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**PLEASE RESPOND TO THE EXETER OFFICE
ATTORNEY-CLIENT PRIVILEGED AND CONFIDENTIAL**

Via First Class Mail and Email to : wmanzi@seabrooknh.org

Seabrook Board of Selectmen
C/O William Manzi, Town Manager
Town of Seabrook
99 Lafayette Road
Seabrook, New Hampshire 03874

August 13, 2021

Re: FairPoint – Settlement Update

Dear Members of the Board:

The purpose of this letter is to provide you with a draft settlement agreement in the FairPoint tax appeals.

As you know, FairPoint offered to settle the tax appeals against the Town based on a settlement calculation that constitutes 96% of the calculated liability under the valuation methodology decided by the Merrimack County Superior Court in the so-called Test Cases involving the Towns of Belmont, Durham, and Hanover, inclusive of interest through December 1, 2020. As applied to the Town, that amount is \$155,349.

Per our discussion on Monday, this amount reflects and gives credit for the Town's assessment of FairPoint for its use of the public rights-of-way in accordance with a prior Bankruptcy Stipulation. FairPoint had previously voiced its position that it did not have to honor its prior agreement with the Town, but after continued back-and-forth, ultimately conceded the issue.

DONAHUE, TUCKER & CIANDELLA, PLLC
16 Acadia Lane, P.O. Box 630, Exeter, NH 03833
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Under the settlement proposal, the Town would pay this settlement figure in two equal installments of \$77,674.50, the first of which would be due on December 31, 2021 and the second of which would be due on September 1, 2022. In return, FairPoint would withdraw all of its present tax appeals against the Town and would provide a full waiver and release as to any and all claims against the Town related to the Town's taxation of FairPoint.

The Town authorized me to communicate an agreement-in-principle to this proposal, which I did. Thereafter, FairPoint and I negotiated a formal settlement agreement. That settlement agreement is enclosed with this letter. I have reviewed the settlement figures and can confirm that they are accurate. One important term in this settlement agreement that was negotiated as part of formalizing the settlement is that, in order for the Town to have the time set forth above to pay the settlement amount, FairPoint insisted that, if either of the above installment payments were not made in a timely fashion, the Town would incur an interest penalty of 12% per annum for any unpaid amounts. Given the time provided to make these payments, I am comfortable with FairPoint's insertion of such a penalty provided that the Town has the ability to ensure that the above-referenced payments are timely made through some form of notification system.

I ask that the Board review the agreement enclosed with this letter. I suggest that the Board deliberate and consider the enclosed settlement agreement in a non-public session pursuant to RSA 91-A:3, II(e) and (l). If you have any questions regarding this settlement agreement, the Board does not need to immediately approve the agreement. Instead, the Board may, of course, contact me with regard to any questions you may have.

If the Board is comfortable with the Agreement, I suggest that the Board make the following motion at its next meeting:

Motion to approve the settlement agreement with FairPoint to settle the pending tax appeals for \$155,349 under the terms contained in that agreement and to authorize the Chair of the Board to sign the settlement agreement on behalf of the Town.

The non-public meeting minutes will have to reflect this motion and the vote of the Board on that motion. Thereafter, when the Board comes out of non-public meeting, I recommend that the Board take a motion to seal the meeting minutes.

Please know that FairPoint has placed a deadline of September 1 for the execution of the enclosed agreement. While I dispute that FairPoint can revoke its prior agreement, execution prior to September 1 would avoid the issue, and I ask that the Board give this letter its attention prior to August 31, 2021.

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Thank you for the continued opportunity to represent you. If you have any questions or concerns regarding this letter or the enclosed agreement, please do not hesitate to contact me.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA, PLLC

A handwritten signature in black ink, appearing to read "Eric A. Maher".

Eric A. Maher, Esq.
emaheer@dtclawyers.com

Enclosures

Consolidated Communications of Northern New England Company, LLC (f/k/a Northern New England Telephone Operations, LLC d/b/a FairPoint Communications - NNE)

v.

Seabrook

Docket Nos. 218-2012-CV-01203, 218-2013-CV-00949, 218-2014-CV-00956, 218-2015-CV-00957, 2018-2016-CV-00929, 218-2017-CV-00973, 218-2018-CV-00961, 218-2019-CV-01226

SETTLEMENT AGREEMENT

NOW COMES Consolidated Communications of Northern New England Company, LLC ("Consolidated Communications"), and the Town of Seabrook, New Hampshire (the "Town", and together with Consolidated Communications, the "Parties" and individually each is a "Party"), and agree as follows:

1. Subject to the terms of this Settlement Agreement, the Parties hereby agree to the settlement of the tax appeal cases listed above.

2. The settlement addressed herein is reached by both Parties and is a compromise of disputed claims reached for the purpose of bringing to a close lengthy and expensive litigation, and without either Party intending to admit or acknowledge the merit of arguments or positions taken by the opposing Party. Nothing in this Settlement Agreement shall be construed as an admission of liability by any Party. This Settlement Agreement shall not be used by either party or any other person as evidence or referenced in any other manner in any matter or proceeding of any kind, including other proceedings against any other municipalities, except that this Settlement Agreement may be used as evidence in any suit or proceeding to enforce the terms of this Settlement Agreement. The Settlement Amount reflected below, and the methodologies used to calculate that Settlement Amount, will not be the basis for any future assessment of the property owned by the Consolidated Communications in subsequent tax years. Further, the details of how these settlements were reached or what they were based on, shall not be admissible in any subsequent litigation, involving the Town or any other municipality.

3. The Town shall pay to Consolidated Communications the gross sum of \$155,349 (the "Settlement Amount"). The Settlement Amount shall be payable in two equal installments of \$77,675 to be paid as follows: the Town shall tender the first installment on or before December 31, 2021, and the Town shall tender the second installment on or before September 1, 2022. For the purposes of this Paragraph 3, tender payment shall mean to (i) deposit the applicable installment of

the Settlement Amount in the U.S. Mail as evidenced by the U.S. Postal Service's postmark or (ii) delivery of the Settlement Amount to an overnight courier of national standing (i.e., Federal Express, United Parcel Service or similar courier). Except as provided in Paragraph 4, no further interest of costs shall be payable to Consolidated Communications, and no interest shall accrue on the Settlement Amount.

4. If any installment of the Settlement Payment is not received by the date set forth in Paragraph 3, any outstanding and overdue balance shall accrue interest at the rate of the twelve (12%) percent per annum.

5. The Town may pre-pay the Settlement Amount prior the dates set forth in Paragraph 3 without penalty.

6. The Settlement Amount required by this Settlement Agreement shall be made payable to Consolidated Communications, and mailed to: Consolidated Communications of NNE, 2116 South 17th Street, C/O Tax Dept., Mattoon, IL 61938.

7. Within 10 days of the execution of this Settlement Agreement, the Parties will execute and file docket markings with the court indicating "Neither Party, No Interest, No Costs, No further action for the same cause."

8. Consolidated Communications hereby waives and releases the Town from any and all claims to a refund for or any abatement of any taxes paid to the Town for tax years 2011 through 2019 and further releases and waives any and all claims to any monies, tax refund, interest, costs, or other sums or expenses which Consolidated Communications alleges, has alleged, or may allege are due and owed to Consolidated Communications by the Town arising out of the Town's assessment and taxation of Consolidated Communications for tax years 2011 through 2019. In return, the Town hereby waives and releases Consolidated Communications from any further assessment of any taxes or other form of imposition of taxes by the Town for the Town's fiscal years 2011 through 2019.

9. The undersigned certify that they have read this Settlement Agreement and fully understand its terms and voluntarily sign this Settlement Agreement for the purpose of making a full and final settlement of all released claims, counterclaims, and causes of action, as set forth more fully above.

10. Each Party warrants and represents for itself that (a) it has full power, legal capacity and authority to enter into and perform this Settlement Agreement, (b) all proceedings required to be taken and all consents required to be obtained to authorize the execution and performance of this Settlement Agreement have been properly taken and obtained, and (c) this Settlement Agreement constitutes the legal, valid and binding obligation of that Party, enforceable in accordance with its terms, and (d) Consolidated Communications has not assigned its rights to any of the claims waived and released under Paragraph 8. Each individual signing this Settlement Agreement on behalf of a Party expressly warrants and represents that

he or she has the full authority to sign on behalf of such party for the purpose of duly binding it to this Settlement Agreement.

11. This Settlement Agreement contains and constitutes the entire understanding and agreement among the Parties respecting their settlement and supersedes and cancels all previous negotiations, agreements, commitments and writings in connection herewith. This Settlement Agreement may not be changed, altered, modified, or waived except by written amendment entered into by the Parties or their successors-in-interest.

12. This Settlement Agreement shall be binding on the Parties' successors and assigns.

13. This Settlement Agreement shall be governed by the laws of the State of New Hampshire, without regard to its choice of law principles.

14. This Settlement Agreement may be executed in counterparts, which shall then be read together and shall constitute for all purposes a single, binding agreement.

15. No representations or warranties have been made by either Party to the other or by anyone else except as expressly set forth in this Settlement Agreement, and this Settlement Agreement is not being executed in reliance upon any representation or warranty not expressly set forth herein.

16. This Settlement Agreement shall be effective as of the date of the last Party's signature below.

**CONSOLIDATED COMMUNICATIONS OF
NORTHERN NEW ENGLAND COMPANY, LLC**

DATED: _____

By _____
It's Duly Authorized _____

SEABROOK

DATED: _____

By _____
It's Duly Authorized _____