

DT 99-092

**FREEDOM RING COMMUNICATIONS D/B/A BAYRING  
COMMUNICATIONS**

**Investigation of Bell Atlantic Compliance with Ordering Schedule  
for Dark Fiber Pursuant to Order No. 22,942**

**Order Scheduling Hearing Date**

**O R D E R    N O.    23,260**

**July 13, 1999**

On June 6, 1999 Freedom Ring Communications LLC d/b/a BayRing Communications (BayRing) filed with the New Hampshire Public Utilities Commission (Commission) a petition for expedited consideration of its request that New England Telephone and Telegraph Company d/b/a Bell Atlantic-New Hampshire (Bell Atlantic) provide dark fiber based on the Commission's "explicit instructions in Order No. 22,942". This order was issued by the Commission on May 19, 1998 in the dark fiber arbitration docket, DE 97-229 between Bell Atlantic and Vitts Corporation.

Referring to Order No. 22,942 BayRing stated that Bell Atlantic has unilaterally adopted its own far more burdensome and dilatory procedures for BayRing's requests for dark fiber. BayRing further states that Bell Atlantic has repeatedly delayed BayRing's requests for dark fiber and has inserted barriers into the application process that are not found in Order No. 22,942. Additionally BayRing states that these unwarranted barriers are preventing BayRing from providing timely service to prospective customers.

The BayRing request for dark fiber in this filing involves the route between the Portsmouth Central Office and the Dover Central Office. On this same route BayRing had in December of 1998 applied to Bell Atlantic to lease conduit over the General Sullivan Bridge in order to connect BayRing's collocation cage at the Bell Atlantic Dover Central Office to BayRing's switch in Portsmouth. BayRing states that after several months of discussions with Bell Atlantic, in April of 1999 Bell Atlantic informed BayRing that it required the rest of the unused space for itself and accordingly denied BayRing use of the conduit. BayRing states that Bell Atlantic has two four-inch conduits running across the bridge with one-third of the space used in one conduit while the other conduit was empty. BayRing in the subject filing makes no request of the Commission for consideration of its effort to obtain use of conduit but only to point out the length of time BayRing has been working to achieve a connection between Dover and Portsmouth.

BayRing stated that on May 14, 1999 it submitted a bona fide request for dark fiber to Bell Atlantic. BayRing provided a copy of the written request in their filing. BayRing included three written Bell Atlantic responses to its request as well as four pages of request form information and a copy of an amendment to its interconnection agreement. BayRing asserts that the process to determine if Bell Atlantic will provide dark fiber as requested will take 76 days or more than 2.5 times the 30-day

deadline set forth by the Commission in Order No.22,942.

BayRing stated that it has fully complied with the requirements set forth in Order No. 22,942 while Bell Atlantic's actions violate the mandate set forth by the order. BayRing thus believes that Bell Atlantic has failed to comply with Order No. 22,942. BayRing further states that Bell Atlantic's actions have denied BayRing entry into the Dover local exchange market and that such actions are adversely affecting BayRing. They further state that the consumers of the Dover Area are being denied their right to purchase competitive telecommunications services from BayRing.

BayRing requests expedited treatment by the Commission and an order to direct Bell Atlantic as follows:

1. Abide by the deadlines set forth in order No. 22,942
2. Pay a fine for the deliberate violation of this Commission order
3. Reimburse BayRing for attorneys' fees and costs incurred in filing this complaint; and
4. Provide such other relief as the Commission may deem necessary and proper.

BayRing provided a copy of its petition to Bell Atlantic at the time it was filed with the Commission.

Staff has reviewed the subject filing and believes that if the alleged delays by Bell Atlantic are confirmed then a competitive disadvantage and violation of the Telecommunications

Act of 1996 have and continue to occur. Staff believes that a settlement between BayRing and Bell Atlantic in the near future is in the best interest of both companies as well as New Hampshire customers. The Staff has established a meeting date of July 16, 1999 with both companies to attempt resolution of the issues between parties. Staff recognizes that a settlement may not result from a meeting or meetings with the parties and therefore recommends that a fast-track hearing date be established for resolution of this docket.

The Commission encourages the parties and Staff to attempt to resolve this issue on July 16th but agrees that a hearing should be scheduled to insure this matter is resolved expeditiously. Accordingly, if the parties and staff are unable to resolve this matter before August 5, 1999, the Commission will hold a hearing on that date. If such a hearing is necessary, Bell Atlantic is required to file a written response to the complaint no later than July 30, 1999.

**Based upon the foregoing, it is here by**

**ORDERED,** that a Hearing, be held before the New Hampshire Public Utilities Commission located at 8 Old Suncook Road, Concord, New Hampshire on August 5, 1999 at 10:00 a.m. and it is

**FURTHER ORDERED,** that Bell Atlantic file a written response to Bay Ring's complaint no later than July 30, 1999 if this matter has not been resolved before that date; and it is

**FURTHER ORDERED,** that the Commission shall order a stenographic record, pursuant to N.H. Admin. Rule 203.05 (d); and it is

**FURTHER ORDERED,** that pursuant to N.H. Admin. Rules Puc 203.01, BayRing shall notify all persons desiring to be heard at this hearing by publishing a copy of this order no later than July 22, 1999 in a newspaper with circulation in the area affected by the filing with publication to be documented by affidavit filed with the Commission on or before August 5, 1999; and it is

**FURTHER ORDERED,** that pursuant to N.H. Admin. Rules Puc 203.02 any party seeking to intervene in the proceeding shall submit to the Commission an original and eight copies of a Petition to Intervene with a copy sent to BayRing and the Office of the Consumer Advocate on or before August 2, 1999 such Petition stating the facts demonstrating how its rights, duties,

privileges, immunities or other substantial interests may be affected by the proceeding, as required by N.H. Admin. Rule Puc 203.02 and RSA 541-A:32,I (b); and it is

**FURTHER ORDERED,** that any party objecting to a Petition to Intervene make said Objection by filing an original and 8 copies thereof, with a copy provided to the Office of Consumer Advocate, on or before August 5, 1999.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of July, 1999.

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Douglas L. Patch  
Chairman

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Susan S. Geiger  
Commissioner

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Nancy Brockway  
Commissioner

Attested by:

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Claire D. DiCicco  
Assistant Secretary