

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 10-010

FREEDOM RING COMMUNICATIONS d/b/a BAYRING COMMUNICATIONS

**Petition for License to Construct and Maintain Utility Cable Over and Across the
Public Waters of the Merrimack River in Concord**

Order *Nisi* Granting License

ORDER NO. 25,139

August 17, 2010

On January 12, 2010, Freedom Ring Communications d/b/a BayRing Communications (BayRing) filed a petition pursuant to RSA 371:17 for a license to construct and maintain fiber optic cable across the Merrimack River in Concord, New Hampshire between Utility Poles CECO 50 and 51, owned by Unitil Energy Systems (Unitil).

BayRing, a competitive local exchange carrier engaged in the provision of telecommunications services in New Hampshire, stated in its petition that construction of the proposed 216 strand fiber optic line spanning the Merrimack River in Concord is necessary to meet the reasonable requirements of service to the public. According to BayRing, the new fiber optic line will help to accommodate the growth in demand for communications needs and obtain a greater level of reliability in the Concord area. In support of its petition, BayRing submitted a location map of the proposed crossing, an Existing Overhead River Crossing plan detailing the construction specifications of the proposed cable, a cable sag chart depicting projected midspan clearances under various conditions, and a letter and Pole Load Analysis Report.

Pursuant to discussions with Commission Staff, BayRing filed a revised petition on April 1, 2010, correcting pole height information and adjusting wire sag calculations based on the revised pole height and a 10-year flood elevation standard rather than a 100-year flood standard. The revised petition included an updated Existing Overhead River Crossing plan and a Pole Load Analysis Report prepared by Consulting Engineers Group (CEG). Additional revisions of the supporting documents were submitted to Staff on July 29, 2010, and August 9, 2010.

According to the final, revised petition, the poles on which BayRing proposes to attach fiber cable are approximately 45 feet tall and set approximately 524 feet apart, spanning the Merrimack River along the northwest side of Federal Bridge in East Concord. Given the pole specifications and using 10-year flood elevation data, BayRing calculated the maximum sag of the non-supporting cable and minimum clearances allowable under the National Electrical Safety Code (NESC) for the proposed crossing.

BayRing stated in its petition that no permits will be required from the New Hampshire Department of Environmental Services or the New Hampshire Department of Transportation. BayRing further stated that the requested license may be exercised without substantially affecting the rights of the public in the public water of the Merrimack River; that minimum safe line clearances above the water surface and affected shorelines will be maintained at all times; and that the use and enjoyment by the public of the Merrimack River will not be diminished in any material respect as a result of the overhead line crossing.

RSA 371:17 requires a utility to petition the Commission for a license to construct and maintain cable, conduit or poles and associated wires and fixtures over, under or

across any public waters or across any land owned by the state whenever such facilities are necessary to meet the reasonable requirements of service to the public. RSA 371:17 defines public waters to include “all ponds of more than 10 acres, tidewater bodies, and such streams or portions thereof as the commission may prescribe.”

On June 16, 2010, Staff filed its recommendation that a license be issued to BayRing pursuant to RSA 371:17 for the proposed crossing, with certain conditions. In its memorandum, Staff noted that the petition had been reviewed and analyzed by the Commission’s Safety Division, and that the Safety Division had determined that the attachment proposed by BayRing was consistent with the 2002 and 2007 editions of the NESC. Staff further noted that the Safety Division had discovered an existing Comcast attachment on the poles in question that is neither consistent with the NESC nor licensed pursuant to RSA 371:17. As a result, the Safety Division recommended that the following conditions be imposed: (i) that Comcast come into compliance with the NESC for the existing crossing; (ii) that Comcast show that its facilities maintain all required clearances at loadings specified in the NESC; (iii) that all future alterations to the crossings conform to the requirements of both the 2002 and 2007 editions of the NESC; (iv) that BayRing be required to maintain and operate the crossing in conformance with the NESC; and (v) that BayRing be required to file, within 120 days of installation, copies of the final configurations of its crossing with clearances from all other attaching entities under applicable NESC loading conditions.

Staff concurred with the conditions proposed by the Safety Division, noting that, pursuant to N.H. Code Admin. Rule Puc 1303.07(c), the Comcast attachment should be brought into compliance with the NESC concurrently with or before the BayRing

attachment is added to the pole, and that the cost of achieving compliance cannot be shifted to BayRing. According to Staff, bringing the Comcast attachment into compliance on the existing poles might not leave enough room for the BayRing attachment to comply with the NESC. Staff recommended that BayRing, Comcast and Unitil work together to ensure the attachments of all three comply with the NESC and that the cost of Comcast's non-compliance is not shifted to BayRing.

On July 8, 2010, BayRing asked that it be permitted to attach to the poles pending Comcast's compliance with the NESC. BayRing noted that the use of an extension arm on the poles is not a suitable solution to Unitil, the pole owner, and that the only alternative solution appears to be the setting of a taller pole. BayRing requested permission for immediate attachment in compliance with the NESC rather than waiting for installation of a new pole, which could take additional time, to the detriment of BayRing's ability to provide service.

On August 13, 2010, Staff filed a second memorandum reporting on an agreement reached by BayRing, Comcast and Unitil with Staff input to accommodate both the BayRing attachment and Comcast's need to bring its existing attachment into compliance with the NESC. According to Staff, Comcast will raise its existing attachment on the north side of the Merrimack River on CECO pole 51 by approximately 6 feet and BayRing will overlash its attachment onto Comcast's facilities. Staff noted that the issues raised in this proceeding would not have been resolved as expeditiously without Unitil's assistance.

Based on the information presented by BayRing, the review and recommendations of the Safety Division, and Staff's June 16, 2010 and August 13, 2010

memoranda recommending approval of the petition, we find the proposed crossing to be necessary for BayRing to meet the reasonable requirements of reliable service to the public within BayRing's authorized service territory, and that the requested license may be exercised without substantially affecting public rights in the affected waters. We find that the crossing is in the public good and we approve the petition on a *nisi* basis in order to provide any interested party the opportunity to submit comments on BayRing's petition or to request a hearing. We therefore grant BayRing's request for a license to attach to the poles in question.

With respect to the Comcast attachment, we direct Comcast to formally petition for a license for its attachment pursuant to RSA 371:17 within 10 business days of this order.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, BayRing is authorized, pursuant to RSA 371:17 *et seq.*, to construct, maintain and operate communications lines over and across the public waters described in its petition and depicted in its plans and charts submitted on January 11, 2010, and supplemented on April 1, 2010, July 29, 2010 and August 9, 2010, and on file with the Commission; and it is

FURTHER ORDERED, that BayRing shall conform to all requirements of the New Hampshire Department of Environmental Services related to the approved crossing; and it is

FURTHER ORDERED, that copies of all wetland permits, if any, required by the New Hampshire Department of Environmental Services for this crossing be filed with the Commission; and it is

FURTHER ORDERED, that all construction and future alterations or reconstruction to the approved crossing shall conform to the requirements of the National Electrical Safety Code and all other applicable safety standards in existence at the time; and it is

FURTHER ORDERED, that BayRing maintain and operate the crossing in conformance with the National Electrical Safety Code; and it is

FURTHER ORDERED, that BayRing shall provide copies of this order to (i) the Town Clerk of Concord; (ii) the New Hampshire Attorney General and the owners of the land bordering on said public waters at the location of the crossing, pursuant to RSA 371:19; (iii) the New Hampshire Department of Transportation and the Office of the Secretary, United States Department of Commerce pursuant to RSA 422-B:13; and (iv) the New Hampshire Department of Environmental Services. All copies should be provided by first class mail, no later than August 25, 2010, and documented by affidavit filed with the Commission on or before September 7, 2010; and it is

FURTHER ORDERED, that BayRing shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than August 25, 2010, and to be documented by affidavit filed with this office on or before September 7, 2010; and it is

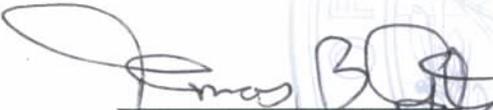
FURTHER ORDERED, that Comcast file a license petition pursuant to RSA 371:17 for its crossing attachment no later than 10 business days following the issuance of this order; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than September 1, 2010 for the Commission's consideration; and it is

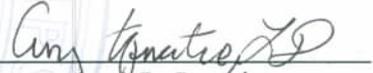
FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than September 3, 2010; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective September 7, 2010, unless the Petitioner fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of August, 2010.

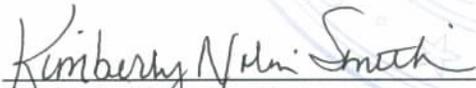


Thomas B. Getz
Chairman

Clifton C. Below
Commissioner

Amy L. Ignatius
Commissioner

Attested by:



Kimberly Nolin Smith
Assistant Secretary