
Cc: Legislative Delegation (housemunicipalandcountygovt@leg.state.nh.us)
Subject: SB133

Dear Chair Ferrante,

Although I will not be able to attend the Municipal and County Government Committee tomorrow, March 24, I wanted you to know the Keene City Council voted on March 17th to oppose the passage of SB133 which would reinstate the exemption for poles and conduits owned by telecommunication entities. While there is much argument for and against the SB133, allowing a permanent exemption is unfair, not only to the taxpaying public, but also to the other utilities who do pay taxes on the "other half of the pole". While those who support passage of SB133 argue that telephone/cell phone and cable users may pay more for service, there is greater likelihood that more revenue will go to municipalities because of an increased tax base which could result in less property taxes for NH property owners.

Thank you for considering the vote of the Keene City Council during your deliberations.

Laura J. Thibodeau, CNHA
Assessor – City of Keene
Phone: 603-352-2125



Macstay

TOWN OF
PETERBOROUGH

ADMINISTRATION

1 Grove Street
Peterborough, NH 03458
Office: (603) 924-8000 x.101
Fax: (603) 924-8001
Web: www.townofpeterborough.com

March 15, 2011

Representative Bruce Marcus
139 Carley Road
Peterborough, NH 03458

Re: Pole Exemption

Dear Representative Marcus,

As I am sure that you are aware, the Senate recently passed a bill which is intended to reinstate and make permanent a property tax exemption for wooden poles and conduits owned by telecommunication companies. As this bill makes its way through the House, I, on behalf of the Town of Peterborough, urge you to **vote against reinstating this property tax exemption.**

Under current state law, poles and conduits owned by *electric* companies are fully taxable, however poles and conduits owned by *telecommunications* companies have been exempt from paying any property tax since 1905. These poles are identical in nearly every way, and carry the same wires and cables and facilitate the delivery of electric and telecommunication services in exactly the same way. However, the telecommunications companies want an continuation of the special treatment that they have been accorded for over 100 years. It is simply unfair that any property owner be accorded a 100% exemption from their property taxes, one which must be borne by every other property owner in the state.

The telecommunications companies have made a number of arguments, none of which stand up to close scrutiny:

This will be a new tax: there is nothing new about property taxes. Saying "no" to the pole exemption means that all property owners will have to pay property taxes just like every other property owner in the state. In fact, by eliminating this exemption, there will be a property tax reduction for almost every taxpayer.

This will add costs to telephone customers: Yes, it will, but it will also spread the costs to cable subscribers, DSL and Broadband subscribers, residential, governmental and business alike. Property taxes are the cost of doing business for every other company in New Hampshire, why should the telecommunications companies be any different?

Level playing field: another argument that has been raised is that the exemption creates a level playing field against inroads being made by wireless companies. In fact, the exact opposite is true! Wireless communications providers pay property taxes on all their cell towers, and have never enjoyed an exemption.

This creates a double tax: the telecommunications companies would have you believe that denying them this exemption taxes would create an unusual "double tax" situation, since they are already burdened with the CST. In reality, just like the meals and rooms, tobacco, gasoline and electricity consumption taxes, the telecommunications are simply the collectors of the taxes paid by the consumers which are then passed along to the state. By that logic, no hotel, restaurant, rental agency, convenience store or utility should pay any property tax!

The bottom line is, these poles are income producing properties. To say that they should be exempt from paying their fair share of property taxes for any reason simply doesn't stand up to any investigation. Again, I urge you on behalf of the Town of Peterborough and all taxpayers to vote against the pole exemption.

Sincerely yours,

Pamela L. Brenner
Town Administrator, Peterborough

Cc: Select Board

ROX. NJSOME 41



TOWN OF WINDHAM, NEW HAMPSHIRE

OFFICE OF THE SELECTMAN AND TOWN ADMINISTRATOR
POST OFFICE BOX 120, 4 NORTH LOWELL ROAD, WINDHAM NH 03087-0120

March 8, 2011

Senator Jim Rausch
Statehouse Room 124
107 N. Main Street
Concord NH 03301

RE: SB 133 – Request to Oppose Legislation

The Town of Windham Board of Selectmen strongly opposes a property tax exemption for Telecommunications Company's real estate. SB-133 would allow certain business to escape taxation and pass their burden onto others.

Telephone and cable companies are the only for-profit entities in the state that would get the benefit of a blanket exemption for a class of property that would be taxed if anyone else owned it. These same poles are fully taxable when they're owned by electric companies. Most of the poles in the state are owned jointly by PSNH and FairPoint. PSNH pays property taxes on their share of the pole, but this bill would exempt FairPoint's portion of the pole. This is categorically unfair taxation.

In 1998, the legislature enacted RSA 72:8-a, stating that "all structures, poles, powers, and conduits employed in the transmission of telecommunication, cable or commercial mobile radio services shall be taxed as real estate". A special exemption, RSA 72:8-b, expired July 1, 2010, because many testified to the unfairness of this tax loophole.

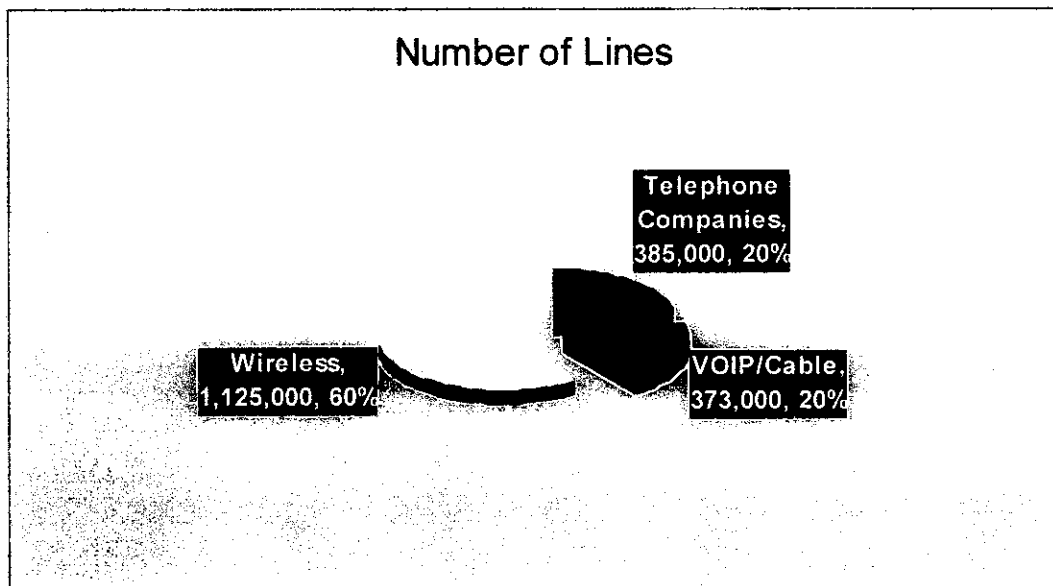
New Hampshire's Bill of Rights states "Every member of the community has a right to be protected by it, in the enjoyment of his life, liberty, and property; he is therefore bound to contribute his share in the expense of such protection..."

Telecommunication poles and conduits meet the definition of real estate as fixtures, and are income-producing property. There is no other industry where rental property enjoys a tax exemption. We encourage your vote in opposition to this discriminatory legislation.

Very truly yours,


Charles McMahon, Chairman
Windham Board of Selectmen

New Hampshire's Local Telephone Competition



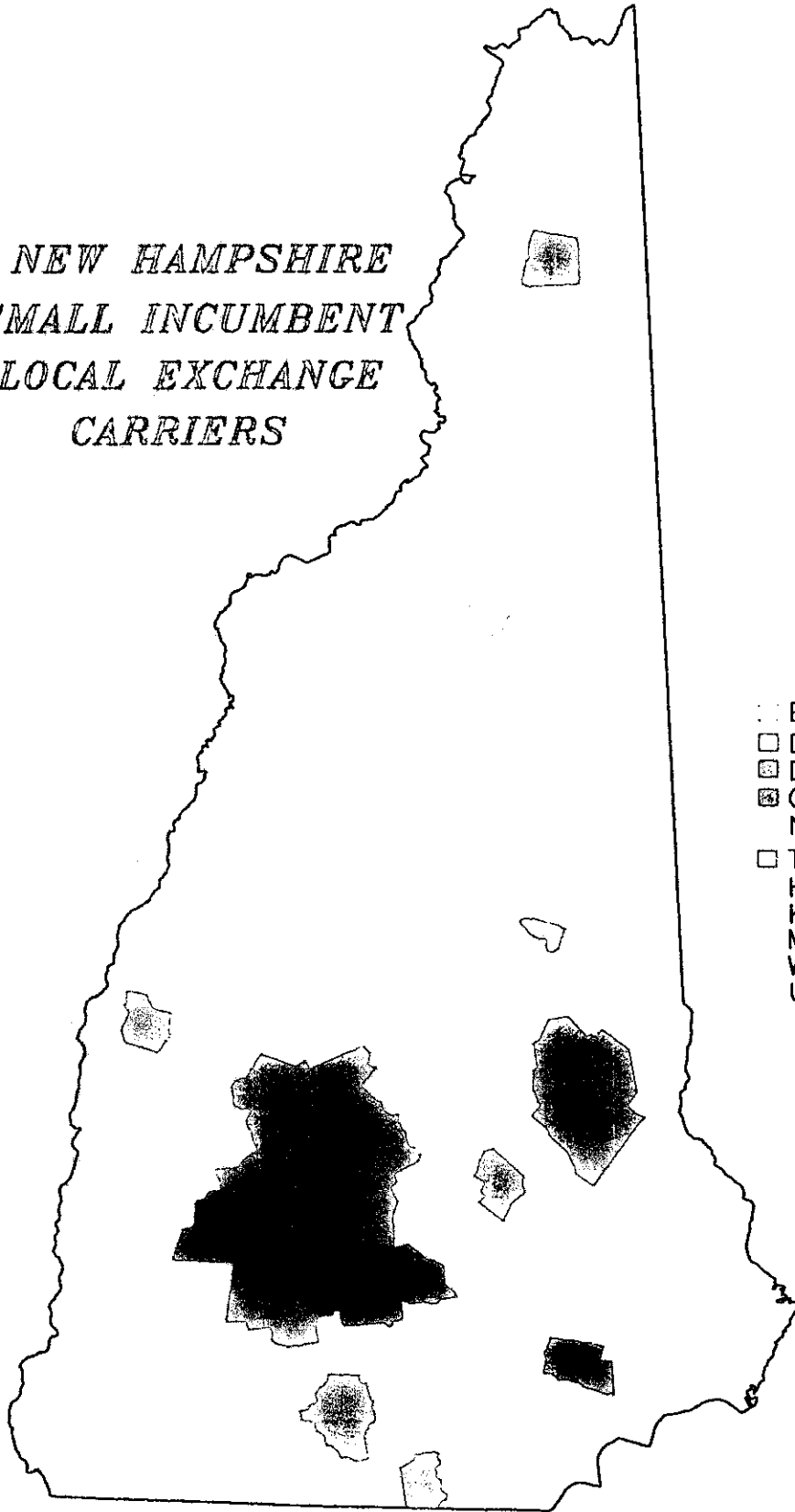
Source: FCC Local Competition Report: Status as of December 31, 2009
http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0111/DOC-304054A1.pdf

Other interesting highlights from the report:

*49% of New Hampshire's landline telephone service is provided by a VOIP/Cable provider, the 2nd highest percentage in the Nation.

* Only 1 zip code in New Hampshire is served by only one provider, a large majority of the state's zip codes have 6 or more providers.

*NEW HAMPSHIRE
SMALL INCUMBENT
LOCAL EXCHANGE
CARRIERS*



- ☒ BRETTON WOODS TELEPHONE CO.
- ☐ DIXVILLE TELEPHONE COMPANY
- ☒ DUNBARTON TELEPHONE COMPANY
- ☒ GRANITE STATE TELEPHONE
NORTHLAND TELEPHONE CO. OF NH
- ☐ TDS
HOLLIS TELEPHONE COMPANY
KEARSARGE TELEPHONE COMPANY
MERRIMACK COUNTY TELEPHONE
WILTON TELEPHONE COMPANY
UNION TELEPHONE COMPANY

WRITTEN TESTIMONY
OF
WILLIAM D. DURAND, ESQ.
ON BEHALF OF
THE NEW ENGLAND CABLE
&
TELECOMMUNICATIONS ASSOCIATION, INC.
IN SUPPORT OF
SENATE BILL 133-FN

March 24, 2011

Introduction:

Madame Chair and members of the Committee, my name is Bill Durand and I represent the New England Cable & Telecommunications Association, Inc., NECTA. Our members include substantially all of the major cable operating and programming companies in the six state New England region, including Comcast, Time Warner and Metrocast. The cable industry employs over 2000 people in New Hampshire. We pass approximately 600,000 homes and businesses and have deployed over 10,000 miles of fiber optic/co-axial cable. We provide approximately \$600,000 in free service to schools, libraries and non-profits and we pay over \$10 million annually in franchise fees to New Hampshire municipalities. We pride ourselves on making positive contributions to the state and communities that we serve.

Over many years we have supported the property tax exemption for poles and conduits based on the principals of equitable and sound tax policy. Today, NECTA respectfully submits this testimony in support of SB 133-FN, an act relative to re-establishing the exemption from property taxation for telecommunications poles and conduits.

This bill will re-instate sound tax policy

We support this bill to reinstate the local property tax exemption for wooden poles and conduits. If the exemption is not reinstated cable companies and thus our customers will experience higher costs in two different ways.

First, cable companies will pay **higher pole rental rates** to Fairpoint and other pole owners. Under the law pole owners have the right to pass along their higher costs to those entities which attach to

their poles. Thus, the pole tax will be a new cost which is incorporated into pole attachment rates which will be paid by cable companies. Ultimately, it is the cable customer who feels the burden of higher costs of doing business.

Additionally, cable companies own conduit. This new tax will be **assessed directly on our conduit**. As is the case with pole attachment rates, a new tax on conduit will also be a factor in our rates. At a time when many people are faced with economic challenges, an increase in cable rates due to new taxes will not be viewed favorably.

The cable industry is also concerned that the impact of the pole and conduit taxes collectively may put our providers at a competitive disadvantage. In 1990 New Hampshire chose to adopt the Communications Services tax which ensured that all two-way providers of telecommunications services were treated equally. By levying a tax on the service and not the infrastructure, tax policy correctly avoided picking winners and losers based on technology in a competitive industry. The imposition of a property tax runs contrary to the fairness imposed by the CST. We do not believe that taxing providers of telecommunication services differently based on the technology they deploy is sound.

Cable customers are already at a competitive disadvantage because customers pay franchise fees of up to five percent (5%) to municipalities. Satellite providers pay no franchise fees, have no facilities or real estate in New Hampshire and will not pay this new tax. Not only does this create an unlevel playing field, it could lead to reduced franchise fees to municipalities if cable customers are lost to satellite companies, for example.

The pole and conduit tax negatively impact economic development:

Cable companies are investing millions of dollars in upgrades to provide high speed internet connections to urban and rural areas alike. Our members are trying to respond to demands by policy makers and in the market for broadband by deploying to or upgrading plant to small businesses, municipalities, hotels, hospitals, schools and individual homes. People around this State are anxious to receive the benefits of our services and these upgrades. Any new tax is a disincentive to cable companies

to continue to deploy new infrastructure and upgrade facilities. This would be true particularly in rural areas of the state where the number of subscribers per mile is low and thus the cost of attaching to poles and deploying infrastructure is disproportionately higher. Our industry too must make difficult choices in difficult economic times. Where we invest capital is determined in part by the business climate and cost of doing business in a state. The imposition of a new tax on technology does not lend itself to a friendly and predictable business climate and runs exactly opposite to the national trend where government is seeking to provide tax incentives for the deployment of broadband infrastructure. Negative signals to business threaten to slow the deployment of broadband and put New Hampshire's economy at risk.

Conclusion:

Allowing municipalities to move forward and impose this tax will have a chilling effect on the investment of capital in New Hampshire and economic development in general. Furthermore, this tax reverses long standing tax policy seeking parity among the various telecommunications companies regardless of the technology they deploy. We urge you to encourage the deployment of broadband and competition among providers by implementing a fair tax policy and reinstating the property tax exemption on poles and conduits.

Thank you for the opportunity to testify and I will answer any questions.

Respectfully submitted,

William D. Durand, Esq.
Executive Vice President Chief Counsel
New England Cable & Telecommunications Association, Inc.
10 Forbes Road, Suite 440W
Braintree, MA 02184

781 843 3418 (office)
781 424 5125 (mobile)
wdurand@necta.info

Town of Gorham New Hampshire



1918 Historic Gorham Town Hall

February 28, 2011

The Honorable Senator John Gallus
292 Prospect Street
Berlin, NH 03570

Dear Senator Gallus:

We are writing to urge you to oppose and vote against SB 133, which would reinstate the property tax exemption for telecommunication poles and conduits that expired last year. The towns are being asked to appropriate more and more to compensate for lost revenue. While some of that cannot be avoided, this is a clear case of something Senators can do to help their communities and taxpayers.

This issue is also one of fairness. Telephone and cable companies are the only for-profit entities in the state that have the benefit of an exemption for property that would be taxed if owned by someone else. Poles owned by electric companies are fully taxed. In fact, poles owned jointly by FairPoint and PSNH are taxed to PSNH for half their value, but the FairPoint half is tax exempt. This really does not make any sense.

We hope that you will see your way to voting against SB 133. It is the right thing to do for the municipalities and taxpayers which you represent. Thank you very much for your consideration.

Town of Gorham
By its Board of Selectmen

Paul Robitaille, Chairman

Robin L. Frost, Town Manager

Terry Oliver

David Graham



Town of Hinsdale

HINSDALE, NEW HAMPSHIRE
03451

OFFICE OF SELECTMEN

March 3, 2011

Senator Molly M. Kelly
Representative William Butynski
Representative Daniel P. Carr
Representative Henry A.L. Parkhurst
Representative Edwin O. Smith

Dear Madam and Sirs:

The Hinsdale Board of Selectmen opposed SB-133 – Exemption of Telecommunication Poles and Conduit and we urge you to defeat this bill.

The basis of taxation should be equity. In the instance of utilities, Fair Point is the only utility of the many that serve Hinsdale that have enjoyed an exemption. Electric utilities are fully taxable as real estate. If a pole is shared by both the electric utility and the telephone company, the electric utility company's share was taxed, and the telephone company's share was exempt. Thankfully that changed last year when the legislature chose not to extend the exemption for telephone poles.

The Town is preparing to assess telephone poles and conduit as of April 1, 2011. The telephone poles and conduit will be assessed the same as with the electric utilities. This additional revenue will help with downshifting tax burden to our property owners.

There are many arguments for reinstating the exemption – cost to telephone customers; level playing field with wireless companies; double taxation; and bad for business. The arguments are not necessarily true. Poles are an income-producing property, generating millions of dollars a year in attachment fees. What business can use property to produce income, receive rental income at the same time, and pay no property tax?

We thank you for your time and consideration. Please feel free to contact our office if you have any questions.

Sincerely,
The Hinsdale Board of Selectmen

Jay Ebbighausen, Jr., Chairman

Bruce A. Bellville, Selectman

Richard Schill, Selectman

John D. Smith, Selectman

Kathy A. Stephens, Selectman

Representative Harold Reilly
1684 Ragged Mountain Hwy.
Hill, NH 03243-6871

Dear Representative Reilly,

The Holderness Board of Selectmen is respectfully requesting your opposition to upcoming legislation that will reinstate the property tax exemption for telecommunication poles and conduits that expired last year.

As you may know, telecommunication companies are the only utility company that, up until last year, were exempt from paying property taxes on their poles and conduits as the electric companies have for many years. As a result of this long time exemption the property tax payers of Holderness have subsidized the telecommunications companies by making up the lack of telecommunication property tax revenue.

We urge you to consider the legislation carefully when it comes before the House and vote no to reinstating the telecommunication pole and conduit property tax exemption.

Sincerely,

Holderness Board of Selectmen



TOWN OF LITTLETON

125 Main Street, Suite 200
Littleton, NH 03561

603.444.3996

www.townoflittleton.org

A Great American Main Street Community

February 28, 2011

Senator John Gallus
107 North Main Street
Concord, NH 03301

Dear Senator Gallus,


As the Board of Selectmen in the Town of Littleton, we are writing to urge you to vote NO on SB 133, the telephone pole tax exemption. As you know, the bill would add another burden to the already shrinking tax base of New Hampshire communities by reinstating an exemption on telephone and telecommunications poles. Here in Littleton we are already struggling with the effects of the State's "downshifting" of costs. Additionally, we have a home-grown tax revolt on our hands that could result in a cut to our budget so severe that we are already looking at the possibility of having to lay off nearly a third of our municipal workers. Littleton simply cannot take another hit at this time and we urge you to help us avoid another devastating blow to our tax foundation.

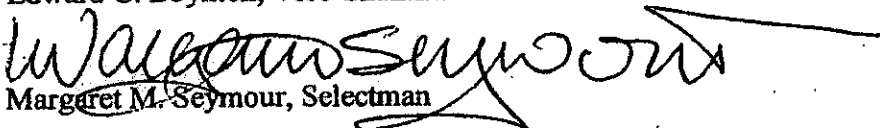
All other users of poles in the state pay property taxes -- there simply isn't any reason that the telephone and telecommunications companies can't pay their fair share. In a state that provides its communities with so few options for taxation, and where our only real option for the income we depend on is the property tax, it seems especially unfair for the legislature to grant certain types of businesses a blanket exemption. The cost to these companies can be spread over all their customers, while the communities that are the base for the infrastructure should continue to get the benefit of the property tax revenue we are forced to depend so heavily on.

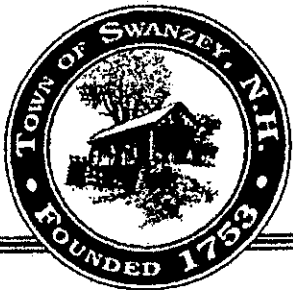
We urge you to vote against this bill and thank you in advance for your assistance.

Sincerely,


Ronald J. Bolt, Chairman


Edward C. Boynton, Vice Chairman


Margaret M. Seymour, Selectman



TOWN OF SWANZEY

620 OLD HOMESTEAD HIGHWAY
P.O. BOX 10009
SWANZEY, NH 03446-0009
TOWN HALL (603)-352-7411 FAX (603)-352-6250

March 4, 2011

Senator Molly Kelly
89 Colonial Drive
Keene, NH 03431

Re: SB 133, Property Tax Exemption for Telecommunications Poles & Conduits

Dear Senator Kelly:

I send this letter on behalf of Swanze Selectmen who urge you vote NO on SB 133 which proposes to reinstate the property tax exemption for telecommunications poles and conduit which expired last year.

Telephone Companies are for profit entities and should not gain a business benefit at the expense of other taxpayers. These fixtures are subject to taxation in 48 other states and fully taxable when owned by electric companies. Reinstatement of this phone company subsidy is not fair or equitable. With pressures increasing on the local taxpayer, consideration of exempt status should be reserved for charitable, educational or similar enterprises. Given the current economic climate, granting a property tax exemption to a business enterprise does not seem prudent.

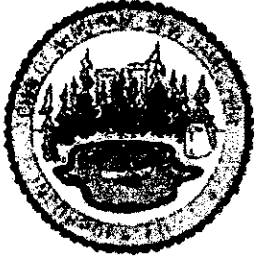
In Swanze, we are struggling to meet the needs of our town's residents in the face of increasing fixed costs and the likelihood that less revenue will be available from other sources to prevent the shifting of increased cost to town property taxpayers. With the Governor's budget proposal including significant additional cost shifting, this opportunity to fairly enhance the property tax base of our town and others in the state should not be discarded.

Please feel free to contact me or Selectmen Carlson, Tatro or Davis if you have any questions regarding this matter. The support you have provided towns and cities in the past is appreciated and we ask for it again on this issue.

Sincerely,

Elizabeth A. Fox
Town Administrator

cc: Swanze Selectmen
New Hampshire Municipal Association



TOWN OF WINDHAM, NEW HAMPSHIRE

OFFICE OF THE SELECTMAN AND TOWN ADMINISTRATOR

POST OFFICE BOX 120, 4 NORTH LOWELL ROAD, WINDHAM NH 03087-0120

March 8, 2011

Senator Jim Rausch
Statehouse Room 124
107 N. Main Street
Concord NH 03301

RE: SB 133 – Request to Oppose Legislation

The Town of Windham Board of Selectmen strongly opposes a property tax exemption for Telecommunications Company's real estate. SB-133 would allow certain business to escape taxation and pass their burden onto others.

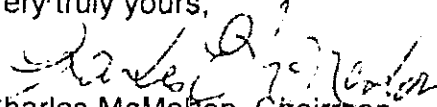
Telephone and cable companies are the only for-profit entities in the state that would get the benefit of a blanket exemption for a class of property that would be taxed if anyone else owned it. These same poles are fully taxable when they're owned by electric companies. Most of the poles in the state are owned jointly by PSNH and FairPoint. PSNH pays property taxes on their share of the pole, but this bill would exempt FairPoint's portion of the pole. This is categorically unfair taxation.

In 1998, the legislature enacted RSA 72:8-a, stating that "all structures, poles, powers, and conduits employed in the transmission of telecommunication, cable or commercial mobile radio services shall be taxed as real estate". A special exemption, RSA 72:8-b, expired July 1, 2010, because many testified to the unfairness of this tax loophole.

New Hampshire's Bill of Rights states "Every member of the community has a right to be protected by it, in the enjoyment of his life, liberty, and property; he is therefore bound to contribute his share in the expense of such protection..."

Telecommunication poles and conduits meet the definition of real estate as fixtures, and are income-producing property. There is no other industry where rental property enjoys a tax exemption. We encourage your vote in opposition to this discriminatory legislation.

Very truly yours,


Charles McMahon, Chairman
Windham Board of Selectmen



City of Nashua
Assessing Department
229 Main Street - Nashua, NH 03060

Angelo Marino
Chief Assessor/GIS Manager

603 589-3040
Fax 603 589-3079

March 24, 2011

The Honorable Beverly Ferrante
Municipal and County Government Committee Members
Legislative Office Building Room 301
33 N. State Street
Concord, NH 03301

RE: Senate Bill 133, relative to reestablishing the exemption from property taxation for telecommunications poles and conduits

Dear Chairman Ferrante and Committee Members:

I write to urge you to oppose Senate Bill 133. The property tax exemption for wooden poles and conduits owned by telecommunication companies expired on July 1, 2010. Senate Bill 133 would reinstate this exemption and remove the ability of cities and towns to tax the poles and conduit of telecommunication companies. Taxation of telecommunication companies' property is merely an issue of fairness and equity.

Contrary to some characterization of this legislation this tax is not new. There is nothing "new" about this tax since electric companies have been paying a tax on poles and conduit for over one hundred years. Removing the exemption merely leveled the field when it comes to taxing assets of both electric companies and telecommunication companies.

The poles and conduit of electric companies is taxed and has been since 1905. Until last year the very same pole if owned by a telecommunications company was exempt from taxation. In many cases, if not all, the pole you see by the side of the road is jointly owned by both an electric company and a telecommunication company. Because of this a tax was levied on one half of the pole, the portion owned by the electric company, but not the remaining half owned by the telecommunications company.

Others will testify in favor of this bill stating that removing the exemption was a way for communities to raise revenue. Again, this is not the case. Equally taxing owners of poles and conduits **does not raise additional revenue**, but merely reapportions the amount of tax every individual taxpayer must pay to their community.

Did the removal of the exemption for poles and conduit of telecommunication companies increase the tax base for communities? Yes, but there is nothing wrong with increasing the tax base when all taxes are apportioned fairly. Allowing cities and towns to tax the full value of all the poles in their jurisdictions will assure that all taxpayers are paying their fair share.

Again, I urge you to oppose this bill and vote against its passage.

Sincerely,

Angelo Marino
Chief Assessor



NO. 1000
Karen A. Mead
900 Elm Street 16th Flr
Manchester, NH 03101
www.FairPoint.com
603-641-1665

Testimony on behalf of FairPoint Communications in Support of Senate Bill 133
Before Municipal and County Government Committee
March 24, 2011

Dear Madam Chair and Committee Members,

Thank you for the opportunity to address you today. I am Karen Mead, Senior Vice President of Operations in Northern New England for FairPoint Communications. I am based out of Manchester, New Hampshire and supervise almost 1600 employees across Maine, New Hampshire and Vermont. My team installs and maintains service for our customers as well as builds the network which includes placing poles, stringing cable and fiber and connecting the electronics needed to provide broadband and voice services.

My team sees firsthand the variety of competitors providing services in New Hampshire. They see businesses and residences that once were FairPoint customers but are now with another telecommunications provider. They see municipalities as well as Competitive Local Exchange Carriers (referred to as CLECs) attaching to our poles and running cable through our conduit and duct systems. Competition is thriving here in New Hampshire. However, this new tax would only be applied to telecommunications companies like FairPoint that own the poles and conduit systems. As employees of FairPoint we are concerned with every extra rule, regulation or tax that is applied inconsistently across the industry which puts us at a competitive disadvantage compared to other telecommunications providers.

We are the local company building out broadband service, employing your friends and neighbors and investing in New Hampshire. This tax places a burden on FairPoint but not on our competitors making it harder for us to compete evenly with other providers. I ask you not to allow this new tax by voting to support and pass this bill. Increasing the cost of doing business for FairPoint could impact jobs and our company's ability to invest in infrastructure.

On behalf of FairPoint employees I would like to leave with you a petition signed by our employees expressing their concern that this new tax could impact their jobs and the opportunity to add new jobs going forward. We ask that you vote to support the passage of SB-133.

Thank you.



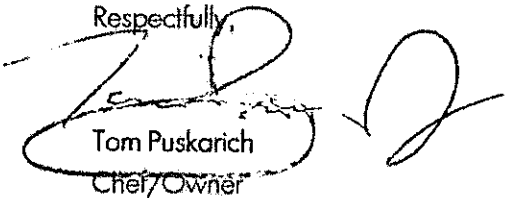
food & drink

March 23, 2011

Honorable members of the General Court:

As the owner of a small business I am always wary of new taxes and fees that could negatively impact my business. I am especially concerned when the tax is levied against an industry that is already heavily taxed and regulated. If Senate Bill 133 is not approved, this tax will be passed along to consumers and businesses. Although not a large dollar figure to the individual, it does represent tax creep and is exactly the kind of taxes many of you were elected not to raise. Please vote to approve SB 133.

Respectfully,



Tom Puskarich
Chef/Owner



Z food & drink
860 Elm Street
Manchester, NH



City of Concord
Assessing Department
City Hall, 41 Green Street
Concord NH 03301
PH (603) 225-8550 – FAX (603) 225-8534

March 22, 2011

Beverly Ferrante, Chairman
Municipal and County Government Committee
State House
33 North State Street
Concord, NH 03301

RE: SB 133-FN

Dear Chairman Ferrante,

SB 133-FN, if passed, would provide for Fairpoint Communications' underground conduit systems and telephone poles to be tax exempt yet again. The property tax exemption for wooden poles and conduits expired on July 1st, 2010, and Fairpoint has yet to pay any taxes on their poles and conduit, a fact that has been true since 1990.

During that same period, electric utilities paid taxes, and continue to pay taxes, on their poles as real property.

As this bill is being pushed as fighting against a 'new tax', we implore that the committee not fall for that patently untrue and unfair line of reason. Every private business pays property taxes. In this particular scenario, the reality is that for decades the communications industry has been untaxed for the same poles for which the electric companies have been taxed for their half of the poles.

In fact, telecommunications companies pay either personal or property taxes on telephone poles in 48 other states.

The impact (estimated based on Fairpoint's 2009 Annual Report) to the State's taxpayers includes losing the tax revenue on a taxable value of \$965,420,000;; the value on which every other taxpayer in this state will continue to pay thru an increase in their own property tax.

Besides the 'new tax' myth being raised by the telecommunications industry representatives, other misleading / incorrect / false claims include, but not limited, to:

- Assuming their fair share of taxes means that the telecommunications industry will have to pass this cost of doing business onto the elderly and low-income customers.

- FACT: Much of the cost will be passed to cable, electric, and wireless companies who attach equipment to telephone poles;

These companies will pass their costs onto their landline, wireless, cable and electric customers, spreading out the costs.

Regardless of how the cost is borne, property taxation is a cost of doing business for all businesses – why should the telecommunications industry be exempt?

- Exemption for the telecommunications industry is required to level the playing field.
 - FACT: It is every taxpayer (individuals and other companies) who need a fairer, level playing field; certainly not the telecommunications industry.

Concord opposes SB 133-FN and asks that you vote this proposed legislation as inexpedient to legislate.

Sincerely,

Kathryn H. Temchack
Director of Real Estate Assessments

CC: Municipal & County Government Committee Members
Thomas Aspell, Concord City Manager
Judy Silva, Local Government Center



Date: March 24, 2011

TO: Members of the House Municipal and County Government Committee

FROM: Hanover Board of Selectmen

SUBJ: Senate Bill 133 -- Reinstatement of Property Tax Exemption for Telecommunication Poles and Conduits

I am writing on behalf of the Hanover Board of Selectmen to urge you to vote against SB 133, which would reinstate the property tax exemption for telecommunication poles and conduits.

During the 2010 Legislative session, Hanover supported elimination of the same property tax exemption and we continue to support that position. Cities and towns have been devastated by cost downshifts and revenue cuts over the past two years and we are clearly in store for more of the same over the next two years. One bright spot last year was the Legislature's refusal to extend the pole and conduit property tax exemption. Governor Lynch's current budget proposes over \$200 million in additional cost shifting and lost revenue. Killing the pole exemption is one small thing Senators can do for their municipalities and their taxpayers. The benefit to municipalities would be small -- estimated at between \$3 and \$10 million -- but the gesture would be huge.

Specifically, Hanover favored and continues to favor elimination of this property tax exemption because:

- Telephone and cable companies are the only for-profit entities in New Hampshire that get the benefit of a blanket exemption for a class of property that would be taxed if someone else owned it. To honor such exemptions, particularly in a property tax dependent state, seems particularly unfair. The identical poles are fully taxable when they are owned by electric companies. The poles in Hanover are generally owned jointly by National Grid and FairPoint. National Grid pays property taxes on its half, but FairPoint's half is exempt. Obviously, the only purpose for this exemption is to provide a favor to an influential industry -- an industry which, time and time again based on our direct observations when we have testified on behalf of Hanover regarding telecommunications issues of real concern to Hanover residents and businesses -- has demonstrated it has a very powerful lobby in Concord.

Senator Matthew Houde

March 4, 2011

Page Two

- Telephone poles are subject to property taxes in 48 other states.
- The claim frequently made by FairPoint, that it would have to pass the cost of the tax on to its landline customers, is false. FairPoint has the ability to pass the cost on to its internet customers, as well as to the cable, wireless, and electric companies that pay fees to FairPoint for attaching equipment to its poles.
- The claim now being advanced by the telecommunications industry--that eliminating the exemption results in a "new tax" -- is specious. This "new tax" is one that everyone else has always paid. Eliminating the exemption merely recognizes that for years the state has been subsidizing a few big businesses at the expense of the rest of the taxpayers.

We appreciate your thoughtful consideration of this issue and hope you will vote against SB 133.

cc: Board of Selectmen
Sharon Nordgren
Bernie Benn
David Pierce
Beatriz Pastor

March 24, 2011

Dear Madam Chair and Committee Members,

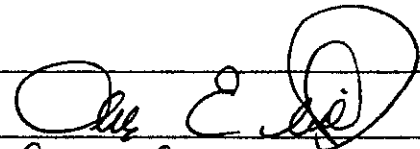
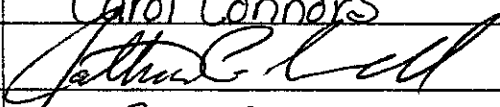
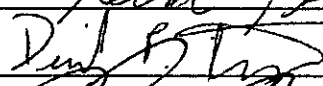
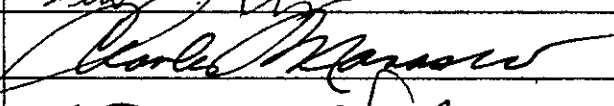




We the undersigned employees of FairPoint, Communications, sign this letter in support of SB 133. This bill will re-establish the property tax exemption for telecommunications poles and conduits.

The pole tax is a new tax to be levied only on landline companies like ours - the local telephone providers and our customers. It would put FairPoint at a competitive disadvantage.

This tax would significantly impact our company. We are concerned that this would negatively affect our jobs and our company's ability to invest in infrastructure.

We urge you to pass SB 133.

Thank you for your consideration.

Joseph Tibbetts	
Carol Connors	Carol Connors
JONATHAN CORNWELL	
Keith Brain	Keith Brain
David Turner	
CHARLES MARASCO	
DIANE WALL	Diane Wall
COLLEEN O'KEEFE	Colleen O'Keefe
Steven Spencer	
	 51 FRANCISCO WAY NOTHINGHAM NH
Karen Pepin	Karen Pepin
Susan Savoia	Susan
Christopher W. Sheard	Christopher W. Sheard
Gail Merrill	Gail Merrill
Gerard Demers	
Charlie Buffum	Charlie Buffum

Adam Clark	Adam Clark
Kathy Gracia	Kathy L. Gracia
Lisa Rossetti	Lisa M. Rossetti
Howard Peck Jr.	Howard Peck Jr.
Kelly Grimm	Kelly Grimm
JANET BATES	Janet Bates
James McTAGSART	James McTaggart
Roy DUKKER	Roy DUKKER
Don S. Dyer	Don S. Dyer
BEVERLY HEIKMAN	Beverly Heikman
Ismael Rodriguez, Jr.	Ismael Rodriguez Jr.
Jose A. Nieves	Jose A. Nieves
Richard M ^c Carthy	Richard M ^c Carthy
Betty Simoneau	Betty Simoneau
YanLi Jia	YanLi Jia
Carman Alenson	Carman Alenson
KELLY PASTOR	K. Pastor
Lara Davis	Lara Davis
Christi Flynn	Christi Flynn
DAVID CAIALE	David Caiale
RUTH WHITMOURN	Ruth Whitmourn
Susan Maiocchi	Susan Maiocchi
DONNA POERTNER	Donna Poertner
Dorothy Forand	Dorothy Forand

March 24, 2011

Dear Madam Chair and Committee Members,

We the undersigned employees of FairPoint Communications, sign this letter in support of SB 133. This bill will re-establish the property tax exemption for telecommunications poles and conduits.

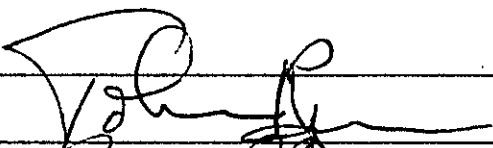
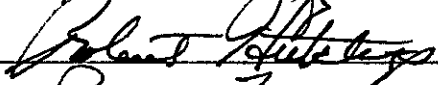
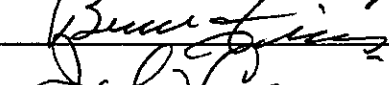
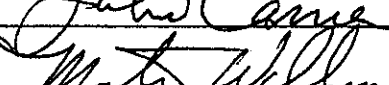
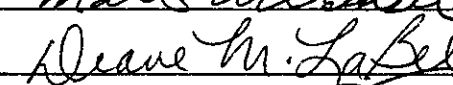
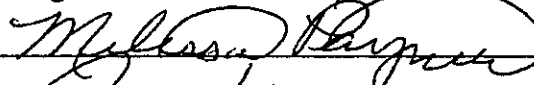
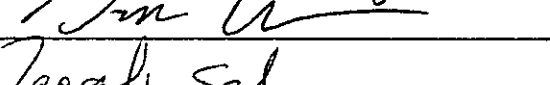





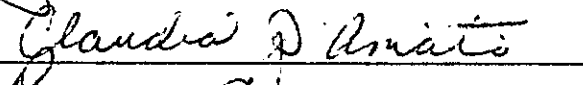
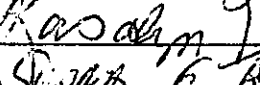
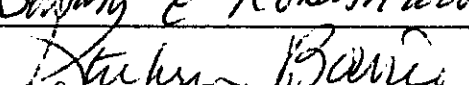
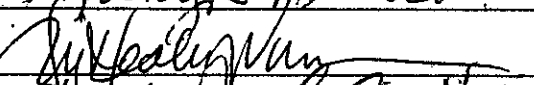

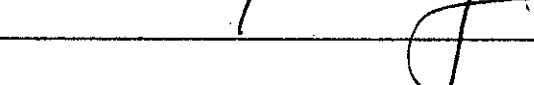



The pole tax is a new tax to be levied only on landline companies like ours - the local telephone providers and our customers. It would put FairPoint at a competitive disadvantage.

This tax would significantly impact our company. We are concerned that this would negatively affect our jobs and our company's ability to invest in infrastructure.

We urge you to pass SB 133.

Thank you for your consideration.

DERBIE D'ENTREMUNT	Ally Dett
Pam Hayes	Pam Hayes
Laura Talbot	Jane Talbot
Linda Collings	Linda Collings
JANE BARRY-QUINNEY	Jane Barry Quinney
Joshua Sobozenski	Jim Sobozenski
Priganka Bachwal	Priganka Bachwal
Beth Duffin	Beth Duffin
Nicole Darling	Jason Dano
David Reynolds	David Reynolds
THOMAS R. CHAGNON	Thomas R. Chagnon
James Reyn	James Reyn
Kevin Burns	Kevin Burns
Eric Ebinger	Eric Ebinger
KENT HOWARD	Kent Howard
MICHAEL WURDACK	Michael Wurdack

JOHN RYAN	
Robert Hutchings	
BRUCE FRIZZLE	
JOHN CARRIER	
MARTIN WILKINSON	
DIANE M. LABELLE	
Melissa Parzyca	
Don Labonte	
JACQUELINE SCHONEMANN	
KENDALL STAPLEY	
Dan Moretto	
GIRVANI HENDRICKS	
Sean Finnegan	
Laura Scafati	
Jessica Araniz	
Claudia Di Amato	
Rosalyn Lisaman	
Susan Roushew	
Kathryn Barrie	
Justfealey Wurn	
Christine McCarthy	

March 24, 2011

Dear Madam Chair and Committee Members,



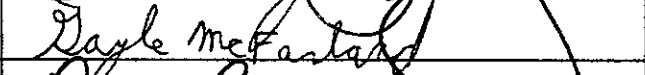
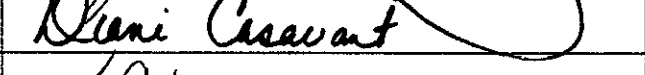

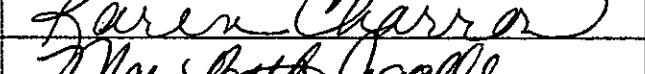


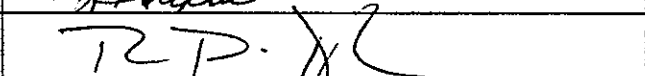
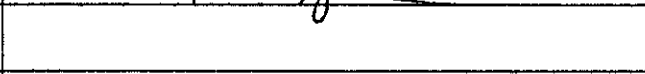
We the undersigned employees of FairPoint Communications, sign this letter in support of SB 133. This bill will re-establish the property tax exemption for telecommunications poles and conduits.

The pole tax is a new tax to be levied only on landline companies like ours - the local telephone providers and our customers. It would put FairPoint at a competitive disadvantage.

This tax would significantly impact our company. We are concerned that this would negatively affect our jobs and our company's ability to invest in infrastructure.

We urge you to pass SB 133.

Thank you for your consideration.

NAME:	SIGNATURE:
MARIE KING	
Eileen Sasso	
Gayle McFarland	
DIANE CASAVANT	
KATHLEEN DUMAINE	
Karen Charron	
Mary Beth Ingalls	
MARIA ARTIELL	
ELIZABETH L. HACKETT	
RYAN P. TAYLOR	



*Town of
Wolfeboro*

BOARD OF SELECTMEN
Linda T. Murray, Chairman
Sarah M. Silk, Vice Chairman
David A. Senecal
Charles "Chuck" Storm
[REDACTED]

TOWN MANAGER
David W. Owen

March 2, 2011

Hon. Jeb Bradley, State Senator
630 South Main Street
Wolfeboro, NH 03894

RE: S.B. 133—Pole Exemption

Dear Senator Bradley:

The Wolfeboro Board of Selectmen respectfully requests, on behalf of your home town and other New Hampshire municipalities, that you oppose S.B. 133, which would reinstate and make permanent the property tax exemption for telecommunications companies on their poles, wires, and other infrastructure within the community. As you undoubtedly know, the electric utilities in New Hampshire already pay property taxes to municipalities on the value of their poles, wires, etc. In 48 other states, the telecommunications companies also pay property tax on their poles, wires, and other infrastructure in communities. On the basis of equity, we question the need to provide this exemption from taxation to telecommunications companies in New Hampshire that they do not receive in most other states where they operate.

Also, as you are also very aware, Wolfeboro and other New Hampshire cities and towns have been hit with a series of revenue cuts and cost shifting over the past two years, and the Governor's budget proposes over \$200 million in additional cost shifting from the state to municipalities and other revenue cuts. The revocation of the exemption of the property tax on utility poles, wires, and other assets represents a small way to make up for a small part of the loss of other revenues. Without some measure of relief, such as the potential additional tax revenue from telecommunications companies, most of the costs of the State's cost shifting and cuts to municipalities will ultimately be borne by local taxpayers in the form of higher property tax rates.

84 South Main Street Post Office Box 629 Wolfeboro, New Hampshire 03894

(603) 569-8101

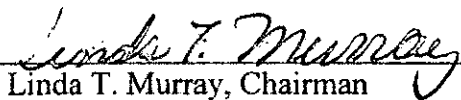
Fax (603) 569-8167

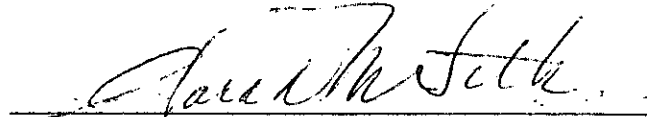


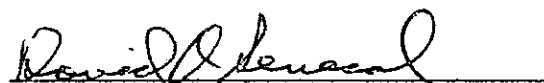
For these and many other reasons too numerous to cover in a short letter, we ask your consideration of your local government's request.

Sincerely,

Wolfeboro Board of Selectmen


Linda T. Murray, Chairman


Sarah M. Silk, Vice-Chairman


David A. Senecal


Charles "Chuck" Storm



Town of Plaistow, New Hampshire

OFFICE OF THE BOARD OF SELECTMEN

Sean R. Fitzgerald, Town Manager

*Plaistow Town Hall
145 Main Street
Plaistow, NH 03865*

*(603) 382-7106 Office
(603) 382-7183 Fax
Email: sfitzgerald@Plaistow.com
Web: www.Plaistow.com*

February 18, 2011

The Honorable Senator Chuck Morse
NH State House
25 Capitol Street
Concord, NH 03301

Re: TOWN OF PLAISTOW OPPOSITION TO POLE TAX EXEMPTION

Dear Senator Morse:

We are writing to express our strong opposition to extending a blanket tax exemption for Telecommunications poles and conduits in New Hampshire. These additional reductions in local property tax revenue will come on the heels of unprecedented losses in state revenues in last year's state budget and in the recent biennium budget proposed last week by Governor Lynch.

Telephone and cable companies are the only for-profit businesses in New Hampshire that get a blanket tax exemption for a class of property that would be taxable if owned by someone else. The identical poles and conduits, when owned by an electric utility, are taxable. Telecommunications poles and conduits are subject to property taxes in 48 states--all except Pennsylvania and New Hampshire. In addition to the operational income that the poles produce, FairPoint and other phone companies receive millions of dollars a year in pole attachment fees, paid by electric, cable, and wireless companies that attach their equipment to the poles. There is simply no principled reason for exempting this class of property from taxation. The exemption is nothing more than a gift from the state to a powerful industry, paid for by municipalities and taxpayers.

The governor and the legislature have stated, correctly, that everyone must "share the pain" in this economic downturn. Municipalities and taxpayers are suffering the effects of tens of millions of dollars per year in reduced state funding and additional costs because of state budget decisions last year and this year. It is unconscionable that, at the same time, anyone would consider extending a tax exemption for one industry simply because of its political influence. Although eliminating the exemption would come nowhere close to offsetting the lost revenue and additional costs that municipalities are dealing with, it would be a very small step in the right direction.

I. BACKGROUND

SB 492, as amended by the Senate, would extend the property tax exemption for wooden poles and conduits owned by telephone companies until 2012 and establish a legislative committee to study the exemption. Telephone companies have paid no tax on these poles and conduits since 1990.

II. HISTORY

Until 1990, the state assessed a personal property tax on telephone poles and conduits. The tax was paid to the state. During the same period, and continuing to the present, poles and conduits owned by electric utilities have been taxed as real property; they pay property taxes to the municipalities in which the poles and conduits are located. See RSA 72:8.

In 1990, the state repealed the personal property tax on telephone poles and conduits and enacted RSA 82-A, the communications services tax (CST), a tax (now 7 percent) on the gross charges for telecommunications services. This is a tax on the customer, not on the phone company. After the repeal of the personal property tax on telephone poles and conduits, some municipalities began trying to tax the poles and conduits as real property. In 1996, the New Hampshire Supreme Court ruled that they could not do this, because the poles and conduits were personal property, not real property.

In 1998, the NH legislature enacted RSA 72:8-a, stating that "all structures, poles, towers, and conduits employed in the transmission of telecommunication, cable or commercial mobile radio services shall be taxed as real estate in the town in which such property or any part of it is situated." However, at the same time, the legislature enacted RSA 72:8-b, which gave a temporary exemption to "any conduit that is not part of a building and any whole or partial interest in wooden poles, employed in the transmission of communications that are subject to the [CST]." That exemption was to last as long as the rate of the CST remained above 4.5 percent, but was to expire, in any event, on July 1, 1999.

The "temporary" exemption under RSA 72:8-b was extended in 1999, 2001, 2003, 2004, and 2005. In 2003 the reference to the rate of the CST was eliminated, so the exemption remains in place as long as the legislature continues to extend it, regardless of the CST rate.

III. THE CURRENT LAW

Under the current statutory scheme in New Hampshire, poles and conduits owned by electric utilities are fully taxable as real estate in the municipality in which they are located. That has been the law at least since 1905. Identical poles and conduits owned by telephone companies are exempt from any taxation. If a pole is jointly owned by an electric company and a telephone company, the electric company's share is taxed, and the telephone company's share is exempt.

IV. TAXATION OF TELEPHONE POLES IN OTHER STATES

According to a survey done by the legislature in 2003, 48 states tax telephone poles as either real or personal property. In some of those states the tax is imposed at the state level, but in many of those cases, the state shares the revenue with municipalities. Only two states—New Hampshire and Pennsylvania—do not tax the poles at all.

V. POLE OWNERSHIP AND USE

According to a legislative study committee report issued in 2004, at that time Verizon used 505,000 poles in New Hampshire. Of those, 434,000 were owned jointly by Verizon and the electric utilities; 15,000 were owned solely by Verizon; and 56,000 were owned solely by the electric utilities (with Verizon's equipment attached to them). We understand that these numbers have not changed significantly since then, except that FairPoint has bought Verizon's interest in the poles.

Telephone and electric companies routinely enter into agreements with other users, including cable companies and wireless telephone companies, to place attachments on the poles. They charge pole attachment fees to these users, and are able to recover a portion of the cost of maintaining the poles through these fees.

VI. RESPONSE TO ARGUMENTS FOR CONTINUING THE EXEMPTION

No one disputes that the poles and conduits owned by telephone companies are identical to those owned by electric companies. No one claims there is any principled reason that this class of property should be exempt from taxation. All of the arguments for continuing the exemption are based on a desire to accommodate the telecommunications industry and its customers.

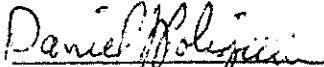
- The cost to telephone customers. The most common argument for continuing the exemption is that if landline telephone companies are required to pay taxes on their poles, they will pass the cost on to their customers, and this will disproportionately harm residents in remote areas who do not have the option to switch entirely to wireless phone service. In reality, no one knows how much of the cost, if any, would be passed on to customers. The phone companies could just as easily pass part of the cost on to the other companies that lease space on their poles. In fact, they would have an incentive to do so, since they are in competition with those companies. Even if all of the cost were borne by landline customers, it is unclear why there would be anything wrong with that. Property taxes are, for every other industry, a cost of doing business. Those costs are borne by customers. That is how business works. When one industry is exempt from property taxes, that burden is shifted to other taxpayers. It makes no sense to require taxpayers to bear one industry's costs of doing business.
- The level playing field. A related argument is that landline phone companies need the exemption to maintain a "level playing field" with wireless companies, because wireless companies operate without poles and conduits, and therefore would escape the tax. However, this issue does not pit landline companies against wireless companies. Representatives of the major wireless companies (as well as the cable companies) have been lobbying for the continued exemption. Presumably this is because the wireless and cable companies recognize that they will bear part of the cost if the landline companies are taxed on the poles. They, in turn, will pass the cost on to their customers. Instead, this issue pits the entire telecommunications industry—all of which benefits from the exemption—against municipalities and taxpayers.

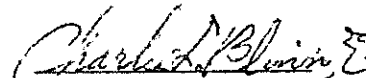
- The “double tax.” Another common argument is that phone companies are already burdened by the CST, and that requiring them to pay property taxes on their poles and conduits would result in a “double tax.” This is nonsense. As stated above, the CST is paid by customers, not by the phone company. The company merely collects the tax and remits it to the state. In this respect, it is identical to the meals and rooms tax, the tobacco tax, the gasoline tax, and—most notably—the electricity consumption tax under RSA 83-E, which is collected by the electric utility, but paid by the customer. Yet no one suggests that restaurants, hotels, convenience stores, gas stations, or electric companies should be exempt from property taxes.
- Some legislators are under the misimpression that phone companies already pay franchise fees or other fees to municipalities. Phone companies do not pay franchise fees. The only fee they pay to municipalities is a one-time fee of ten dollars for a license to install poles in a public right-of-way. The fee is not ten dollars per pole—it is ten dollars for a license to install whatever number of poles the company needs. Conceivably, a company could install a thousand poles along a public road for one ten-dollar fee. Once a pole is installed, no new license (or fee) is required to replace it. Further, no license (or fee) is required to install poles along private roads. Since almost all new installations are related to new subdivisions, in which the roads have not yet been accepted by the municipality, phone companies rarely have to pay a license fee at all.
- “This is not the time.” A number of legislators and lobbyists have stated that “this is not the time” for “a new tax on business.” Of course, this is not a new tax. It is merely the elimination of an irrational, single-industry exemption from a tax that everyone else pays.
- Some legislators have said that they have no choice but to further cut state aid to local governments because they have no options for raising additional state revenues. The options available to the state are not available to local governments, which clearly have few options for raising revenue other than the local property tax.
- Plaistow’s budget, already approved by the Board of Selectmen and Budget Committee is thin and most cannot absorb any additional loss of revenues.
- Further, telephone companies obviously are not the only entities experiencing difficult economic times. The implication of this argument—that telephone companies are struggling while municipalities and property taxpayers are doing fine—is troubling. Eliminating the exemption would provide property tax relief to homeowners and businesses that are currently carrying more than their fair share of the burden.


During these tough economic times, closing ending these loopholes for Telecommunication companies would send a clear message that we can cut spending while protecting the New Hampshire’s Cities and Towns. New Hampshire faces difficult challenges, and we look forward to working together as local and state officials to find solutions that are in the best interests of our citizens.

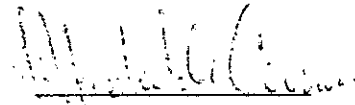
In closing, We urge your strong opposition to extending a blanket tax exemption for Telecommunications poles and conduits in Plaistow.

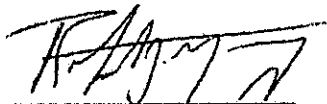
Respectfully,

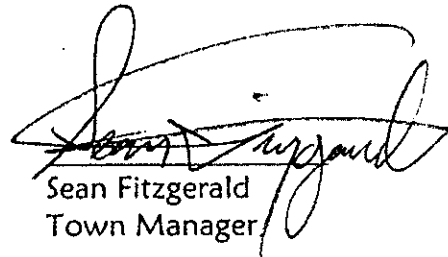

Daniel J. Poliquin
Selectman, Chair

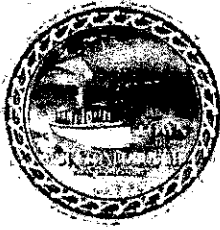

Charles L. Blinn, Jr.
Selectman, V.Chair


John Sherman
Selectman


Michelle Curran
Selectman


Robert J. Gray
Selectman


Sean Fitzgerald
Town Manager



Office of Selectmen
Town of Moultonborough
6 Holland Street - PO Box 139
Moultonborough, NH 03254
(603) 476-2347 * Fax (603) 476-5835

March 7, 2011

The Honorable Jeb Bradley
107 N. Main Street, Room 302
Concord, NH 03301

Re: SB 133 et al

Dear Senator Bradley,

I write on behalf of a unanimous SelectBoard on the matter (s) of SB 133, HB457 and the Governor's proposal to not funding the state "portion" of the Group II (Police & Fire) pension obligation. Should all of these pieces of legislation pass they would collectively require us to raise an estimated \$180,000 in local property taxes raising our local tax rate by 6¢ in our coming fiscal year. We urge you to oppose each one of them. Specifically I point out the following:

- **SB 133:** We believe there is an inherent unfairness in exempting the telecommunications property (poles, conduits and the like) while assessing the other equivalent utilities. One argument that I hear in reinstating the exemption is that this is a new tax. That simply is not true in that these total taxes are already being collectively paid. What is true is that the actual property owner will now pay the taxes that have been shifted to all other payers of real estate taxes. These identical poles – and similar type of equipment – are fully taxable when owned by the electric company. There is an inherent inconsistency in this unequal treatment of equal types of equipment. We urge you to defeat this legislation.

- **HB457:** It has a host of technical problems such as a lack of clarity on when these new rates would take effect and its possible retroactive application. As one example, would we have to amend liens already on record to correct the interest charged at the time of lien from 12% to 6%? As another example, would we need to reimburse those taxpayers that have already redeemed their lien and paid interest at the higher 12% and 18% rate?).

In addition there are a number of other concerns. We have already set our revenue estimates and proposed budget upon which they are based for this Fiscal Year. A lower interest rate will give more taxpayers less of an incentive to pay their real estate taxes in a timely manner. This will create cash flow problems as well as substantially reduce revenues. Even if we assume that more people do not shift to not paying their taxes at this extremely low interest rate and even if we assume that does not create a need for us to enter into revenue anticipation notes we still estimate this loss of revenue will cost us at least \$50,000 per year. That loss simply penalizes all those who pay their taxes on time through either an increased tax rate or reduced services.

March 7, 2011
Page 2

The current interest rates are not so high as to be onerous but sufficiently high enough to motivate people to make timely payment. We urge you to defeat this legislation.

- Governor's Budget: We were enticed to enter our Group II employees into the New Hampshire Retirement System in part by the state's promise to pay a portion of those costs. We understand the state budget crisis of the past two years and have found the wherewithal to deal with the additional costs forced upon us when the state's portion of these costs was reduced to 25%. We had looked forward to the state returning to a cost sharing honoring its original commitment to us.

The Governor's proposal to reduce the state's share to zero could not be further from the action the state should be taking. His proposal will cost us an additional \$80,000 in its first year in addition to the \$30,000 per year we have already had to absorb as a result of the reduction of the state share to 25%. We urge you to defeat this proposed reduction.

We and are fellow communities have had our local operations hard pressed by cost downshifts and revenue cuts in the last two years. We ask that you not visit further such expenses upon our local citizenry.

Sincerely yours,



Carter Terenzini
Town Administrator

CC: BoS

Historic Timeline on Telecom Pole Tax Exemption

1970 Statewide Property Tax on personal property of landline telephone (satellite, wireless did not pay).

1990 CST created. All two-way providers treated equally. Tax on service, not infrastructure.

1990-1996 Municipalities begin taxing telephone companies' personal property. Supreme Court rules that this was unlawful because municipalities can only tax real property. *NET&T Co. v. City of Franklin*, 141 N.H. 449 (1996).

1996-1997 Electric utilities filed abatements because their poles were taxed and telephone poles were not. SB 73 (1997) reclassified telephone poles and conduits as real property and exempted them from the property tax. Supreme Court approves this as constitutional. *Opinion of the Justices*, 142 N.H. 102 (1997).

1998-2003 Several legislative studies review and affirm that tax structure.

2004 Temporary portion of CST made permanent. Change brought rate to 7%. Exemption extended two years.

2005 Exemption extended until 2010.

2010 Exemption repealed effective July 1, 2010

Talking Points on SB 133

1. Local governments have never before had the right to tax telephone poles and conduits. **Thus, this is a new tax.** If this tax is allowed to go into operation as of April 1, 2011 (the first property tax snapshot day after the sunset of the exemption), then the current legislature will be presiding over the beginning of a new tax.
2. The tax is undoubtedly going to be passed on to telephone customers. Compare the aftermath of the 1990 adoption of the CST: the PUC ordered telephone companies to lower their rates to reflect the cost savings from not having to pay the Personal Property Tax. Rates can now be expected to rise as a result of this new tax.
3. The new tax creates an uneven playing field. This tax applies only to communications companies which use wires. Communication providers which do not use wires do not have to pay this tax. Thus, the balance which was created by the CST is destroyed and could result in a competitive advantage for wireless entities due to potential wireline customer rate increases.
4. As more and more consumers go to wireless technologies, fewer and fewer consumers will bear the burden of this tax.
5. As is the case with all taxes, money being used to pay this tax cannot be used for improvement of the business - tasks such as broadband deployment or job creation.
6. This bill has no impact at all on the right of municipalities to tax the use and occupancy of public rights-of-way. That remains unchanged.
7. It is not true, as the municipalities claim, that "a pole is a pole is a pole." Electricity is only delivered one way- over wires. Communications are delivered by various means. That is why the State established a specific type of tax structure for communications services, and it would be foolish to ignore this tax structure as it relates to the subjects of the tax. **A pole involved in one type of tax system is different from a pole involved in another. To say otherwise is to ignore the essential tax characteristic of the pole.**
8. The bottom line here is not that "a pole is a pole is a pole", but rather that "a tax is a tax is a tax."

SB 133 – Re: Pole Tax Exemption

Testimony Outline – House Municipal and County

Government Committee March 24, 2011

- A. Describe the Company – customers, territory, employees, operations, etc.**

Hand out RLEC map

- B. Background**

The Communications Services Tax established in 1990 leveled the playing field among communications providers for tax purposes through the taxation of retail communications services as opposed to the plant and equipment used to provide the service as was the case in the successor tax mechanism, the Railroad and Public Utilities Tax. The CST, currently at 7%, is applied to revenue generated by the customers of communications providers, who then turn this revenue over to the State. In 2010 for example, the CST generated approximately \$185,000 in revenues for the State from Granite State Telephone customers. Prior to the CST, the State generated revenue from the Railroad and Public Utilities Tax which was assessed on various personal property of the telephone utility which included poles and conduits. In 1989 our Company paid approximately \$120,000 to the State for that tax. In 1998 RSA 72:8-a was enacted which reclassified telecommunications wooden poles and conduits as real estate rather than personal property. Concurrently RSA 72:8-b was enacted which exempted telephone company owned poles and conduits from any property taxes as long as there was a surcharge on the CST. After passage of the 7% CST base rate and the elimination of the surcharge in 2003, the exemption was extended for 2 years in 2004, and in 2005 the exemption was extended to 2010. The exemption was repealed in 2010. SB 133 now before you would put the pole tax exemption back in place.

- C. Our Company and the other Small Incumbent Local Exchange Carriers support SB 133 for the following reasons:**

1. **This new tax effective last year needs to be repealed. How anyone can say this is not a new tax is beyond me. We have never ever paid taxes at the local level for these poles. It is absolutely a new tax on our Company. I've also heard proponents of the tax say that until last year only 2 states, New Hampshire and Pennsylvania did not tax the poles and now only Pennsylvania. Don't be swayed by that argument, New Hampshire has long stood out as the state without a sales or income tax, so standing alone isn't necessarily a bad thing. While it may in some circumstances be instructive to make comparisons like that, it is certainly does not dispose the issue.**

2. **This tax is not a relatively small amount of expense for Companies as some parties would have you believe. At the recent hearing in the Senate Ways and Means Committee on this Bill, I heard one proponent of the tax talk about its impact on FairPoint indicating that it would "simply be lost in the rounding". I seriously doubt FairPoint supports that view. We certainly don't. In our case, the impact of this tax assuming net book value (\$3.8 M) is a good proxy for valuation would mean an additional \$68,000 of expense per year. That figure essentially doubles our current property taxes we pay to our local communities for our land and buildings. This 100% increase in property taxes is additional expense the Company would seek to have reimbursed through an increase in basic local telephone rates [Review history of CST on rate impact]. Based on the \$68,000 estimate, an approximate 5% increase in rates would result. In these economic times, I doubt our customers would**

perceive this increase as not a big deal --- It certainly is a big deal to our Company and is by no means "lost in the rounding".

3. I've also heard arguments by proponents of the tax who say much of the cost will be passed on to those like cable companies who attach to our poles. This is absolutely not true. When you utilize the prescribed formula set by the FCC for determining the appropriate rate for pole attachments, out of that \$68,000 I mentioned, less than 1% or about \$623 would go into the formula as a reimbursable expense. This is hardly an automatic flow through as some proponents would have you believe.
4. This is an anti-business tax that affects our ability to expand our services and network capabilities, especially in the very important areas of broadband deployment and creation of jobs.
5. Importantly, this bill in no way impacts the right of municipalities to tax the use and occupancy of public rights-of-ways. That local taxation authority remains in place.
6. It is not true, as the municipalities claim, that a "pole is a pole, is a pole." Electricity is only delivered one way over wires. Communications are delivered by various means and that is why the state established a specific type of tax structure for communications services through the CST. A pole involved in one type of tax system is different from a pole involved in another. To say otherwise ignores the essential tax characteristics of the pole.

In 1997 the New Hampshire Supreme Court rendered an opinion which stated the apparent disparity in tax treatment of telephone poles and conduits was within the law and that similar properties can be classified separately for tax purposes by the legislature (Opinion of the Justices, 142 N.H. 102, June 23, 1997).

- 7. In summary, the bottom line is not that a pole, is a pole, is a pole but rather a tax, is a tax, is a tax. We believe strongly this tax is anti-business and counter to the interests of our Company and its customers. We therefore respectfully urge your support of SB 133.**

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VT. MINORITY: INEXPEDIENT TO LEGISLATE

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Robert W. Brundige for Municipal and County Government: This bill would allow a municipal-
lien on a real property owner's interests in any property insurance proceeds that are a
the damage or destruction of that property owner's real property located in the municipality.
The impetus for the filing of this bill was Berlin's experience of an owner of a damaged or destroyed
collecting the insurance payment, leaving the city and the destroyed building behind causing
an unsightly and hazardous mess that becomes the city's responsibility to clean up. A subcom-
mittee looked at the implications of this bill and determined that it had statewide ramifications and
unintended consequences. Some of the issues were: when and how the municipality would place the
a blanket lien for all buildings in the municipality; who would determine the cost of re-
pair or razing, the owner or the municipality; and how and when the lien would be released.
On these questions, the committee does not support SB 69 and recognized that implementing a
downtown development project is a better answer to this situation. The committee has retained
a bill that deals with revitalization of downtown areas and the committee will consider other avenues
that municipalities deal with damaged or destroyed buildings. Vote 12-3.
The committee report adopted.

VT. MINORITY: INEXPEDIENT TO LEGISLATE
...-A-L, increasing certain motor vehicle registration fees and appropriating the funds for
government records management programs. **MAJORITY: INEXPEDIENT TO LEGISLATE**
MINORITY: OUGHT TO PASS.

Robert W. Brundige for the Majority of Municipal and County Government: Currently town
clerks receive one dollar to cover the costs of document preparation and administration
for motor vehicle registrations and have since the New Hampshire statute was enacted in 1983.
The local motor vehicle registration fees and the clerk preparation fee of \$1.00 are deposited
in the municipality's general fund budget. In the 2001 session, the legislature created the local
government records management improvement program and the position of the local government
records manager, but it did not fund either one. The records to be preserved include all the
municipality's forms and information, not just motor vehicle registrations, as determined by the
Municipal Records Board. SB 180 is a proposal to increase the administrative cost by one dollar,
with fifty cents would be sent to the state, to fund the New Hampshire local government records
management improvement fund established under RSA 5:48 and the other fifty cents would re-
main with the municipality to support local records management. The majority of the committee
determined that by sending half of the increase to the state, in essence making it accruable to the state,
the fifty cents would need to be deposited in the highway fund, based on Part II, Article 6-a of the
New Hampshire Constitution and any increase locally would need to offset increases in registration
fees for records management. RSA 162:152 allows for a fee in support of preparation of docu-
ments dealing with motor vehicle registrations. The committee recognizes that it is imperative that
these records be preserved and maintained and this action benefits the whole community. However the
cost should be appropriated at the local level utilizing the normal budget process, not by increas-
ing the cost of registering a motor vehicle. Vote 10-5.

Jessie L. Osborne for the Minority of Municipal and County Government: The minority
believes that the State of New Hampshire has mandated that municipalities preserve and maintain
records. RSA 261:153 enables the town or city clerk to receive a fee of \$1 for the preparation of
an application for the registration of a motor vehicle. This fee is not currently being used for
records management by most municipalities; rather it is deposited in the general fund. SB 180 would
provide an additional \$.50 to be collected for the specific purpose of record management and
records preservation programs at the local level and an additional \$.50 to be sent to the state for
records management. Testimony clearly indicated that many municipalities do not have sufficient
funds to preserve and maintain records properly. SB 180 addresses the critical need to fund local
records management programs.

... Patten spoke in favor.
... minority committee report adopted.

VT. MINORITY: INEXPEDIENT TO LEGISLATE
...-FN, extending the local property tax exemption for wooden poles and conduits. **MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE.**

Shawn N. Jasper for the Majority of Ways and Means: Prior to 1990, telephone poles and con-
duits, owned by the regulated wireline telephone companies, were taxed only at the state level, never

at the local level. In 1990, and because of the potential growth in cellular service (cellular service is not regulated telephone service), the tax on poles and conduits was repealed and replaced with the Communications Services Tax (CST). The CST taxes all two way communications regardless of the technology used to deliver the telephone service. As a result of the repeal of the state pole tax the regulated wireline telephone companies experienced lower tax expenses and the Public Utilities Commission immediately ordered them to lower their rates for service. The property tax exemption was created in 1998 to settle electric company tax abatement efforts and every two years the legislature has voted to continue the exemption, reasoning that as long as there was a CST, a partial tax on just poles and conduits would be unfair to the industry and its customers. The majority of the committee believes that if local communities are allowed to begin taxing poles and conduits, the Public Utilities Commission will allow telephone companies to pass along this charge to customers through the form of a charge on just the regulated wireline telephone bill. The cost of a new tax is unknown, as is the value of poles and conduits at the community level, but the new tax could range from \$10 to \$40 per phone line, per year. As an example, if the new property tax amounted to \$20 million dollars, then with 600,000 regulated wirelines, the charge per wireline could be approximately \$35 dollars per year per line. It is clear that the breakdown of property assessments, the increases in telephone bills for the average wireline user and home owner would far outweigh any potential local property tax savings. Vote 12-9.

Rep. Howie Lund for the Minority of Ways and Means: The minority felt strongly, having heard well-founded testimony supporting the rights of towns and municipalities to tax poles and conduits. The legislature has provided numerous multiple year extensions exempting the telecommunication businesses from this tax. The majority of the states in the US assess a tax on poles and conduits. Some states call it a personal property tax; other states call it a real property tax. Some states tax the items locally and some states tax at the state level. Initially, New Hampshire's Communications Service Tax (CST) was a substitute for the personal property tax that the telecommunication companies were paying. In the latter part of the 1990's the state granted a tax exemption to all telecoms from having to pay a tax on their poles and conduits. The CST is a consumer based tax collected by the telecommunication companies and paid to the state in the same manner as the rooms and meals tax is collected by restaurants and motels from the consumers. Restaurants, motels and every other for profit business in this state must pay taxes on all of their real estate. The electric utilities pay a local property tax on their poles and conduits. It has only been the telecommunication industry that has had this unique exemption.

Reps. Lund, Butynski and Pratt spoke against.
 Rep. Christine Hamm spoke in favor.
 Reps. Jasper and Major spoke in favor and yielded to questions.
 Rep. Major requested a roll call; sufficiently seconded.
 The question being adoption of the majority committee report.

YEAS 255 NAYS 109

YEAS 255

BELKNAP

Allen, Janet
 Flanders, Donald
 Pilliod, James
 Tilton, Franklin
 Whalley, Michael

Boyce, Laurie
 Heald, Bruce
 Rosen, Ralph
 Tobin, William

Clark, Charles
 Millham, Alida
 Russell, David
 Veazey, John

Fitzgerald, James
 Nedeau, Stephen
 Thomas, John
 Wendelboe, Fran

CARROLL

Ahlgren, Christopher
 Dickinson, Howard
 Merrow, Harry

Babson, David Jr
 Knox, J David
 Patten, Betsey

Buco, Thomas
 Martin, James
 Stevens, Stanley

Chandler, Gene
 McConkey, Mark

CHESHIRE

Dexter, Judson
 Hogancamp, Deborah
 Robertson, Timothy

Dunn, J Timothy
 Hunt, John
 Sawyer, Sheldon

Emerson, Susan
 Pelkey, Stephen

Foote, Sheila
 Roberts, Kris

Jeffrey
 Ralph
 James
 Claudia
 Jane
 Honore Casey
 Cynthia
 Larry
 Carolyn
 Carlos
 Ryan
 Peyton
 William
 Pamela
 Irene
 Lori
 Pamela
 Cindy
 Joan
 Kathleen
 Jordan
 Candace
 Barbara
 David
 James
 James
 Robert
 Dennis
 Court, David
 Harriet
 Kimberley
 John
 Bob
 James
 Karen
 Rogers
 Norman
 Terie
 Anne
 James

SB 11-FN, extending the local property tax exemption for wooden poles and conduits. MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE.

Rep. Shawn N. Jasper for the Majority of Ways and Means: Prior to 1990, telephone poles and conduits, owned by the regulated wireline telephone companies, were taxed only at the state level, never at the local level. In 1990, and because of the potential growth in cellular service (cellular is a non-regulated telephone service), the tax on poles and conduits was repealed and replaced with the Communications Services Tax (CST). The CST taxes all two way communications regardless of the type of technology used to deliver the telephone service. As a result of the repeal of the state pole tax in 1990, the regulated wireline telephone companies experienced lower tax expenses and the Public Utilities Commission immediately ordered them to lower their rates for service. The property tax exemption was created in 1998 to settle electric company tax abatement efforts and every two years since, the legislature has voted to continue the exemption, reasoning that as long as there was a CST, an additional tax on just poles and conduits would be unfair to the industry and its customers. Current law calls for the exemption to expire in June of 2006 and this bill extends the exemption until 2010. A majority of the committee believes that if local communities are allowed to begin taxing poles and conduits, the Public Utilities Commission will allow telephone companies to pass along this new tax to customers through the form of a charge on just the regulated wireline telephone bills. The amount of a new tax is unknown, as is the value of poles and conduits at the community level, but recovery of the new tax could range from \$10 to \$40 per phone line, per year. As an example, if the new local property tax amounted to \$20 million dollars, then with 600,000 regulated wirelines, the additional charge per wireline could be approximately \$35 dollars per year per line. It is clear that due to the breakdown of property assessments, the increases in telephone bills for the average wireline business and home owner would far outweigh any potential local property tax savings. Vote 12-9.

Rep. Howie Lund for the Minority of Ways and Means: The minority felt strongly, having heard well-founded testimony supporting the rights of towns and municipalities to tax poles and conduits. The legislature has provided numerous multiple year extensions exempting the telecommunication businesses from this tax. The majority of the states in the US access a tax on poles and conduits. Some states call it a personal property tax; other states call it a real property tax. Some states tax the items locally and some states tax at the state level. Initially, New Hampshire's Communications Service Tax (CST) was a substitute for the personal property tax that the telecommunications companies were paying. In the latter part of the 1990's the state granted a temporary exemption to all telecoms from having to pay a tax on their poles and conduits. The CST is a consumer based tax collected by the telecommunication companies and paid to the state in the same manner as the rooms and meals tax is collected by restaurants and motels from the consumer and paid to the state. Restaurants, motels and every other for profit business in this state must pay taxes on all of their real estate. The electric utilities pay a local property tax on their poles and conduits. It has only been the telecommunication industry that has had this unique exemption.

Reps. Lund, Butynski and Pratt spoke against.

Reps. Christine Hamm spoke in favor.

Rep. Jasper and Major spoke in favor and yielded to questions.

Rep. Major requested a roll call; sufficiently seconded.

The question being adoption of the majority committee report.

YEAS 255 NAYS 109

the entire race to bet, merely a few second snippet, the end of the race. Like with a slot machine, one could play several machines at once. A few years ago, there was talk of doing this without legislative approval, but the idea was not approved. In fact, the Wyoming Supreme Court, ruling on a similar attempt, noted, "We are not dealing with a new technology here, we are dealing with a slot machine that attempts to mimic traditional pari-mutuel wagering...although it may be a good try, we are not so easily beguiled." If, in fact, such slot machines are a good idea, they should not be limited to the tracks as is done in this bill. The majority of the committee does not believe this is a good idea. Charitable games of chance are not affected at all by this bill; they would continue to be allowed, including at the three tracks. **Vote 14-5.**

SB 492-FN-L, extending the local property tax exemption for wooden poles and conduits. MAJORITY: IN-EXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS WITH AMENDMENT.

Rep. Mary Beth Walz for the **Majority** of Local and Regulated Revenues: This bill would extend the property tax exemption for wooden poles and conduits owned by the telephone companies until 2012. In 1998, the legislature enacted RSA 72:8-a stating that poles and conduits shall be taxed as real estate. At the same time the legislature enacted a temporary exemption for any pole or conduit owned by a telecommunications company. That "temporary" exemption has been extended five times. The majority does not believe there should be a sixth extension. Under current law, the value of poles and conduits owned by electric companies are fully taxed by the cities or towns where they are located. Identical poles and conduits owned by the telephone companies are exempt from property taxes. Poles and conduits jointly owned by electric companies and telephone companies are taxed on the electric company's share while the telephone company's share is exempt from taxation. The majority believes that identical properties should be treated the same, regardless of the ownership of the property. The phone companies argue that they should not have to pay property taxes on poles and conduits because they pay the communications services tax. But the reality is they do not pay that tax, the customers do. That tax is passed through to the customers in its entirety and appears as a separate line on phone bills. The phone company merely collects the tax and passes it on to the state. This is similar to the consumption tax collected by the power companies. That, too, is a direct tax on the consumers that appears on their bills. In a similar manner, it is collected by the electric companies and passed on to the state. Some have suggested that this is not the best time to end this exemption because the largest of the phone companies is currently in bankruptcy. However, this is just the latest in a long line of reasons put forth by the telephone companies to justify their special treatment. This may, in fact, be the best time to end this exemption since FairPoint will be returning to the marketplace free from much of its previous debt. FairPoint will write off a billion dollars in debt. The three million dollars in taxes that they will pay will not have a noticeable impact on the company. Some have suggested that this tax will just be passed on to consumers. This ignores the fact that both the power companies and the phone companies rent space on their poles to the cable companies and the wireless companies. It is a reasonable assumption that the public utilities commission would demand that all customers of the phone companies, including the cable and wireless companies, share the tax burden. This bill also includes another study of this issue. This exemption has been studied numerous times. The most recent study in 2004 was quite extensive. It is difficult to believe that there is anything else to be learned by yet another study. The ending of the exemption will, for the first time, create fairness for those towns where the utility poles are owned in whole or in part by the telephone companies. Presently, some communities get a tax benefit from the existence of the poles in their rights of way, while other communities get nothing. This means there is a shifting of the tax burden from FairPoint to these local taxpayers. Those communities where the phone companies own the poles and conduits in whole or in part will finally be on equal footing with all other communities in the state in their ability to tax this real property in their communities. At a time when many communities are struggling with reduced revenues, this will be a small but welcome addition to town coffers. **Vote 15-4.**

Rep. Peyton B Hinkle for the **Minority** of Local and Regulated Revenues: Until 1990, the state assessed a personal property tax on telecommunications poles and conduits. This tax was paid to the state. In 1990, the state enacted a communications service tax (CST) instead and repealed the personal property tax so that all communications service would be more fairly taxed. Some municipalities then began trying to tax poles and conduits as real property. In 1996, the NH Supreme Court ruled they could not do this because the poles and conduits were personal property, not real property. So you can't have it two ways- personal property one time and real property another. In the process of extending this exemption, the Senate, in 1997, requested an opinion from the NH Supreme Court as to whether such an exemption would violate the state constitution. In reply, the court gave the opinion that the legislature has the power to grant reasonable exemptions from taxation, and that an exemption to the proposed tax was just and valid. Thus, it is within the power of the legislature to make poles and conduits exempt from a property tax. In 1998, the legislature enacted RSA 72:8-a, which taxed all telecommunications poles, towers, conduits as real estate. At the same time, the legislature passed RSA 72:8-b which exempted poles and conduits from the tax as long as the CST remained above 4.5% (it is now at 7%). The exemption was to expire in July of 1999. This exemption has been studied and extended five times since then. In October of 2004, a legislative committee established to study the exemption concluded that local communities have never had taxing authority over poles and conduits, and recommended that the exemption



HOUSE COMMITTEE RESEARCH OFFICE

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Nancy LeVinus, Committee Researcher
(603) 271-3385
Nancy.LeVinus@leg.state.nh.us

TO: Representative Beverly Ferrante, Chair
House Municipal and County Government Committee

FROM: Nancy LeVinus, Committee Researcher
House Committee Research Office *Nancy*

DATE: March 21, 2011

RE: SB 133 relative to reestablishing the exemption from property taxation for telecommunication poles and conduits

You had requested background information relative to the legislative history of the Communications Services Tax (CST) (RSA 82-A) as it relates to the taxation of telephone poles and conduits. Detailed legislative history is contained in the attachments herein.

BRIEF SYNOPSIS

The passage of the Communications Services Tax and repeal of the state tax on telephone company personal property in 1990 triggered inquiries from municipalities regarding their ability to tax poles and conduits (personal property) as well as land and buildings (real property). Poles and conduits were designated as real property in 1997 with the passage of HB 707, Chapter 304. However, this bill specifically exempted from the local property tax the poles and wires of telecommunications providers who were subject to the Communications Services Tax. This exemption was set to expire in 1999 and was extended in 1999 (Chapter 163:7), 2001 (Chapter 158:2), 2003 (Chapter 270:8), 2004 (Chapter 35:1) and 2005 (Chapter 146).

The most recent legislation to extend the exemption, SB 492 from 2010, was voted Inexpedient to Legislate (222-129) and subsequently Indefinitely Postponed (188-154). SB 492 would have extended the exemption for telecommunication wooden poles and

conduits under RSA 72:8-b from municipal property taxation until 2012. The exemption expired July 1, 2010.

SB 133 proposes to re-establish the exemption for telecommunication poles and conduits, to not be considered real estate, on a *permanent* basis, effective July 1, 2010.

Majority and Minority Committee Reports from SB 492 are attached and provide a comprehensive overview of the legislative debate and the history of the taxation of this property.

Study Committees on this topic were created in 2003 and 2004. I have attached copies of those reports and letters to the editor from the House Chairman of those committees and a Senator outlining the debate in 2004. These reports and letters highlight the legislative actions and debates since 1990. I have also included reports from Senate Research detailing the legislative history from 1990-2003. I have included an excerpt from *New Hampshire Practice* detailing court actions related to municipal taxation of this property. Letters from the Commissioner of the Department of Revenue Administration and Chairwoman of the House Ways and Means Committee from 1990 illustrate the initial questions related to the passage of the CST.

Please let me know if I can provide additional information.

The following committee majority and minority reports from 2010 outline the recent history in detail:

House Record No. 31, April 16, 2010

SB 492-FN-L, extending the local property tax exemption for wooden poles and conduits.

MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS WITH AMENDMENT.

Rep. Mary Beth Walz for the Majority of Local and Regulated Revenues: This bill would extend the property tax exemption for wooden poles and conduits owned by the telephone companies until 2012. In 1998, the legislature enacted RSA 72:8-a stating that poles and conduits shall be taxed as real estate. At the same time the legislature enacted a temporary exemption for any pole or conduit owned by a telecommunications company. That "temporary" exemption has been extended five times. The majority does not believe there should be a sixth extension. Under current law, the value of poles and conduits owned by electric companies are fully taxed by the cities or towns where they are located. Identical poles and conduits owned by the telephone companies are exempt from property taxes. Poles and conduits jointly owned by electric companies and telephone companies are taxed on the electric company's share while the telephone company's share is exempt from taxation. The majority believes that identical properties should be treated the same, regardless of the ownership of the property. The phone companies argue that they should not have to pay property taxes on poles and conduits because they pay the communications services tax. But the reality is they do not pay that tax, the customers do. That tax is passed through to the customers in its entirety and appears as a separate line on phone bills. The phone company merely collects the tax and passes it on to the state. This is similar to the consumption tax collected by the power companies. That, too, is a direct tax on the consumers that appears on their bills. In a similar manner, it is collected by the electric companies and passed on to the state. Some have suggested that this is not the best time to end this exemption because the largest of the phone companies is currently in bankruptcy. However, this is just the latest in a long line of reasons put forth by the telephone companies to justify their special treatment. This may, in fact, be the best time to end this exemption since FairPoint will be returning to the marketplace free from much of its previous debt. FairPoint will write off a billion dollars in debt. The three million dollars in taxes that they will pay will not have a noticeable impact on the company. Some have suggested that this tax will just be passed on to consumers. This ignores the fact that both the power companies and the phone companies rent space on their poles to the cable companies and the wireless companies. It is a reasonable assumption that the public utilities commission would demand that all customers of the phone companies, including the cable and wireless companies, share the tax burden. This bill also includes another study of this issue. This exemption has been studied numerous times. The most recent study in 2004 was quite extensive. It is difficult to believe that there is anything else to be learned by yet another study. The ending of the exemption will, for the first time, create fairness for those towns where the utility poles are owned in whole or in part by the telephone companies. Presently, some communities get a tax benefit from the existence of the poles in their rights of way, while other communities get nothing. This means there is a shifting of the tax burden from FairPoint to these local taxpayers. Those communities where the phone companies own the poles and conduits in whole or in part will finally be on equal footing with all other communities in the state in their ability to tax this real property in their communities. At a time when many communities are struggling with reduced revenues, this will be a small but welcome addition to town coffers. **Vote 15-4.**

Rep. Peyton B Hinkle for the Minority of Local and Regulated Revenues: Until 1990, the state assessed a personal property tax on telecommunications poles and conduits. This tax was paid to the state. In 1990, the state enacted a communications service tax (CST) instead and repealed the personal property tax so that all communications service would be more fairly taxed. Some municipalities then began trying to tax poles and conduits as real

property. In 1996, the NH Supreme Court ruled they could not do this because the poles and conduits were personal property, not real property. So you can't have it two ways- personal property one time and real property another. In the process of extending this exemption, the Senate, in 1997, requested an opinion from the NH Supreme Court as to whether such an exemption would violate the state constitution. In reply, the court gave the opinion that the legislature has the power to grant reasonable exemptions from taxation, and that an exemption to the proposed tax was just and valid. Thus, it is within the power of the legislature to make poles and conduits exempt from a property tax. In 1998, the legislature enacted RSA 72:8-a, which taxed all telecommunications poles, towers, conduits as real estate. At the same time, the legislature passed RSA 72:8-b which exempted poles and conduits from the tax as long as the CST remained above 4.5% (it is now at 7%). The exemption was to expire in July of 1999. This exemption has been studied and extended five times since then. In October of 2004, a legislative committee established to study the exemption concluded that local communities have never had taxing authority over poles and conduits, and recommended that the exemption continue. If land line companies are required to pay taxes on their poles, they will pass the cost on to their customers since taxes are a part of the cost of doing business. Residents in remote areas who cannot switch to wireless phone service would be required to pay the tax while customers in areas with wireless service would be unaffected. The elderly are more likely to be affected by the tax since they often prefer to keep their land line service. People with land line service are already heavily taxed as a result of the six to seven fees and taxes appearing on their phone bills, including the CST. Those people with land line service would be helping subsidize wireless customers since the signal travels over land lines for part of the distance. Also, customers who receive TV via satellite would not be taxed, while those who receive such service by cable would. The exception is supported by the Nashua chamber of commerce, the Granite State Telephone Company, FairPoint, the N.E. Cable and Telecommunications Association, and the Business and Industry Association. This tax has been studied and restudied, and the exemption extended and re-extended. It is now time to end the uncertainty for the telecommunications companies and allow for the opportunity to make the extension permanent.



State of New Hampshire

HOUSE OF REPRESENTATIVES

CONCORD

MEMORANDUM

DATE: October 31, 2003

TO: Honorable Craig Benson, Governor
Honorable Gene Chandler, Speaker of the House
Honorable Thomas R. Eaton, President of the Senate
Honorable Karen O. Wadsworth, House Clerk
Honorable Steven J. Winter, Senate Clerk
Michael York, State Librarian

FROM: Rep. Kurt J. Roessner

SUBJECT: Final Report on HB 705 establishing a committee to study the application of the communications services tax and continuing the property tax exemption for wooden poles and conduits

Pursuant to Chapter 270:1, Laws of 2003, enclosed please find the Final Report of the committee charged with studying HB 705 establishing a committee to study the application of the communications services tax and continuing the property tax exemption for wooden poles and conduits.

If you have any questions or comments regarding this report, please do not hesitate to contact me.

cc: Study Committee Members
Representative Norman Major, Chairman, Ways and Means Committee
Representative John H. Thomas, Chairman, Science, Technology
and Energy Committee
Nancy LeVinus, House Committee Researcher
Susan Duncan, Senior Senate Legislative Aide

**STUDY COMMITTEE FOR THE APPLICATION OF THE
COMMUNICATIONS SERVICES TAX AND CONTINUING
THE PROPERTY TAX EXEMPTION FOR WOODEN POLES
AND CONDUITS**

(Chapter 270:1, Laws of 2003, HB 705)

FINAL REPORT

COMMITTEE MEMBERS:

Representative Kurt Roessner, Chairman	Senator Robert Boyce
Representative Stephen DeStefano	Senator Lou D'Allesandro
Representative Paul Hatch	Senator Richard Green
Representative David Hess	Senator Bob Odell
Representative Lawrence Ross	Senator Russell Prescott

COMMITTEE MEETINGS:

August 20, 2003	September 2, 2003
September 16, 2003	September 23, 2003
October 7, 2003	October 16, 2003
October 23, 2003	October 28, 2003
October 30, 2003	

The Committee would like to acknowledge and express its gratitude to House Researcher Nancy LeVinus and to Senior Senate Legislative Aid Susan Duncan for the initiative and professionalism they demonstrated throughout these proceedings which significantly contributed to the effectiveness of this Committee.

COMMITTEE ACTIVITY:

Summary Background

Prior to 1990 the State of New Hampshire taxed the personal property of telephone companies; this tax generated \$9,510,000 in 1989 and was levied against such property as office furniture, motor vehicles, office equipment, wooden telephone poles and conduits.

In 1990 the State implemented the Communications Services Tax (CST) and repealed the personal property tax which had been levied on New Hampshire telephone companies. Over the years several changes have been made to the CST and as of 2003 the tax rate was set at 7%; in FY 03 the CST generated over \$60 million in tax revenue to the state. During this period there has also been a change of classification of the wooden poles and conduits from personal property to real property, and legislation enacted which provided an exemption for any real estate taxes on these wooden poles and conduits for the telephone companies. During the 2003 Legislative session the exemption was continued for one year and will expire on July 1, 2004. Also, during the 2003 session this study committee was established to examine the continuation of this exemption, as well as the application of the Communications Services Tax.

Study Approach

The Committee recognized the two aspects of its charter:

- To study the Application of the Communications Services Tax
- To study the continuation of the property tax exemption for wooden poles and conduits

While these are related, it was decided by the committee to address them separately and to offer individual recommendations for each.

The committee exhaustively studied prior records, documents and transcripts of previous proceedings regarding the application of the CST and the property tax exemption. Thirteen witnesses appeared before the committee offering perspectives from a diverse group of stakeholders. The witnesses included representatives from: the New Hampshire Municipal Association, DRA, Verizon, the Town of Bow, the New Hampshire Telephone Association, the New Hampshire PUC, the Chairman of the Telecommunications Oversight Committee and an individual internet service provider. Additionally, in order to provide a historical perspective two Senators, Below and Gordon, who were intimately involved in the CST over the years also testified before the committee.

A complete record of all exhibits and minutes from each meeting are available upon request.

Findings

- Prior to 1990 telephone company poles and conduits were taxed by the state as personal property pursuant to RSA 82:2. In 1989 the total of such taxes was \$9,510,000 which also included personal property tax on telephone company owned property such as office furniture, motor vehicles and computers.
- Prior to 1990, and continuing to today, wooden poles and conduits owned by electric companies are taxed as real property by individual localities pursuant to RSA 72:8.
- In 1990 the Communications Services Tax (CST) was adopted which placed a tax on the end users of two way electronic communications. The main purpose of the CST was to enact a tax which would be applied to all telecommunications services, including wireless. The 1990 Majority Report on the CST stated: "An existing personal property tax on telephone & telegraph companies is repealed to provide a level playing field in the communications business." On October 16th Mr. George Sansoucy, an appraiser representing the New Hampshire Municipal Association (NHMA), verified the consequence of the CST and stated that it did help level the playing field between wireline and wireless providers. When the CST was adopted and the Statewide Personal Property Tax was repealed the PUC ordered telephone companies within the state to lower their rates to reflect the cost savings from not having to pay the Personal Property Tax (Docket 90-037).
- The primary arguments for repealing the exemption offered by representatives of the NHMA and others who support elimination of the exemption is that it isn't fair to tax the poles and conduits of electric companies and not tax similar property of telephone companies and that this exemption is depriving municipalities from a needed source of revenue.
- In 1997 the New Hampshire Supreme Court rendered an opinion which stated the apparent disparity in tax treatment of telephone poles and conduits was within the law and that similar properties can be classified separately for tax purposes by the legislature (Opinion of the Justices, 142 N.H. 102, June 23, 1997).
- The initial CST enacted in 1990 was 3%, which was accompanied by a 2% surcharge, making the effective tax rate 5%. In his September 2nd testimony attorney Dan Wensley, representing the NHMA, stated the 3% base rate was designed to provide a "one for one exchange" for the state property tax which had been charged, meaning the repeal of the property tax and the implementation of the 3% base rate of the CST was designed to be revenue neutral.
- The level of the CST varied over the years, and in 2002 it consisted of a base rate of 4½% with a 2½% surcharge and generated approximately \$60 million in revenue to the state. In 2003 the surcharge was eliminated and the 7% became the base rate.

- In 1998 RSA 72:8-a was enacted which reclassified telecommunications wooden poles and conduits as real estate rather than personal property. Concurrently RSA 72:8-b was enacted which exempted telephone company owned poles and conduits from any property taxes as long as there was a surcharge on the CST. With the passage of the 7% CST base rate and the elimination of the surcharge in 2003, the exemption on the ability to tax the poles and conduits would have lapsed. HB-4 included a one year continuation of the exemption, which will expire on July 1, 2004.
- According to the NH PUC, any implementation of a property tax on poles and conduits could legitimately be added to a telephone company's expense base and passed on to its telephone subscribers. While the exact impact on each subscriber cannot be precisely determined (due to such considerations as valuation and assessment approaches for the poles and conduits), both the PUC and Verizon agree that the impact would be approximately 75¢ per access line per month for each \$10 million of taxes collected. It is likely that \$10 million would be the upper limit of any such tax on poles & conduits.
- Verizon reports it has 230,000 pole equivalents, with a cost of approximately \$780 per pole, and 725,000 access lines. If the depreciated poles are valued at \$350, and taxed at \$20 per thousand dollars of assessed valuation, the tax would be: $230,000 \times \$350 = \$80,500,000$ in valuation; @ \$20/000 the tax would be about \$1,600,000. Also, according to Verizon the depreciated value of its conduits is approximately \$72 million. A comparable tax on these assets would be another \$1,400,000 resulting in a combined tax for Verizon of approximately \$3 million. These data assume a *Cost* valuation approach. The results could be significantly different if either *Market Value* or *Income* based assessment approaches are used.
- The wireline telecommunications business is declining vis-a-vis wireless. Verizon operates about 80% of New Hampshire's 850,000 wired access lines and reports it is losing them at a rate of 35,000 to 40,000 lines per year. On the other hand, New Hampshire's 600,000 wireless access lines are increasing rapidly and experienced 80% growth between 1999 and 2002. On September 16th Verizon's New Hampshire President Michael Hickey testified that for the twelve months ending June, 2003 Verizon's intrastate expenses exceeded their revenues by about \$10 million (approximately \$290 million in expenses and \$280 million in revenues).
- On October 7th Ms. Kate Bailey, Director of Telecommunications for New Hampshire's Public Utility Commission testified that Verizon's intrastate earnings have fallen below its authorized rate of return for the past four years and that "any new tax [imposed on Verizon] is likely to increase rates."
- In his October 16th testimony Mr. Sansoucy stated that the implementation of a property tax on telephone company owned poles and conduits would create an immediate advantage for wireless communications providers and that the new taxes would become imbedded in the telephone companies' rate structures.

DISCUSSION:

The committee carefully reviewed all the exhibits and testimony which were presented during the proceedings and vigorously debated the issues in arriving at its conclusions and recommendations.

In summary, the primary arguments for the elimination of the exemption on the ability of municipalities to tax telephone company wooden poles and conduits are:

- Telecommunications is the only industry which enjoys such real estate tax protection
- It is not fair to tax poles and conduits owned by electric companies and not tax similar property owned by telecommunications companies
- The legislation enacted in 1990 to eliminate the personal property tax and institute the CST happened a long time ago, under a different legislature and under different economic conditions, and we should not be bound by those decisions made thirteen years ago
- Local municipalities are being deprived from a significant revenue source through this exemption
- This is not a new tax and it will not necessarily be passed through to telephone rate payers
- Local tax payers are being penalized because the telephone companies are not paying their share of taxes

The primary arguments for continuing the exemption are:

- The CST was implemented in 1990 to replace the property tax on wooden poles and conduits; upon implementation of the CST the property tax was repealed and there is an obligation to honor this agreement - particularly in light of the fact that the base rate of the CST has more than doubled since its inception thirteen years ago
- The CST was implemented to "level the playing field" between cellular providers (which were not paying the tax) and wireline providers (who were paying the tax). This competition has only intensified since 1990 and to eliminate the exemption would provide a competitive advantage to wireless providers
- There is a greater nexus between players in the telecommunications industry (e.g. wireless and wireline) than exists between telecommunications and electricity providers. There is no compelling reason to tax the assets of these industries identically

- That any new tax burden placed on the telephone companies will be passed through to telephone rate payers, and the increased taxes will be inflated to cover the costs of assessment and collection in addition to the "net" taxes which will be received by the municipalities
- New Hampshire telephone rate payers are already burdened by over half a dozen taxes and surcharges on their telephone bills
- The impact of taxing poles and conduits will more likely be borne by residents in rural communities who don't have the option to switch to wireless services

RECOMMENDATIONS:

I. At the Committee's October 28, 2003 meeting it was agreed by the majority present (7-2) to recommend that legislation be introduced in the House during 2004 to continue, without sunset, the exemption from real estate taxes for telephone company owned wooden poles and conduits which are employed in the transmission of communications services.

II. At the Committee's October 23, 2003 meeting it was unanimously agreed (8-0) to recommend that the charge to examine the *Application of the Communications Services Tax* be included in an expanded Telecommunications Oversight Committee. This recommendation was strongly endorsed by the Chairman of the Telecommunications Oversight Committee, and was based on the following considerations:

- Studying the *Application of the Communications Services Tax* is an extremely broad charge and one which could not be adequately addressed within the timeframes allowed
- There would be significant redundancies with the Telecommunications Oversight Committee if a separate committee were to pursue an independent study of the *Application of the Communications Services Tax*
- Any study of the *Application of the Communications Services Tax* will be dramatically impacted by developing federal legislation regarding states' abilities to tax internet related communications services.

It is the Committee's recommendation that:

- The Telecommunications Oversight Committee be expanded to include one member from the House Ways and Means Committee, one member from the House Municipal and County Government Committee, one member from the Senate Ways and Means Committee, and one additional Senate member to be appointed by the President of the Senate

- The assignment of such members will be made within sixty days of passage of the enabling legislation. The duration of these assignments will continue through FY '06.
- The focus of these members will be the continuation of the study of the application of the communications services tax, including the impact of any related federal legislation
- The Committee is aware that similar recommendations are being made by another Study Committee which is examining the application of taxes on internet services. In order to reduce duplications of effort and redundancies it is further recommended that the legislation to implement the above recommendations be drafted by the Chairman of the House Science and Technology Committee who will coordinate the nearly identical recommendations of both Study Committees.

Respectfully submitted,



Representative Kurt J. Roessner, Chairman
October 31, 2003



State of New Hampshire

HOUSE OF REPRESENTATIVES

CONCORD

MEMORANDUM

DATE: October 21, 2004

TO: Honorable Craig Benson, Governor
Honorable Gene Chandler, Speaker of the House
Honorable Thomas R. Eaton, President of the Senate
Honorable Karen O. Wadsworth, House Clerk
Honorable Steven J. Winter, Senate Clerk
Mr. Michael York, State Librarian

FROM: Rep. Kurt J. Roessner

SUBJECT: Final Report on HB 1416 establishing a committee to study issues related to the property tax exemption for wooden poles and conduits

Pursuant to Chapter 35:2, Laws of 2004, enclosed please find the Final Report of the committee charged with studying HB 1416 establishing a committee to study issues related to the property tax exemption for wooden poles and conduits. If you have any questions or comments regarding this report, please do not hesitate to contact me.

cc: Study Committee Members
Representative Norman Major, Chairman, Ways and Means Committee
Representative John H. Thomas, Chairman, Science, Technology
and Energy Committee
Ms. Nancy LeVinus, House Committee Researcher

**STUDY COMMITTEE FOR ISSUES RELATED TO THE
PROPERTY TAX EXEMPTION FOR WOODEN POLES AND
CONDUITS**

(Chapter 35:2, Laws of 2004, HB 1416-FN)

FINAL REPORT

COMMITTEE MEMBERS:

Representative Kurt Roessner, Chairman
Representative Susan Almy
Representative Russell Ingram


Senator Robert Boyce
Senator Lou D'Allesandro
Senator Bob Odell

COMMITTEE MEETINGS:

August 4, 2004
September 2, 2004
September 29, 2003

August 26, 2004
September 15, 2004
October 14, 2004

Respectfully submitted,


Representative Kurt J. Roessner, Chairman
October 21, 2004

COMMITTEE ACTIVITY:

Summary Background

Prior to 1990 the State of New Hampshire taxed the personal property of telephone companies; this tax generated \$9,510,000 in 1989 and was levied against such property as office furniture, motor vehicles, office equipment, wooden telephone poles and conduits.

In 1990 the Legislature implemented the Communications Services Tax (CST) and repealed the personal property tax which had been levied on New Hampshire telephone companies. Over the years several changes have been made to the CST and in 2003 the tax rate was set at 7%; in FY '04 the CST will generate over \$65 million in tax revenue. During this period there has also been a change of classification of the wooden poles and conduits from personal property to real property, and in 1998 legislation was enacted which provided an exemption from any real estate taxes on these wooden poles and conduits for the telephone companies. During the 2003 legislative session, pursuant to HB 705 Chapter 270, the exemption was continued for one year - until July 1, 2004 - and a study committee was established to examine the continuation of this exemption. As a result of the 2003 Study Committee's effort legislation was drafted and passed (HB 1416, Chapter 35, Laws of 2003) which continued the exemption for two additional years, expiring on July 1, 2006, and established this Study Committee to continue the examination of issues related to the property tax exemption for wooden poles and conduits.

Study Approach

The Committee recognized the four aspects of its charter:

- (a) Whether the property tax exemption for wooden poles and conduits should be continued
- (b) The feasibility of sharing Communications Services Tax and potential property tax revenues between local communities and the state
- (c) Wireline companies profits, the pass through to customers of any property tax, and the public benefits provided by wireline companies and the property tax exemption
- (d) Methods to access and assess poles

The committee studied records of previous proceedings regarding the application of the CST and the property tax exemption. Eight witnesses appeared before the committee offering perspectives from a diverse group of stakeholders. The witnesses included representatives from: the Department of Revenue Administration (DRA), Verizon, the Town of Hudson, the Town of Hampton, the New Hampshire Telephone Association and the New Hampshire Public Utilities Commission.

A complete record of all exhibits and minutes from each meeting are available upon request.

A tremendous amount of work was accomplished by the 2003 Study Committee and much of the data it collected is still current and relevant, and has been incorporated into the current study.

FINDINGS:

- Prior to 1990 telephone company poles and conduits were taxed by the state as personal property pursuant to RSA 82:2. In 1989 the total of such taxes was \$9,510,000 which also included personal property tax on telephone company owned property such as office furniture, motor vehicles and computers.
- Prior to 1990, and continuing to today, wooden poles and conduits owned by electric companies are taxed as real property by individual localities pursuant to RSA 72:8.
- In 1990 the Communications Services Tax (CST) was adopted which placed a tax on the end users of two way electronic communications. The main purpose of the CST was to enact a tax which would be applied to all telecommunications services, including wireless. The 1990 Majority Report on the CST stated: "An existing personal property tax on telephone & telegraph companies is repealed to provide a level playing field in the communications business." On October 16, 2003 Mr. George Sansoucy, an appraiser representing the New Hampshire Municipal Association (NHMA), verified the consequence of the CST and stated that it did help level the playing field between wireline and wireless providers. When the CST was adopted and the Statewide Personal Property Tax was repealed, the PUC ordered telephone companies within the state to lower their rates to reflect the cost savings from not having to pay the Personal Property Tax (Docket 90-037).
- In 1997 the New Hampshire Supreme Court rendered an opinion which stated the apparent disparity in tax treatment of telephone poles and conduits was within the law and that similar properties can be classified separately for tax purposes by the legislature (Opinion of the Justices, 142 N.H. 102, June 23, 1997).
- The initial CST enacted in 1990 was 3%, which was accompanied by a 2% surcharge, making the effective tax rate 5%. In his September 2, 2003 testimony attorney Dan Wensley, representing the NHMA, stated the 3% base rate was designed to provide a "one for one exchange" for the state property tax which had been charged, meaning the repeal of the property tax and the implementation of the 3% base rate of the CST was designed to be revenue neutral.
- The level of the CST varied over the years, and in 2002 it consisted of a base rate of 4½% with a 2½% surcharge and generated approximately \$60 million in revenue to the state. In 2003 the surcharge was eliminated and the 7% became the base rate.
- In 1998 RSA 72:8-a was enacted which reclassified telecommunications wooden poles and conduits as real estate rather than personal property. Concurrently RSA 72:8-b was enacted which exempted telephone company owned poles and conduits

from any property taxes as long as there was a surcharge on the CST. With the passage of the 7% CST base rate and the elimination of the surcharge in 2003, the exemption on the ability to tax the poles and conduits would have lapsed. 2003's HB-4 included a one year continuation of the exemption, which expired on July 1, 2004.

- Legislation proposed by the 2003 Study Committee, and passed in 2004 (HB 1416-FN) extended the exemption until July 1, 2006 and created the 2004 Study Committee.
- According to the NH PUC, any implementation of a property tax on poles and conduits could legitimately be added to a telephone company's expense base and passed on to its telephone subscribers. While the exact impact on each subscriber cannot be precisely determined (due to such considerations as valuation and assessment approaches for the poles and conduits), it is estimated that the impact would be approximately \$1.00 per access line per month for each \$10 million of taxes collected. ($\$10,000,000 \div 829,000$ access lines = \$12.06/year or \$1.00/month) It is likely that \$10 million would be the upper limit of any such tax on poles & conduits.
- Verizon reports it has 230,000 pole equivalents, with a cost of approximately \$780 per pole. If the depreciated poles are valued at \$350, and taxed at \$20 per thousand dollars of assessed valuation, the tax would be: $230,000 \times \$350 = \$80,500,000$ in valuation; @ \$20/1000 the tax would be about \$1,600,000, or \$6.96 per pole. Also, according to Verizon the depreciated value of its conduits is approximately \$72 million. A comparable tax on these assets would be another \$1,400,000 resulting in a combined tax for Verizon of approximately \$3 million. These data assume a *Cost* valuation approach. The results could be significantly different if either *Market Value* or *Income* based assessment approaches are used.
- Data provided by the Assessor of the Town of Hudson, where poles owned by PSNH are taxed by the municipality, showed the following: there are 4,225 wooden poles that are jointly (50/50) owned by PSNH and Verizon. Only the PSNH portion of the poles is taxable, and the total assessed valuation is \$1,122,850. Measured against the pole-equivalents owned by PSNH of 2,113 ($4,225 \div 2$) a depreciated value of \$532 is computed. It is estimated by the Town of Hudson that the taxes it will receive from the poles will be approximately \$15,000 in 2004, or \$7.10 per pole-equivalent, which is consistent with the \$6.96 estimate computed using the assumptions above.
- Verizon claims to attach to 505,000 poles in New Hampshire. They jointly own 434,000 of these poles with electric utilities, and they own 15,000 poles by themselves. They lease space on the 56,000 poles which are wholly owned by electric companies. From the poles they own outright they collect \$450,000 in rental fees from electric companies who have attachments on their poles, on the other hand, Verizon pays rental attachment fees of \$1,300,000 to electric companies for use of their poles. Verizon also receives approximately \$1,400,000 in rental fees for

attachments to its poles primarily from cable operators and other telephone companies.

- The wireline telecommunications business is declining vis-a-vis wireless. Verizon operates about 80% of New Hampshire's 829,000 wired access lines and reports it is losing them at a rate of 35,000 to 40,000 lines per year. On the other hand, New Hampshire's 649,000 wireless access lines are increasing rapidly and experienced 68% growth between 2000 and 2003.
- Verizon reported for the twelve months ending June, 2004 their intrastate expenses exceeded their revenues by about \$30 million (approximately \$311 million in expenses and \$281 million in revenues) resulting in a negative rate of return. For the twelve months ending June, 2003 the loss was a more modest \$10 million.
- Ms. Kate Bailey, Director of Telecommunications for New Hampshire's Public Utility Commission substantiated Verizon's claim of decreasing access lines and diminished revenues during her testimony on September 2, 2004. She also testified that Verizon's authorized Rate of Return had been reduced this year to 8.2% from the previous level of 10.9%. This reduction is based on the more current costs of equity, debt and capital. Even with this reduction she acknowledged that Verizon's earnings have fallen below its authorized rate of return, as they have for the past four years. She estimated Verizon's current return was around 0%. It was her assessment that "any new tax [imposed on Verizon] is likely to increase rates."
- In 2003 Mr. Sansoucy stated that the implementation of a property tax on telephone company owned poles and conduits would create an immediate advantage for wireless communications providers and that the new taxes would become imbedded in the telephone companies' rate structures.
- There was a good deal of discussion and testimony regarding how municipalities currently assess and tax wooden poles owned by electric companies. On an overall basis, the DRA develops the value of an electric utility using a variety of tools and techniques. This is referred to the Unitary Valuation. This valuation is then allocated among the communities in the state where the company operates. The municipalities may accept and bill the companies based upon the data provided by the DRA, or they may perform their own assessment, or they may negotiate a different valuation with the electric company. Data provided to the Committee shows a variation between the allocated DRA valuations and the amounts localities are actually assessing on an equalized value basis. In almost all cases the assessments made by the communities are higher than those provided by the DRA.

DISCUSSION:

The committee carefully reviewed all the exhibits and testimony which were presented during the proceedings and vigorously discussed the issues in arriving at its conclusions and recommendations.

In summary, the primary arguments for the elimination of the exemption on the ability of municipalities to tax telephone company wooden poles and conduits are:

- Telecommunications is the only industry which enjoys such real estate tax protection
- It is not fair to tax poles and conduits owned by electric companies and not tax similar property owned by telecommunications companies
- Local municipalities are being deprived from a significant revenue source through this exemption and have to provide road access and possibly other services for the poles.
- This is not a new tax and it will not necessarily be passed through to telephone rate payers
- Local tax payers are being penalized because the telephone companies are not paying their share of taxes

The primary arguments for continuing the exemption are:

- The CST was implemented in 1990 to replace the property tax on wooden poles and conduits; upon implementation of the CST the property tax was repealed and there is an obligation to honor this agreement - particularly in light of the fact that the base rate of the CST has more than doubled since its inception fourteen years ago
- The CST was implemented to “level the playing field” between cellular providers (which were not paying the tax) and wireline providers (who were paying the tax). This competition has only intensified since 1990 and to eliminate the exemption would provide a competitive advantage to wireless providers
- There is a greater nexus between players in the telecommunications industry (e.g. wireless and wireline) than exists between telecommunications and electricity providers. There is no compelling reason to tax the assets of these industries identically
- That any new tax burden placed on the telephone companies will be passed through to telephone rate payers, and the increased taxes will be inflated to cover the costs of assessment and collection in addition to the “net” taxes which will be received by the municipalities. This is even more likely considering Verizon’s negative net income.
- New Hampshire telephone rate payers are already burdened by over half a dozen taxes and surcharges on their telephone bills
- The impact of taxing poles and conduits is a regressive tax and will more likely be borne by residents in rural communities and the poor who don’t have the option to switch to wireless services

- If the property tax exemption were to lapse the DRA would most likely not establish an overall unitary valuation for telecommunications providers. Rather, it would more likely establish an overall valuation for the poles and conduits, similar to the way it assesses utility properties. These valuations would be provided to individual communities who would then apply their own local assessment procedures against the DRA data.
- While there are several other telephone companies in New Hampshire, Verizon is by far the largest and most significant, and receives most of the public's attention. There are concerns that when Verizon loses wireline lines to wireless companies it is Verizon Wireless which is picking many of them up making the net effect minimal. It is necessary to draw a clear differentiation between Verizon and Verizon Wireless. Verizon is a completely separate business unit which is regulated by the New Hampshire Public Utility Commission and there are very strict federal guidelines which prescribe the necessary separations between regulated and unregulated subsidiaries of the same parent corporation. There can be no cross subsidies between sister companies, nor joint marketing or joint operations. Unlike Verizon Wireless, which operates freely in a competitive environ, Verizon is a regulated utility whose marketing flexibility is restricted by the PUC relative to the prices and products it can offer in New Hampshire.
- Maintaining a healthy wireline telecommunications industry in New Hampshire is essential to the wellbeing of its citizens and its economy. One of the responsibilities of the PUC is to ensure a healthy telecommunications market and to balance the needs of a commercial service provider and the public good. There are many areas and services that cannot be accommodated or provided by wireless or cable companies, and this situation is likely to continue for many years. A large risk to any state is the possibility that a major landline telecommunications provider will leave a market. This has been done many times throughout the country when a provider comes to the point where it is no longer economically feasible to continue operations. Generally what happens is that the larger provider will sell some or all of its operations to a smaller company, or it will fragment its operations and sell smaller piece-parts to small companies.
- This year in New York Verizon proposed selling 2.6 million access lines in upstate New York for \$7.7 billion that opponents say would most likely result in substantial job loss and may also lessen the service quality that the region receives. In the spring of 2004 the New York Public Service Commission held hearings regarding the sale and witnesses expressed their opinions that any buyer would not care for the assets of the system, including its employees and the communities they serve as Verizon would. During these hearings a spokesman for Verizon indicated that Verizon continually evaluates its assets and properties based on strategic fit and financial performance. On October 14, 2004 it was reported to this committee by Verizon that negotiations for the potential sales of these New York access lines had been discontinued, but the properties were still up for sale. In 2001 Verizon sold 1.275

million access lines in Kentucky, Alabama and Missouri for \$4.11 billion to Alltel and Century Telephone Company.

- In New Hampshire Verizon's financial losses are accelerating, \$10 million for 12 months ending June, 2003; \$30 million for the period ending June, 2004. It's wireline business is declining, 680,000 access lines in 2003, 650,000 today. The business is clearly in decline and for the state to implement any additional tax burden which will force Verizon to raise its rates, and lose additional access lines, or to bear the burden of a tax increase onto its already negative return is not in the public interest of the state.

RECOMMENDATIONS:

I. At the Committee's October 14, 2004 meeting it was agreed by the majority present (4 to 0) to recommend that legislation be introduced in the House during 2005 to continue the exemption from real estate taxes for telephone company owned wooden poles and conduits which are employed in the transmission of communications services for an additional four years beyond the current July 1, 2006 expiration date. This will provide time for a continuing assessment of the need for such an exemption without the burden of biennial legislative Study Committees as has been the case recently. Additionally, this provides a planning horizon in which greater stability and focus may emerge in the overall landscape, during which the roles and markets for converging telecommunications technologies and Voice over Internet Protocol (VoIP) will become better defined.

II. At the Committee's October 14, 2003 meeting it was agreed by the majority present (4 to 0) to recommend that there is no suitable opportunity to share the Communications Services Tax with local communities. This recommendation is based on the facts that (1) the revenue potential to the individual communities would be relatively small, but the loss to the state could be several million dollars per year, and in light of projected budget deficits the state is not in a position to lose these revenues; (2) that the local communities have never had taxing authority over these poles and conduits, so nothing is being taken away; and (3) the level of the Communications Services Tax revenues is susceptible to significant change, even in the near term, due to losses caused by an inability to assess VoIP communication services, which threaten to erode the public switched telephone network, and/or the potential federal preemption of VoIP taxation.

III. At the Committee's October 14, 2003 meeting it was agreed by the majority present (4 to 0) to recommend that a 2005 Study Committee be created to examine regulatory practices as they pertain to: (1) basic telephone services and competitive services offered by telephone companies; (2) innovative regulatory approaches which have been implemented in other jurisdictions which lessen business restrictions of the companies in return for price stability or price cap guarantees; and, (3) preserving the public good which is derived from an important but declining telecommunications industry.

Our telephone bills

AS A MEMBER of the New Hampshire House, I recently had the privilege of chairing a study committee that thoroughly examined House Bill 1416, which Rochester's Sen. Dick Green wrote about in this space last Wednesday. I wish to clarify and correct some of the statements Sen. Green made.

The bill will continue a property tax exemption on wooden telephone poles and conduits owned by telephone companies. The exemption was enacted on a temporary basis in 1998, has been renewed twice by the Legislature and will lapse on June 30. This bill impacts the health and vitality of the telecommunications landscape throughout New Hampshire.

The genesis of the tax exemption dates to 1990, when the state's personal property tax, which taxed wooden telephone poles and conduits, was repealed in favor of the communications services tax (CST). The CST, which taxes all two-way communications services in the state and is charged to end users, was designed to increase state revenues. It was also designed to level the playing field between wireline telephone companies, which had been paying the personal property tax on poles and conduits, and

the wireless service providers, who did not bear the burden of this personal property tax.

Coincident with the repeal of the personal property tax, the New Hampshire Public Utilities Commission ordered the state's telephone companies to roll back their rates to account for the expense savings they realized. In 1998, telephone company poles and conduits were reclassified as real property rather than personal property, and the property tax exemption was established.

Sen. Green refers to the property tax exemption as an unreasonable and unfair loophole. On the contrary, the exemption was carefully thought out and constructed, it has been the topic of several legislative study committees, and it has been renewed twice by the Legislature. It is not a loophole, but rather well-considered tax policy.

Sen. Green also states that this exemption is provided at a cost of \$30 million to \$40 million annually. This claim is completely unfounded and no such testimony or evidence was presented to our study committee, which met nine times last fall. Further, Sen. Green cites testimony that any increase in telephone bills as a result of a rate case would likely be a modest 50 cents per month. Since

ANOTHER VIEW

Rep. Kurt J. Roessner

there are approximately 850,000 wire access lines in New Hampshire, the total tax income under this assumption would be \$5.1 million, which is a far cry from the exaggerated \$30 million to \$40 million he cites.

Sen. Green goes on to state that the communications services tax gives the companies a multi-million dollar commission — equal, at least, to the property tax they were formerly required to pay — merely for

Nancy

Opinion

THE UNION LEADER, Wednesday, Feb. 11, 2004 • Page A11

shouldn't be virtual tax bills

acting as a collection agent for the state. This may lead one to believe that the telephone companies are being paid a commission to collect the communications services tax, such as restaurant and hotel operators are for collecting the rooms and meals tax. This is completely false. There is no commission paid for the \$60 plus million communications services tax collected by the telephone companies. Also, Sen. Green omits the fact that once the communications services tax was implemented and the property tax was repealed in 1990, the Public Utilities Commission ordered the telephone

companies to roll back their rates to account for the expense savings they incurred.

A healthy telecommunications industry, which employs more than 2,000 of our citizens, is vital to the economic well being of our state. If this exemption lapses, the telephone companies will have two options: pass the expense on to ratepayers or bear the costs themselves.

Passing on this expense will result in higher phone bills for all wireline telephone subscribers, but not wireless or cellular customers. For the year ending November 2003, Verizon incurred a net operating loss. Ab-

sorbing this tax will lead to a further deterioration in earnings, and I believe it will result in reduced investment and development in New Hampshire.

While this might seem like a complicated issue to understand, it is really quite simple. Just ask your legislator not to be part of creating any new taxes and ask him or her to support HB 1416. You might also remind your legislator of something Sen. Green fails to realize: taxpayers and telephone ratepayers are the same people!

Rep. Kurt J. Roessner lives in Rockingham County and represents District 83 in the New Hampshire House.

By **Sen. Dick Green**

February 20, 2004 2:00 AM

The Legislature must eliminate the most unreasonable loophole in our property-tax system — the telecommunications industry's poles and conduits exemption — by voting against HB 1416-FN, a bill to extend the exemption beyond the July 1, 2004, expiration date. Local officials, who along with the state rely heavily on property taxes for education and other programs, must work to end the subsidy of New Hampshire's billion-dollar, land-based telecommunications industry. Our constitution requires property taxes be reasonable and proportional. All property must be assessed at full, fair-market value, and taxed at the same proportional rate. This proportionality guarantees each taxpayer pays a fair share — and no more.

The Legislature can exempt certain individuals and entities, and has extended to local governments, educational institutions and charities a complete exemption. The elderly, the disabled, the blind and the needy, and those who provide special benefits to the community, such as veterans, have partial exemptions.

Others must pay their full share — with one notable exception: telecommunications companies, when it comes to their poles and conduits. While others meet their obligations, the billion-dollar, for-profit telecommunications industry is exempted at a higher level than the elderly, the disabled, the blind, the otherwise disadvantaged, and veterans, at a cost of \$30 to \$40 million annually — a massive corporate subsidy!

Arguments to justify the exemption include:

Telephone bills will increase.

An unlevel playing field between land-based and wireless telecommunications providers will be created.

Double taxation of telecommunications companies would result.

Recently confirmed by a legislative study committee, these claims are without merit.

Businesses attempt to pass on expenses, including taxes, to consumers, so one might expect that the taxes paid by telecommunications companies would increase telephone bills. However, a rate increase requires Public Utilities Commission approval, which entails a review of costs and revenues through what is called a "rate case" to ensure the increase is reasonable and justifiable. The state's primary telecommunications provider has refused to initiate a rate case since the 1980s, presumably to avert an examination of its increased costs and realized savings. Based on the history, therefore, it is probable that the companies would simply absorb the tax. However, if a rate increase were sought and approved, it would be borne by telephone consumers — not property-tax payers. Interestingly, a representative of the small, independent telephone companies testified any increase in telephone bills as a result of a rate case would likely be a modest 50 cents per month.

The "uneven-playing-field" claim is also false. Land-based telecommunications companies charge wireless telecommunications companies facilities-use fees, which automatically take into account the tax obligations of the land-based providers. Land-based telecommunications companies pass on to wireless companies a portion of any increased costs for their use of land-based facilities. Therefore, because there is no property tax on the poles and conduits, the playing field for telecommunications providers is indeed uneven — it is tilted in favor of the land-based telecommunications companies!

Finally, the "double-taxation" claim is bogus. When the exemption was originally granted, the state also imposed a "telecommunications-services tax" on telephone bills. The industry received a corporate subsidy while customers were taxed. The communications-services tax gives the companies a multimillion-dollar commission — equal, at least, to the property tax they were formerly required to pay — merely for acting as a collection agent for the state. The double-taxation argument is designed to confuse, not enlighten, and has the same validity as would a claim by restaurant owners that because they collect the Rooms and Meals Tax from patrons they should not be subject to the real-property tax.

The exemption is particularly egregious given that revenues of the telecommunications industry are driven by the ability to locate poles, wires and related conduits in public rights of way rent free, which amounts to another huge publicly subsidized benefit.

I urge all local officials and state legislators to join me in opposing extending the exemption beyond its July 1, 2004, expiration date. Call your legislators today and encourage a vote against HB 1416-FN. Simple fairness demands that billion-dollar corporations not be accorded bigger tax breaks than those allowed for the elderly, the infirm and the disadvantaged.

Sen. Richard ?Dick? Green, a Republican, was elected to the New Hampshire Senate in November 2002. He had previously served in the New Hampshire Senate from 1973 to 1974. Green is chairman of the Finance Committee, vice chair of Rules and Enrolled Bills, and is a member of the Education, and the Public Affairs committees. Green represents Senate District 6, which comprises the communities of Barrington, Madbury, Nottingham, Rochester, and Somersworth.

of taxes which equaled the amount which the host community would receive from taxes for the land without improvements as determined by the Commissioner of Revenue Administration.⁵⁴

Library References

16 E. McQuillin, *Municipal Corporations* § 44.57 (3rd ed. 2003)

§ 18.07 Railroads

The state of New Hampshire got in on the ground floor on railroad taxation. Railroads were first being developed in New Hampshire in the late 1830s and early 1840s. In 1842, the Legislature provided that every railroad corporation had to pay to the state one percent of the value of that part of its capital stock expended within the state.⁵⁵ There have been numerous changes in the statute concerning the taxation of railroads over the years, but the Legislature has always given the state the exclusive right to collect taxes from railroads.^{56,57} The real estate of every railroad continues to be taxable by the state and not by municipalities,⁵⁸ except that real estate of railroads not being used in the ordinary business of the railroad may be appraised and taxed by the municipality under RSA 72.

→ § 18.08 Telephone and Telegraph Companies

Buildings used by telephone and telegraph companies for office purposes and as central stations may be taxed by municipalities in the same manner as other real estate.⁵⁹ Other real estate of telephone and telegraph corporations is taxable by the state pursuant to RSA chapter 82 and is not taxable by municipalities.⁶⁰ For example, poles and equipment of a telephone company are not taxable by the municipalities of New Hampshire,⁶¹ even though the

⁵⁴ RSA 72:11-a.

⁵⁵ RS ch. 39, § 4.

⁵⁶ See *Boston & Maine Railroad Co. v. Concord*, 78 N.H. 192, 98 A. 66 (1916) (city of Concord did not have authority to tax certain personal property located in the Boston & Maine Railroad's repair shops at Concord in 1913. The 1911 amendments to the statute concerning taxation did not give Concord power to tax the railroad).

⁵⁷ RSA 72:12; RSA ch. 82.

⁵⁸ RSA 82:37; *Crown Paper Co. v. City of Berlin*, 142 N.H. 563, 703 A.2d 1387 (1997).

⁵⁹ RSA 82:2.

⁶⁰ Id.

⁶¹ RSA 82:2; *New England Telephone & Telegraph Co. v. Manchester*, 72 N.H. 166, 55 A. 188 (1903) (city of Manchester did not have authority to tax building owned by telephone company used for a telephone exchange and which contained engines, dynamios and other apparatus as well as offices occupied by the local manager and others as this building was

poles of electric utilities are taxable by the municipalities.⁶² The reason for the difference in treatment of these two utilities may be related to historical development. In the nineteenth century, numerous gas and electric companies sprang up in the larger cities of the state to provide street lighting and other services. After expending a great deal of energy to enact this tax, the legislature granted an exemption from tax on all wooden poles.⁶³ Although that exemption was prospectively repealed as of 1999, by Laws 1998, ch. 304:5, it has been repeatedly extended by the legislature.⁶⁴

An attempt by the City of Franklin to tax communications equipment⁶⁵ of New England Telephone and Telegraph Company and other communications companies was unsuccessful. The Supreme Court held that their communications equipment was personal, not real, property, and therefore not subject to taxation by municipalities.⁶⁶ The court held that the nature of the communications equipment and its use as associated with the underlying land did not result in the equipment becoming a fixture and thus taxable.⁶⁷ Unlike ski lifts and associated equipment used for transporting skiers to the top of slopes, the court found that telephone poles and similar communications equipment were not intimately intertwined with the underlying real estate.⁶⁸ The city's claim that the pole licenses which were granted in public ways by the city effectively constituted a taxable easement was rejected, with the court noting that the statute (RSA 231:161, IV-VI (1993)) specifically indicated that the only interest that the municipality was conveying was a license and that use could not ripen into an easement.⁶⁹

During the legislative session after the Court's decision in *New England*

used in the ordinary course of business by New England Telephone & Telegraph Co.).

⁶² RSA 72:8.

⁶³ RSA 72:8-b.

⁶⁴ Laws 2005, ch. 146 extended the exemption to 2010.

⁶⁵ Franklin attempted to tax two basic categories of communications equipment: (1) distribution plant, including telephone poles, wires and underground conduits, and (2) central office equipment, consisting of frames, switches and other power equipment.

⁶⁶ *New England Tel. & Tel. Company v. City of Franklin*, 141 N.H. 449, 685 A.2d 913 (1996).

⁶⁷ *New England Tel. & Tel. Company v. City of Franklin*, 141 N.H. at 453, 685 A.2d at 917.

⁶⁸ *New England Tel. & Tel. Company v. City of Franklin*, 141 N.H. at 455, 685 A.2d at 918.

⁶⁹ *New England Tel. & Tel. Company v. City of Franklin*, 141 N.H. at 455-456, 685 A.2d at 918.

Telephone and Telegraph Company v. City of Franklin, the legislature considered a bill which would make certain telecommunications poles and wires taxable as real estate. The bill did, however, exempt from the real estate tax any pole or partial interest in poles and wires employed in the transmission of communication services that are subject to the tax imposed under RSA 82-A and owned by a retailer as that term is defined in RSA 82-A:2, X.⁷⁰ In evaluating the proposed bill, the Supreme Court found that the use of poles and wires as elements in a telecommunications network appeared to make this property distinctive.⁷¹ It opined that there appeared to be just reason for providing for an exemption for those poles and wires subject to the communications service tax established by RSA Chapter 82-A.⁷² The 1998 session of the legislature⁷³ made all structures, poles, towers and conduits used in the transmission of telecommunications or cable taxable as real estate but excluded from the definition of real estate wires, fiber-optics, and switching equipment.⁷⁴ After expending a great deal of energy to enact this tax, the legislature granted an exemption from tax on all wooden poles.^{74.1} RSA Although that exemption was prospectively repealed as of 1999 by Laws 1998, ch. 304:5, it has been repeatedly extended by the legislature.⁷⁵

Library References

16 E. McQuillin, *Municipal Corporations* §§ 44.51, 44.87 (3rd ed. 2003).

§ 18.09 Taxation of Wires and Poles Pursuant to RSA 72:23, I(b)

Although the New Hampshire Supreme Court had ruled that telecommunications equipment of the New England Telephone and Telegraph Company was not taxable as real estate,⁷⁶ the City of Rochester amended the pole licenses for New England Telephone making every license subject to a

⁷⁰ Opinion of the Justices (Property Taxation of Telephone Poles), 142 N.H. 102, 697 A.2d 125 (1997).

⁷¹ 55.35. Opinion of the Justices (Property Taxation of Telephone Poles), 142 N.H. 102, 697 A.2d 125.

⁷² 55.35. Opinion of the Justices (Property Taxation of Telephone Poles), 142 N.H. 102, 697 A.2d 125.

⁷³ Laws 1998, ch. 304.

⁷⁴ RSA 72:8-a.

^{74.1} RSA 72:8-b.

⁷⁵ Laws 2005, ch. 146 extended the exemption to 2010.

⁷⁶ *New England Tel. & Tel. Co. v. City of Franklin*, 141 N.H. 449, 452-56, 685 A.2d 913, 916-18 (1996).

requirement that the licensee was responsible for paying all properly assessed real and personal taxes and providing that the failure of the licensee to pay such taxes would cause the city to terminate the license.⁷⁷ The City took the position that it was not directly taxing the equipment of the telephone company but that, by virtue of its authority to issue licenses pursuant to RSA 231:161, I(b), (vi), it had the authority to amend the license requirements to provide that a condition of the license was payment of taxes.⁷⁸

The Supreme Court, in *New England Telephone & Telegraph Company v. City of Rochester [Rochester I]*,⁷⁹ upheld the City's position, pointing out the license agreement constituted "other agreements the terms of which provide for the use or occupation by others of real or personal property owned by the state or a city, town, school district, or village district" as defined in RSA 72:23, I(b).⁸⁰ The Court held that the City was required to impose certain conditions on licenses,⁸¹ and thus was implicitly authorized to impose other conditions on licenses consistent with the public good.⁸² The Court agreed that the telephone company's licenses "represent agreements, in the usual sense of the term, to occupy and use public property" and that the provisions of RSA 72:23, I(b), were thus applicable to those licenses.⁸³ The telephone company argued that the amendments to the license were invalid because they were not required for the public good; however, the Court disagreed and ruled that "a measure or act is in the public good if it is not forbidden by law and is to be reasonably permitted under all of the circumstances."⁸⁴

Rochester's efforts to include language from RSA 72:23, I(b) in its pole licenses ended up back before the Supreme Court after the remand in *Rochester I*.⁸⁵ In *Verizon New England, Inc. v. City of Rochester [Rochester II]*,⁸⁶ Verizon advanced five reasons why RSA 72:23, I(b) did not allow the

⁷⁷ *New England Tel. & Tel. Co. v. City of Rochester*, 144 N.H. 118, 119, 740 A.2d 135, 136 (1999).

⁷⁸ *Id.* at 119, 740 A.2d at 135.

⁷⁹ 144 N.H. 118, 740 A.2d 135 (1999).

⁸⁰ *Id.* at 121, 740 A.2d at 137.

⁸¹ RSA 231:161, V.

⁸² *Rochester I* at 121, 740 A.2d at 137.

⁸³ *Id.*

⁸⁴ *Id.* at 122, 740 A.2d at 137.

⁸⁵ *Id.* at 122, 740 A.2d at 138.

⁸⁶ 151 N.H. 263, 855 A.2d 497 (2004).

City to tax its use of the public ways. The Court rejected all five arguments.⁸⁷ The Court also rejected Verizon's argument that the amendment to the City's pole licenses was not consistent with the public good.⁸⁸ The Court remanded the case to the trial court on the issue of whether the pole licenses violated Verizon's right to equal protection, but the Court did point out that in analyzing this constitutional argument, the legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest, and that Verizon had the burden to prove that the classification was arbitrary or without some reasonable justification.⁸⁹ The Court reversed the trial court's grant of an abatement to Verizon and remanded the case for further proceedings, pointing out that Verizon was only entitled to a tax abatement if it carried the burden of proving disproportionality by establishing that its property is assessed at a higher percentage of fair market value than the percentage at which property generally is assessed in the City.⁹⁰

In *Verizon New England, Inc. v. City of Rochester [Rochester-III]*,⁹¹ the Court faced head-on the issue of whether the taxation of Verizon's poles is a violation of equal protection guarantees since the property of other utilities in the public rights of way was not being taxed. The Court pointed out that the equal protection clause protects an entity from state action which selects it out for discriminatory treatment by subjecting it to taxes not imposed on others of the same class.⁹² The Court found that the City was selectively applying RSA 72:23, I against Verizon since it was not taxing the electric or gas companies for their use of public streets.⁹³ There might not have been an equal protection violation if the City's selected taxation was reasonably related to a legitimate state interest. However, the Court could find no rational reason for selectively imposing the tax upon Verizon and not upon

⁸⁷ Id. at 266-270, 855 A.2d at 500-03.

⁸⁸ Id. at 270, 855 A.2d at 503.

⁸⁹ Id.

⁹⁰ Id. at 272, 855 A.2d at 504-05 (the trial court had granted the abatement based on Verizon's claim that the City failed to follow a recognized methodology in determining the market value of Verizon's use of the land pursuant to its pole licenses. The Supreme Court pointed out that while it was possible that a flawed methodology could lead to a disproportionate tax burden, the flawed methodology does not, in and of itself, prove the disproportionate result).

⁹¹ 156 N.H. 624, 940 A.2d 237 (2007).

⁹² Id. at 630, 940 A.2d at 243 (quoting *Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster Cty.*, 488 U.S. 336, 345, 109 S. Ct. 633, 102 L. Ed. 2d 688 (1989)).

⁹³ Id. at 631, 940 A.2d at 244.

other utilities that use and occupy public property in the same manner as Verizon and, in fact, the Court could not find any legitimate governmental interest that was furthered by this disparate treatment.⁹⁴

Note that in *Town of Ossipee v. Whittier Lifts Trust*,⁹⁵ the Court found that a license agreement in a state owned telecommunications tower was taxable under RSA 72:23, I.⁹⁶

§ 18.10 Sand and Gravel Deposits

Real estate must be taxed independently of any mines or ores or any sand, gravel, loam or other deposits contained on the real estate until those minerals become a source of profit.⁹⁷ If the mineral rights are owned by a person other than a person owning the fee simple in the real estate, the sand and gravel deposits or other mines or ores may be taxed as real estate to the person owning them.⁹⁸

§ 18.11 Leaseholds

In New Hampshire, taxation must be authorized by statute.⁹⁹ Since only real estate has been made subject to taxation under RSA 72:6 and since leaseholds for a term of years are considered personalty, they are not taxable to the lessee.¹⁰⁰ Unless the lessor and lessee have reached an agreement to the contrary, the lessor, as owner of the fee interest, pays taxes on the full value of the land as if the leasehold interest did not exist.¹⁰¹ Leases of land

⁹⁴ Id.

⁹⁵ 149 N.H. 679, 827 A.2d 989 (2003).

⁹⁶ Id.

⁹⁷ RSA 72:13. See *French v. Lyme*, 77 N.H. 63, 64, 86 A. 823, 824 (1913) (case dealt with the taxability of timber standing on property prior to the constitutional amendment dealing with the taxation of timber, however, in the opinion, the court in dicta quoted *Cool Tax* (3d ed.) 635 indicating that "[mines] and quarries, though the ownership of them is severed from that of the surface, are taxable as real estate...").

⁹⁸ RSA 72:13.

⁹⁹ *Verney Corp. v. Peterborough*, 104 N.H. 368, 371-372, 188 A.2d 50, 53-54 (1963) (authorization existed for tax on stock-in-trade of plaintiff corporation).

¹⁰⁰ *Indian Head National Bank of Portsmouth v. Portsmouth*, 117 N.H. 954, 955, 379 A.2d 1270, 1271-1272 (1977) (leasehold interest of Indian Head National Bank at Pease Air Force Base for a 15-year term with a 10-year extension was not taxable, but building built on the land and owned by the bank was real estate and was taxable); Note that RSA 12-G: 11, II now specifically makes all leased property at Pease subject to local taxation unless inside the so-called airport district.

¹⁰¹ *Hampton Beach Casino, Inc. v. Town of Hampton*, 140 N.H. 785, 674 A.2d 979

NEW HAMPSHIRE SENATE RESEARCH**MEMORANDUM**

TO: Sen. Lou D'Allesandro
DATE: April 11, 2003
FROM: Diana Ferguson
IN RE: The telecommunications pole and wires property tax exemption and
the communications services tax

You have asked for history on legislation relative to both the subject tax provisions. Further to this morning's request, here is a preliminary outline of the chronology of these developments:

- 1990 The legislature repeals the telephone pole and wire personal property tax while instituting the communications services tax (CST). Chapter 9 (HB 1390), codified at RSA 82-A. The tax is set at 3% (RSA 82-A:3 and 82-A:4) and is enhanced by a temporary surcharge at the rate of 66 2/3 of the tax. Thus, the effective tax, collected by the telephone companies from the consumers, is 5%.
- 1991 Chapter 353 (HB 40) and Chapter 354 (HB 64) are adopted and continue CST statutory rate at 3% and raise the surcharge to 100%, thus setting the effective tax at 6%.
- 1993 Chapter 350 (HB 51) is adopted, setting the CST's combined rate for the biennium at 5.5% (effective rate), thus changing the surcharge to the rate that would be renewed biennially through June 30, 2001. The base tax rate also remained at 3% through the same period.
- 1996 The New Hampshire Supreme Court decides *N.E.T.&T. v. City of Franklin*, holding that poles and wires are personal property unless the legislature says otherwise, thus depriving the municipalities of the power to tax them (not real property)
- 1997 The Supreme Court of New Hampshire issues an advisory opinion on SB 73 that declaring poles and wires to be real property is not unconstitutional and that granting an exemption for the telephone company (as opposed to the electric company) is not unconstitutional because the use by the telephone companies is distinguishable from the use by the electric companies. SB 73 eventually dies but its corresponding house bill passes (HB 707). Testimony at the hearings for HB 707 suggests the purpose of the exemption is to maintain a level field between the telephone and electric companies for tax purposes as the CST is already being imposed.
- 1998 Chapter 304 (HB 707, 1997 session, prime sponsor Clifton Below) becomes effective establishing the tax status of poles, wires and other conduits as real property taxable by municipalities but also granting a conditional exemption for poles and conduits of the telephone company so long as the CST tax remains enhanced by surcharges over and above the rate set on RSA 82-A:3 and RSA-A:4.
- 2001 Chapter 158 (HB 170) raises the base CST to 4.5% and continues the surtax (of 2.5% since 1993) for an effective rate of 7% for the biennium ending June 30, 2003.

I will continue the compilation of the history you have requested. If we can provide you with any further information, please let us know.

file

NEW HAMPSHIRE SENATE RESEARCHMEMORANDUM

TO: Sen. Lou D'Allesandro
 DATE: April 14, 2003
 FROM: Diana Ferguson
 IN RE: The telecommunications pole and wires property tax exemption and the communications services tax

You have asked for the chronology of the history on legislation relative to both the subject tax provisions. You have also asked for legislative history of the telecommunications poles and conduits property tax exemption including a review of that history for information showing whether or not the telephone poles and wires exemption has been intended to be permanent.

General description of the tax and the exemption

The communications services tax (CST) is part of a complex fabric of taxes interwoven to provide revenue for the state. Examples of other threads in this web include (but are not limited to) the business profits tax (BPT), the business enterprise tax (BET), the utility franchise tax, the rooms and meals tax, the tobacco tax and the real estate transfer tax. The CST is found at RSA 82-A.

The CST is collected by the telephone companies from the consumers. According to the Department of Revenue Administration Audit Division, the general rule is that telecommunications service retailers remit the taxes due for services in, say, January by the fifteenth day of February. (There is a quarterly option available to those at less than \$100 per month, such as hotels; taxes for January, February and March are due the fifteenth day of April.)

The property tax status of telecommunications poles and conduits is found at RSA 72:8-a. The telecommunications poles and conduits property tax exemption is found at RSA 72:8-b. Adopted in 1997, it is a conditional exemption available so long as the rate of the CST actually imposed by action of the legislature (the effective rate) exceeds the rate of the tax set out in the CST statute's sections RSA 82-A:3 (for intrastate service) and RSA 82-A:4 (for interstate service). Put another way, so long as there is a surcharge.

Chronology (analysis drawn in part from bill testimony):

- 1990 The legislature repeals the state telephone pole and wire personal property tax while instituting the communications services tax (CST) in Chapter 9 (HB 1390), the main provisions of which bill establish the BPT. In testimony then and since, the CST is variously characterized as an excise tax or a sales tax. The tax is set in statute at 3% and is enhanced by a temporary surcharge at the rate of $66 \frac{2}{3}$ of the base statutory tax. Thus, the initial effective tax is 5%.
- 1991 Chapter 353 (HB 40) and Chapter 354 (HB64) are adopted continuing CST statutory rate at 3% and raising the surcharge to 100%, thus setting the effective tax at 6%.
- 1993 Chapter 350 (HB 51) is adopted, instituting the BET. Among other provisions, the bill sets the CST's combined rate for the biennium at 5.5% (effective rate) through the biennium ending June 30, 1995. This rate in the surcharge is renewed biennially

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(in session law) through June 30, 2001 (*see below*). The base statutory tax rate also remains at 3% through the same period. A review of the bill and of the Senate debates shows that the drop of half a percent in the CST surcharge is described as a beneficial effect of the BET's closing a perceived loophole on the BPT. Similar drops are set in the surcharges for the rooms and meals tax and the real estate transfer tax. Finally, annual drops are provided for the BPT statutory rate over the biennium. 1993 SJ 859-870, 1345-1353, and 1553-1576. (The final version of HB 51 includes language from the earlier defeated HB60 which sought to set the effective rate for the CST at 5.75%.)

- 1995 Chapter 96 (HB 442) is adopted continuing the CST effective rate of 5.5% through the biennium ending June 30, 1997. In the *Senate Journal*, the bill was reported as follows:
- Sen. Danais [for Ways and Means]: This bill extends the current tax rate for the rooms and meals tax, the telecommunications tax and the real estate transfer tax through the biennium. Support for the legislation comes from keeping this rate temporary in order for the legislature to revisit the issue every biennium in hopes of a reduction, however slight, similar to the fifty cents per thousand reduction in 1993. The committee recommends ought to pass. 1995 SJ 528.
- 1996 The New Hampshire Supreme Court decides *N.E.T.&T. v. City of Franklin*, 114 NH 449, holding that poles and wires are personal property unless the legislature says otherwise, thus depriving the municipalities of the power to tax them. Albeit that municipalities have the legislatively-granted power to tax property, that power is for real property or for property not already taxed by the state. Prior to the 1990 repeal of the state's power to tax telephone company property, the municipalities had had no power to tax that class of property. ~~After the 1990~~
- 1997 The New Hampshire Supreme Court issues an advisory opinion on SB 73 that legislation declaring poles and wires to be real property is not unconstitutional and that granting an exemption for certain property of telephone companies (as opposed to the electric companies) is not unconstitutional because the property use by the telephone companies is distinguishable from the property use by the electric companies. *Opinion of the Justices*, 142 NH 102. SB 73 eventually dies but its corresponding house bill survives re-referral and passes the next year (Chapter 304, HB 707). Testimony at the hearings for HB 707 suggests the purpose of the exemption is to maintain a level field between the telephone and electric companies for tax purposes as the CST is already being imposed; there is discussion of putting the telecommunications business at a competitive disadvantage in the state if the exemption were to be discontinued.
- 1997 Chapter 294 (HB 566) is adopted, an act relative to the applicability of the property tax to electric plants and pipelines. This bill is related to electric deregulation and one issue in it is what constitutes real property for electric companies.
- 1997 Chapter 130 (HB 51) is adopted continuing the CST effective rate of 5.5% through the biennium ending June 30, 1999.

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- 1998 **Chapter 304 (HB 707, 1997 session**, prime sponsor Clifton Below) is adopted and becomes effective April 1, 1998, establishing the tax status of poles, wires and other conduits used in telecommunications as real property taxable by municipalities while also granting a conditional exemption for telecommunications poles and conduits so long as the CST tax remains enhanced by surcharges over and above the base rate set in RSA 82-A:3 and RSA-A:4. The conditional exemption has a prospective repeal (sunset) date of July 1, 1999. (See legislative history below.)
- 1999 Chapter 163 (HB 596) continues the CST effective rate of 5.5% through the biennium ending June 30, 2001. The bill also extends the prospective repeal of the telecommunications poles and conduits property tax conditional exemption to July 1, 2001.
- 1999 The New Hampshire Supreme Court decides *N.E.T. & T. v. City of Rochester*, confirming that municipalities have the power under RSA 231:161 to make it a condition of licensure under RSA 72:23, I (b), that land used and occupied by the a telephone company under such license be subject to real property tax. In the case, this power applied to the city's amending the conditions of the telephone company's license "for the public good."
- 2000 HB 1436, an act reducing the temporary rate of the communications services tax (Sponsor: Rep Young, Sull. 6), is a proposal to lower the temporary effective rate of the CST from 5.5% to 4.5% for the years ending June 30, 2000 and June 30, 2001. Testimony of the sponsor related the following:
- Originally, we passed the surcharge and the communications tax. Every speaker on the floor of the House and -- and Representative Kurk, I'm not looking at anybody in particular, promised all of us that it was a temporary tax. As we always do in New Hampshire, we first set up a temporary tax or a temporary surcharge. We promise everybody that it's gonna be temporary, here for two years, or four years, or whatever it is, and then we turn around and we make it a permanent tax, or a permanent surcharge, or a permanent increase.
- If, in fact, that they had told the Floor of the House when they put in the surcharge the first time that it wasn't -- it was gonna be permanent, ladies and gentlemen, it would never have passed. And I suspect that -- that a lot of people knew that it was gonna be permanent and they sort of played games with the Legislature at that time and told them it was gonna be a temporary tax.
- I also suspect if they told them it was gonna be a permanent tax, that a lot of small businesses, who are directly affected by this in the high-tech industry, would have come out and said, All right, this is more than a 2-year pinch. This is a long-term, non-economic growth process for our company that is gonna hurt us job-wise and growth-wise for decades to come.
- We are now in that process, and, hopefully, throughout the summer and -- and the next year's elections, that there will be a lot more emphasis on the communications tax and how jobs will suffer in decades to come, because we

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had made a determination to tax which should be the backbone of our economy for years to come. Thank you, Mr. Chairman.

CHAIRMAN KURK: Thank you, Representative Young. Questions from Members of the Committee? Representative Vaughn?

REPRESENTATIVE VAUGHN: Just briefly. You're withdrawing this bill?

REPRESENTATIVE YOUNG: Yes, sir. Basically, I think the concept is it's in lieu of the success that many of us have had with the interest and dividends tax and inheritance tax; it's not practical from a budgetary standpoint this year. To the extent that those taxes hadn't had such good success on the floor, I'm saying that this would be the best time to bring this, but not now.

And then, later in the transcript:

CHAIRMAN KURK: No, the question was: What tax you could use or what tax system should be used to raise the necessary revenues, since you've decided that this tax doesn't make sense; that the interest and dividends tax doesn't make sense, and the state legacy's tax doesn't make sense?

REPRESENTATIVE YOUNG: First off, this bill doesn't get -- take away the communications tax. So, all it does, it decreases the communications tax. It doesn't -- it doesn't get rid of it, nor am I suggesting in this tax that we will have the luxury of being able to get rid of those taxes. I -- I don't think we will, no. I'm not suggesting that the communications tax be disbanded.

Transcript of hearing before House Finance Committee, Wednesday, January 26, 2000; the bill is reported out of House Finance as ITL (report adopted 3/9/2000).

- 2001 Chapter 158 (HB 170) raises the base CST to 4.5% and continues the surtax (of 2.5% since 1993) for an effective rate of 7% for the biennium ending June 30, 2003. The bill also extends the prospective repeal of the telecommunications poles and conduits property tax conditional exemption to July 1, 2003.
- 2003 HB 705, an act (New Title) establishing a committee to study the application of the communications services tax to the provision of Internet services and relative to the rate of the communications services tax and the property tax exemption for wooden poles and conduits (Sponsors: Rep. Thomas, Belk. 31; Sen. Eaton, Dist. 10), passes the House on April 10, 2003, by a division vote of 231-124. Among other provisions, the bill seeks to continue the effective CST rate of 7% for the biennium ending June 30, 2005. The bill also extends the prospective repeal of the telecommunications poles and conduits property tax conditional exemption to July 1, 2005.
- 2003 SB 151, an act relative to the taxation of telecommunications poles and conduits (Sponsor: Sen. Green) is reported out of Energy and Economic Development as refer and then tabled in the Senate (3/27/03, no further action as of today).

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2003 SB 102, an act relative to the taxation of telecommunications poles and conduits (Sponsor: Sen. D'Allesandro) is reported out of Ways and Means as ought to pass as amended and then tabled in the Senate (3/27/03, no further action as of today).

Legislative History of HB 707, Chapter 304, Laws of 1998.

HB 707 was introduced (copy attached) as follows:

AN ACT relative to municipal taxation of utility property.

SPONSORS: Rep. Below, Graf 13; Rep. J. Bradley, Carr 8; Rep. MacGillivray, Hills 21; Sen. F. King, Dist 1; Sen. Whipple, Dist 8; Sen. McCarley, Dist 6

COMMITTEE: Science, Technology and Energy

ANALYSIS

This bill clarifies the types of utility property which are subject to property taxation by municipalities.

> And the body of the bill:

1 Utilities and Electricity Suppliers. RSA 72:8 is repealed and reenacted to read as follows:

72:8 Utilities and Electric Suppliers. Poles, towers, conduits, pipelines, stationary storage tanks, wires, cables, structures, machinery, and fixtures of all kinds and descriptions, except telecommunications central office equipment, owned by a person or corporation operating as a public utility as defined in RSA 362:2, operating as an electricity supplier, as defined in RSA 374-F:2, II, operating as a petroleum products supplier, or operating as a telecommunications services provider, generating, producing, supplying, distributing electricity or light, or used in transporting or supplying natural gas, crude petroleum, refined petroleum products, or steam, or combinations thereof, or providing telecommunications services, shall be taxed as real estate in the municipality or place in which the property or any part of it is situated.

The bill was re-assigned to Local and Regulated Revenues which, after a hearing on February 20, 1997, reported it out for March 12, as follows:

HB 707-L, relative to municipal taxation of utility property. RE-REFER TO COMMITTEE

Rep. Stephen G. Avery for Local and Regulated Revenues: The committee had two bills dealing with the deregulation issues of electrical power rates, HB 707-L and HB 566-FN-A-L. HB 566 was amended and voted OTP/A by the committee to take care of the most pressing issues. There are far more questions to be asked on this complicated issue and the committee wants the time to look at all aspects of deregulation. Therefore, we would ask your support on re-referral. Vote 14-0.

1997 HJ 359; the re-refer report was adopted on the consent calendar.

NEW HAMPSHIRE SENATE RESEARCH

The bill was heard again on September 17 and October 7 of 1997, then reported out as ought to pass with amendment. The amendment and report were adopted January 7, 1998 as follows:

HB 707-L, relative to municipal taxation of utility property. OUGHT TO PASS WITH AMENDMENT

Rep. Jean R. Wallin for Local and Regulated Revenues: This bill, as amended, finally distinguishes between real property that is subject to local taxation and personal property that is not. All utility poles will be taxed equally whether they are owned by electric companies or telecommunications companies. The amendment attempts to address some concerns of the telecommunication industry by exempting wires, fiber optics, switching equipment and other transmission devices. Our cities and towns fear losing revenue should pending court cases be decided in favor of the electric utilities challenging pole taxation on the basis of equality of taxation. If all poles are taxed equally, this danger may disappear. Vote 13-0.

Amendment (0043h)

Amend the title of the bill by replacing it with the following:

AN ACT relative to municipal taxation of telecommunications poles and conduits.

Amend the bill by replacing all after the enacting clause with the following:

**1 New Section; Property Taxation of Telecommunications Poles and Conduits.
Amend RSA 72 by inserting after section 8 the following new section:**

72:8-a Telecommunications Poles and Conduits. All structures, poles, towers, and conduits employed in the transmission of telecommunication or cable services shall be taxed as real estate in the town in which such property or any part of its is situated. Wires, fiber optics, switching equipment, and other telecommunications or cable services transmission devices and equipment owned by a person or corporation operating as a telecommunications or cable services provider shall not be taxable as real property.

2 Effective Date. This act shall take effect April 1, 1998.

AMENDED ANALYSIS

This bill clarifies the types of telecommunications property which are subject to property taxation by municipalities.

Adopted.

Rep. Wallin spoke against referring the bill to Finance.

Rep. Kurk spoke in favor and yielded to questions.

Report adopted and referred to Finance.

Rep. Joseph Foster declared a conflict of interest and did not participate.

NEW HAMPSHIRE SENATE RESEARCH

The bill was heard in House Finance on January 12 and 14, 1998; copies of the transcripts are attached. As to mention of the temporary or permanent nature of the conditional exemption, that aspect had not yet developed in the bill, though it had been raised in the prior committee's hearings in the Fall of 1997 (minutes and materials in bill file for Local and Regulated Revenues). At this stage, the bill is still seeking to bring telecommunications poles, wires and conduits into a taxable status for municipalities. Nonetheless, there is reference (at p.25) in the testimony of Jeanne Conroy, representing Bell Atlantic, to a bit of history on the surcharge (to which the conditional exemption is attached), concerning the question of the interwoven taxes and preserving the level playing field as between telecommunications and electric companies. Ms. Conroy says:

First, it's important to note that personal property of the telephone company has never been subject to a local property tax during the 20th Century. Although electric companies were subject to a local property tax, railroad companies, telegraph and telephone companies were subject to a state property tax on their personal property. Telephone personal property was valued and assessed by the state, and the revenues from that tax went to the general fund. Even when the stock and trade tax was eliminated and the business profits tax was enacted, telephone companies continued to pay a state personal property tax in addition to the business profits tax, until 1990.

Of course, telephone company real estate was always subject and continues to be subject to the local property tax. By that, I mean land and buildings is subject to the local property tax. When the state personal property tax on telecommunications was repealed in 1990 and replaced with the communications excise tax, the revenues generated by the communications excise tax also went to the state. In fact, as I'm sure Chairman Kurk recalls, the amount of revenues earmarked for the state were roughly doubled in 1990, because the proposed three percent communications excise tax was transformed into a five percent tax, through a surcharge, to remedy a state budget deficit problem at that time. Although everyone contemplated that the surcharge would be gradually phased out, that never happened, and telecommunications customers continued to be burdened by an excise tax, which is currently at 5.5 percent. The revenues raised from the communications excise tax continued to grow each year, and will raise approximately \$40 million from telecommunications customers this year.

Ms. Conroy goes on to say, at p.27:

Now, back down memory lane for a moment. One of the major reasons that the legislature eliminated the property tax on poles, wires and conduit and equipment in 1990 and substituted the communication services tax was because the property tax did not apply fairly to all providers of telecommunication service. New telecommunications providers competing with the local telephone companies in New Hampshire were wireless providers who had no property in the state. **It was not a level playing field, because the traditional local telephone company was paying millions of dollars in property taxes and new entrants into the market, because of differences in technology, were paying virtually nothing. Substituting the communication services tax for the property tax established a level playing field, because it applies equally to all**

NEW HAMPSHIRE SENATE RESEARCH

telecommunication services, whether the service is provided by a traditional telephone company, by a cellular company, by a cable company or by an Internet company, because it's a tax on revenues rather than property. It is so effective that the state tax revenues attributable to this tax continue to grow each fiscal year.

The legislature's decision to broaden the tax base by focusing on revenues from the service rather than property was clearly the right choice, given the current trend to enter the telephone business using wireless technologies or the Internet. By re-imposing a property tax, the legislature would be undoing a comprehensive, very successful tax policy that was established in 1990 to prepare New Hampshire for the 21st Century, which taxes all communications providers at a fair and equal manner. Creating a level playing field and taxing all communications providers is a fair -- in a fair and equal manner was an important goal in 1990 and continues to be important today. That is what is important, taxing all communications providers in a fair and equal manner. It is not important to tax telephone companies and electric companies. We are not competing with each other in the same way.

[Emphasis added.]

Ms. Conroy's position is echoed later, at p. 34, in the testimony of Dom D'Ambruoso of the New Hampshire Telephone Association:

Until 1990 personal property of telephone companies was centrally assessed by the Department of Revenue Administration, pursuant to RSA 82, the statewide personal property tax on telephone companies. In 1990, the legislature repealed RSA 82 and abandoned this property-based tax in favor of a type of sales tax on telecommunication services, known as the CST, to be applied equally to all providers of communication services. The CST had two objectives, one to level the playing field in the telecommunications industry, and second, to increase revenue for the state, subject to the imperative that it be revenue neutral for municipalities.

These two objectives of the CST were met. It achieved tax equity in the rapidly expanding world of competing technologies for telecommunication services. Secondly, it generated enhanced revenues for the state government in a manner which does not impact the cities and towns. Now, in enacting CST, the legislature created the level playing field so that taxation of telecommunication services would not be distorted by the happenstance of how much tangible property a provider requires for its particular service. Up to the time that the CST was passed, certain communications providers, such as paging, microwave, satellite and cable companies did not pay the local property tax. That tax was borne by the facilities based providers, which are the telephone company members of the NHTA.

The bill as Finance had received it was reported out as ought to pass and was adopted on a voice vote on February 12, 1998, as follows:

**HB 707-L, relative to municipal taxation of telecommunications poles and conduits.
OUGHT TO PASS**

NEW HAMPSHIRE SENATE RESEARCH

Rep. Charles L. Vaughn for Finance: RSA 72:8 is the statute that allows municipalities to tax fixtures of all kinds and descriptions that belong to electric and gas companies. Almost 100 years old, the law's taxing provisions are a significant part of some communities' tax base. Electric companies are challenging the fairness of the law and seeking tax abatements from municipalities because their property is taxed but not the utility property which belongs to telephone companies. This bill removes this risk by eliminating inconsistencies in the law and permits municipalities to tax all poles and conduits regardless of ownership. Studied for over a year, amended to protect municipalities, the bill was passed by the House on a voice vote and sent to the Finance Committee. The Finance Committee voted to ensure the protection of municipalities to tax all poles and conduits ignoring ownership. The Committee recognizes that this bill adds a burden on certain telecommunications service providers, upsetting the tax equity plan worked out by the legislature in 1990. Vote 19-0.

Adopted and ordered to third reading.

Rep. Joseph Foster declared a conflict of interest and did not participate.

The bill then passed to the Senate where it was referred to Ways and Means. The bill was heard on March 31, 1998 (transcript copy attached) and there was much discussion of the need to treat telephone poles and electrical poles the same way and, in contrast, much concern about the anti-competitive impact of the taxation on the telephone company (for example, Bell Atlantic's representative again visits the "level field" concept). The bill was reported out as ought to pass with amendment and with a second new title. It is here that the exemption mechanism first appears in the bill itself. See attached copy of Senate Journal pages for April 9 for the amended bill and the debate. See also attached pages from June 18, 1998, relative to adoption of the Conference report (and pages from January 29, 1998, relative to SB 73 in which reference is made to HB 707). The exemption transformed from a flat exemption (April 9) to a conditional exemption (June 18).

Attached also please find the bill in its final form. It is worth noting that the central theme thorough the process of renewals of the original HB 707 exemption scheme has been the preservation of the delicate interweaving of the various tax methods used in the state.

Constraints of time have not allowed a comparison of SB 73 in depth with HB 707 at this point. Please advise if you would like me to proceed with that task.

Of course, if we can provide you with any further information, please let us know.



Stanley R. Arnold
Commissioner

State of New Hampshire
Department of Revenue Administration

61 South Spring Street, P.O. Box 457

Concord, 03302-0457

April 19, 1990

Representative Donna Sytek
Chairman
House Ways and Means Committee
Room 204, Legislative Office Bldg.

Dear Representative Sytek:


We have received several inquiries from local assessors concerning the taxability of telephone company property. The general nature of the inquiry is whether or not the local towns can tax telephone property now, as a result of the adoption of the Communications Services tax.

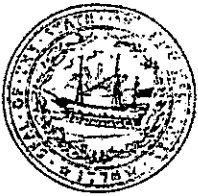
The question being asked is "what is taxable" (telephone poles, the wires, switching units, etc.) and how do the local assessors determine the values.

I did not attend all of the hearings, but I do not recall the issue of local taxation of telephone property being discussed. I believe that this issue should be decided by the legislature because of the associated questions raised by similar property taxed under RSA 72:8. Could you confirm whether the legislature addressed the issue of local taxation of telephone property?

Finally, many states classify telephone poles, wires, etc. as personal property rather than as real property. I believe failure to address this issue could lead to protracted litigation at the local level. This issue is no longer a state-level revenue issue, but now impacts the local municipalities. Should this issue be addressed by the Ways and Means Committee or the Municipal and County Government Committee? I would appreciate your comments on this issue.

Sincerely,


Stanley R. Arnold,
Commissioner



State of New Hampshire

HOUSE OF REPRESENTATIVES

CONCORD

COMMITTEE ON WAYS AND MEANS

Sytek, Donna P., Chairman
Ahrens, Frederick G., Vice Chairman
Cowenhoven, Garret P., Clerk
Sallada, Roland A.
Grip, Robert H.
Saunders, Howard N.
Hayes, Robert C.
Stiles, Walter A.
Kurk, Neal M.
Young, David A.
Hardy, Earle D.
Nichols, Avis B.
Barry, Vivian
Crutchley, Donald O.
Blacketer, Paul G.
Bourque, Ann J.
LaMar, David M.
Gureckis, Adam C., Sr.
Densmore, Edward

April 19, 1990

Stanley R. Arnold, Commissioner
Dept. of Revenue Administration
61 South Spring Street
Concord, New Hampshire 03301

Dear Stan:

Thank you for your letter of April 19, 1990, concerning the taxability of telephone company property. The legislature did not address the issue of whether or not the property formerly taxed at the state level could be, or should be taxed by the local municipalities. The amendment to RSA 72 was made at the request of the NHMA, because they were concerned that the land and buildings would not be taxable after repeal of RSA 82-C. They did not raise the issue of other telephone property.

I would agree that the legislature should look at the broader issue of how this property should be classified for local property tax purposes. I have directed our telecommunications subcommittee, in consultation with the Municipal and County Government Committee, to look at this issue and prepare legislation for the 1991 legislative session. Once legislation is introduced, it will be decided which committee should conduct the hearings.

I hope this answers your questions, and if you have any further question, please contact me.

Sincerely,

Rep. Donna P. Sytek
Chairman
Ways and Means Committee

cc: Kathleen M. Veracco

Voting Sheets

HOUSE COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT

EXECUTIVE SESSION on SB 133-FN

BILL TITLE: relative to reestablishing the exemption from property taxation for telecommunications poles and conduits.

DATE: March 24, 2011

LOB ROOM: 301

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

Motions: OTP, OTP/A, ITL, RETAIN (Please circle one.)

Moved by Rep. Burt

Seconded by Rep. Coffey

Vote: 9-7 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, RETAIN (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)


CONSENT CALENDAR VOTE: Yes No (please circle one)

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Munck, Clerk



HOUSE COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT

EXECUTIVE SESSION on SB 133-FN

BILL TITLE: relative to reestablishing the exemption from property taxation for telecommunications poles and conduits.

DATE: 3-24-11

LOB ROOM: 301

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, RETAIN (Please circle one.)

Moved by Rep.

Burt

Seconded by Rep.

Coffey

Vote:

(Please attach record of roll call vote.)

9-7

Motions: OTP, OTP/A, ITL, RETAIN (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

(Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: Yes No No (please circle one)

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Munck, Clerk

MUNICIPAL AND COUNTY GOVERNMENT

Bill #: SB133 Title: reestablish telecommunications exemption

PH Date: 3 / 24 / 11

Exec Session Date: 3 / 24 / 11

Motion: OTP

Amendment #: _____

MEMBER	YEAS	NAYS
Ferrante, Beverly A, Chairman		
Sterling, Franklin W, V Chairman	✓	
Patten, Betsey L		✓
Lockwood, Priscilla P		✓
Accornero, Harry	✓	
Belanger, James P	✓	
Burt, John A	✓	
Coffey, James E	✓	
Copeland, Timothy D		✓
Moore, Robert W	✓	
Munck, Philip L		✓
Shackett, Jeffrey S		
Stroud, Kathleen M	✓	
DeStefano, Stephen T	Absent	
Roberts, Kris E		✓
Hooper, Dorothea D		✓
Fatro, Bruce L		✓
<u>DeLumus, Susan</u>	✓	
<u>Wardan, Mark</u>	✓	
TOTAL VOTE:	9	7

Committee Report

REGULAR CALENDAR

March 24, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Majority of the Committee on MUNICIPAL AND COUNTY GOVERNMENT to which was referred SB133-FN,

AN ACT relative to reestablishing the exemption from property taxation for telecommunications poles and conduits. Having considered the same, report the same with the recommendation that the bill OUGHT TO PASS.

Rep. John A Burt

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee: **MUNICIPAL AND COUNTY GOVERNMENT**
Bill Number: **SB133-FN**
Title: **relative to reestablishing the exemption from
property taxation for telecommunications poles
and conduits.**
Date: **March 24, 2011**
Consent Calendar: **NO**
Recommendation: **OUGHT TO PASS**

STATEMENT OF INTENT

The purpose of SB133 is to reinstate the property tax exemption on telephone polls owned by telecommunication companies.

The majority of the committee believe that it is not in the best interest of businesses and consumers of New Hampshire to assess property taxes on communications poles and conduits. Local governments have never before had the right to assess property taxes on telecom poles and conduits. Such a tax would result in new costs to the communications companies that would undoubtedly be passed on to businesses and residents who rely on landline phones, especially low income households and the elderly. As more consumers move to wireless and other technology, the burden of this tax will be on the shoulders of fewer and fewer landline consumers. While we continue to encourage broadband expansion in our rural areas, we must remember that investment by these companies in their infrastructure will not continue if every pole they erect becomes a liability. The cost of assessing the communications poles and conduits could cost several thousands of dollars in each community. In short, a tax is a tax. If there is one message that the voters sent us in November, it is that they do not want us looking for ways to expand the areas the government can levy taxes on businesses and individuals. Many of us were elected on a promise of no new taxes, and SB 133 keeps that promise.

Vote 9-7

Original: House Clerk
Cc: Committee Bill File

Rep. John A Burt
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

MUNICIPAL AND COUNTY GOVERNMENT

SB133-FN, relative to reestablishing the exemption from property taxation for telecommunications poles and conduits. **OUGHT TO PASS.**

Rep. John A Burt for the **Majority of MUNICIPAL AND COUNTY GOVERNMENT.** The purpose of SB133 is to reinstate the property tax exemption on telephone polls owned by telecommunication companies.

The majority of the committee believe that it is not in the best interest of businesses and consumers of New Hampshire to assess property taxes on communications poles and conduits. Local governments have never before had the right to assess property taxes on telecom poles and conduits. Such a tax would result in new costs to the communications companies that would undoubtedly be passed on to businesses and residents who rely on landline phones, especially low income households and the elderly. As more consumers move to wireless and other technology, the burden of this tax will be on the shoulders of fewer and fewer landline consumers. While we continue to encourage broadband expansion in our rural areas, we must remember that investment by these companies in their infrastructure will not continue if every pole they erect becomes a liability. The cost of assessing the communications poles and conduits could cost several thousands of dollars in each community. In short, a tax is a tax. If there is one message that the voters sent us in November, it is that they do not want us looking for ways to expand the areas the government can levy taxes on businesses and individuals. Many of us were elected on a promise of no new taxes, and SB 133 keeps that promise. **Vote 9-7.**

Original: House Clerk

Cc: Committee Bill File

Bart

COMMITTEE REPORT

COMMITTEE: Municipal and County

BILL NUMBER: SB 133

TITLE: Restablishing pole tax exemption

DATE: 3-24-11 CONSENT CALENDAR: YES NO

OUGHT TO PASS

OUGHT TO PASS W/ AMENDMENT

INEXPEDIENT TO LEGISLATE

INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.

STATEMENT OF INTENT:

COMMITTEE VOTE: 9-7

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. Ad A. Bart
For the Committee

[Signature]

Rafeal, Linda

From: Goulette, Aaron
Sent: Thursday, March 24, 2011 3:47 PM
To: Rafeal, Linda
Subject: RE: Majority Blurb on SB 133 update

→ The majority of the committee believe that it is not in the best interest of businesses and consumers of New Hampshire to assess property taxes on communications poles and conduits. Local governments have never before had the right to assess property taxes on telecom poles and conduits. Such a tax would result in new costs to the communications companies that would undoubtedly be passed on to businesses and residents who rely on landline phones, especially low income households and the elderly. As more consumers move to wireless and other technology, the burden of this tax will be on the shoulders of fewer and fewer landline consumers. While we continue to encourage broadband expansion in our rural areas, we must remember that investment by these companies in their infrastructure will not continue if every pole they erect becomes a liability. The cost of assessing the communications poles and conduits could cost several thousands of dollars in each community. In short, a tax is a tax. If there is one message that the voters sent us in November, it is that they do not want us looking for ways to expand the areas the government can levy taxes on businesses and individuals. Many of us were elected on a promise of no new taxes, and SB 133 keeps that promise.

From: Goulette, Aaron
Sent: Thursday, March 24, 2011 3:15 PM
To: Rafeal, Linda
Subject: Majority Blurb on SB 133

~~The majority of the committee believed that it is in the best interest of consumers of New Hampshire to continue the exemption of communications poles and conduits from local property taxes. A tax on these poles and conduits would result in new costs to the communications companies that would undoubtedly be passed on to businesses and residents who rely on landline phones, especially our low income and elderly constituents. While we continue to encourage broadband expansion in our rural areas, we must remember that investment by these companies in their infrastructure will not continue if every pole they erect becomes a liability. If the exemption were to expire any tax revenue to our towns and cities would most likely not result in any meaningful tax relief and the cost of assessing the communications poles and conduits would cost thousands of dollars. Many of us were elected on a promise of no new taxes, and SB 133 keeps that promise.~~

The purpose of SB 133 is to reinstabe the property tax exemption on telephone polls owned by telecommunication companies. →

3/24/2011

REGULAR CALENDAR

March 24, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on MUNICIPAL AND COUNTY GOVERNMENT to which was referred SB133-FN,

AN ACT relative to reestablishing the exemption from property taxation for telecommunications poles and conduits. Having considered the same, and being unable to agree with the Majority, report with the following Resolution: RESOLVED, That it is INEXPEDIENT TO LEGISLATE.

Rep. Kris E Roberts

FOR THE MINORITY OF THE COMMITTEE

**MINORITY
COMMITTEE REPORT**

Committee: **MUNICIPAL AND COUNTY GOVERNMENT**
Bill Number: **SB133-FN**
Title: **relative to reestablishing the exemption from
property taxation for telecommunications poles
and conduits.**
Date: **March 24, 2011**
Consent Calendar: **NO**
Recommendation: **INEXPEDIENT TO LEGISLATE**

STATEMENT OF INTENT

The sponsors of SB 133 stated that the failure to pass SB 133 granting tax-exempt status to underground conduit systems and telephone poles would result in a new tax. In many ways this is a play on words. The general court can't grant a property tax exemption, abatement, or credit unless there was a tax currently in place. So failure to pass SB 133 would not result in a new tax. SB 133 in fact reinstates an exemption that over 60% of this body voted to eliminate. SB 133 is government getting involved in the free-market system by requiring the local property owner to support major corporations such as Comcast, Time Warner, Metrocast, FairPoint and numerous others through their tax dollars. Despite what many people stated for many communities this wouldn't result in increased taxes, resulting in larger budgets. It would mean that in most communities everyone would be treated fairly and would be required to pay equal taxes based on assessed value.

Rep. Kris E Roberts
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

MUNICIPAL AND COUNTY GOVERNMENT

SB133-FN, relative to reestablishing the exemption from property taxation for telecommunications poles and conduits. **INEXPEDIENT TO LEGISLATE.**

Rep. Kris E Roberts for the **Minority** of MUNICIPAL AND COUNTY GOVERNMENT. The sponsors of SB 133 stated that the failure to pass SB 133 granting tax-exempt status to underground conduit systems and telephone poles would result in a new tax. In many ways this is a play on words. The general court can't grant a property tax exemption, abatement, or credit unless there was a tax currently in place. So failure to pass SB 133 would not result in a new tax. SB 133 in fact reinstates an exemption that over 60% of this body voted to eliminate. SB 133 is government getting involved in the free-market system by requiring the local property owner to support major corporations such as Comcast, Time Warner, Metrocast, FairPoint and numerous others through their tax dollars. Despite what many people stated for many communities this wouldn't result in increased taxes, resulting in larger budgets. It would mean that in most communities everyone would be treated fairly and would be required to pay equal taxes based on assessed value.

Original: House Clerk

Cc: Committee Bill File

SB 133 Min Rep
ITL
Rep Roberts

The sponsors of SB 133 stated that the failure to pass SB 133 granting tax-exempt status to underground conduit systems and telephone poles would result in a new tax. In many ways this is a play on words. The general court can't grant a property tax exemption, abatement, or credit unless there was a tax currently in place. So failure to pass SB 133 would not result in a new tax. SB 133 in fact reinstates an exemption that over 60% of this body voted to eliminate. SB 133 is government getting involved in the free-market system by requiring the local property owner to support major corporations such as Comcast, Time Warner, Metrocast, FairPoint and numerous others through their tax dollars. Despite what many people stated for many communities this wouldn't result in increased taxes, resulting in larger budgets. It would mean that in most communities everyone would be treated fairly and would be required to pay equal taxes based on assessed value.

MINORITY REPORT

COMMITTEE: Municipality and County

BILL NUMBER: SB133

TITLE: reestablishing pole tax exemption

DATE: 3-24-11 CONSENT CALENDAR: YES NO

OUGHT TO PASS

OUGHT TO PASS W/ AMENDMENT

INEXPEDIENT TO LEGISLATE

INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.

STATEMENT OF INTENT:

The sponsors of SB133 stated that the failure to pass SB133 granting tax-exempt status to underground conduit systems and telephone poles would result in a new tax. In many ways this is a play on words. The General Court can't grant a property tax exemption, a statement, a credit unless there was a tax currently in place. So failure to pass SB-133 would ^{not} result in a new tax. SB-133 in fact reestablishes an exemption that this body over 60% of this body voted to eliminate. SB133 is government ~~system~~ getting involved in the free-market ^{system} ~~system~~ requiring the local property

COMMITTEE VOTE: 9-7

• Copy to Committee Bill File

RESPECTFULLY SUBMITTED,

Rep. [Signature]
For the Minority

[Signature]