

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 10-009

FREEDOM RING COMMUNICATIONS D/B/A BAYRING COMMUNICATIONS

**Petition for License to Construct and Maintain Utility Cable Over and Across the
Concord and Montreal Railroad in Concord**

Order *Nisi* Granting License

ORDER NO. 25,134

August 5, 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 Concord and Montreal (C&M) Railroad in Concord, New Hampshire¹ between Utility Poles CECO 12 and 13, owned by Unifil Energy Systems (Unifil).

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 crossing the C&M Railroad 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 and an Existing Overhead plan detailing the construction specifications of the proposed cable.

According to the petition, the poles on which BayRing proposes to attach fiber optic cable are approximately 45 feet tall and set approximately 59 feet apart, located on

¹ The section of the C&M Railroad at issue is now owned by the State of New Hampshire.

either side of the C&M Railroad tracks along the east side of West Portsmouth Street in Concord. Given the pole specifications and using heavy load conditions (0 degrees F, 4 pounds psf wind loading and ½” radial ice) with a maximum tension of 2,764 pounds under that load, 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 crossing of the C&M Railroad; minimum safe line clearances above the railroad will be maintained at all times; and the use and enjoyment of the railroad 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. Commission Staff reported that the C&M Railroad property referred to in the BayRing petition was acquired by the Boston and Maine Rail system in 1895, and that the segment subject to the current petition subsequently became part of the State of New Hampshire Rail System, now known as the Concord-Lincoln branch of the New Hampshire Rail System. Staff further reported that FairPoint and City of Concord attachments are currently on the poles. According to the Commission’s Safety Division Staff, a private license to cross

the railroad was granted to Concord Electric (now part of Unitil) by the former Boston and Maine Rail System on June 4, 1968. Staff further reported that they could find no record of licenses granted to FairPoint, its predecessor Verizon, or the City of Concord for attachment to the poles on which BayRing seeks to attach fiber optic cable.

On July 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, as outlined below. 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. The Safety Division recommended that the following conditions apply to approval of the requested license:

- a. that BayRing submit to the Commission a copy of the approved rail permit issued by the NHDOT within 60 days of this order;
- b. that all future alterations to the crossings conform to the requirements of both the 2002 and 2007 editions of the NESC;
- c. that BayRing be required to maintain and operate the crossings in conformance with the NESC; and
- d. that BayRing be required to file within 120 days of installation copies of the final configurations with sufficient detail of its crossing with clearances from all other attaching entities under applicable NESC loading conditions.

Based on the information presented by BayRing, the review and recommendations of the Safety Division, and Staff's July 16, 2010 memorandum 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 with respect to the railroad property that will be crossed. We find that the crossing is in the public good and therefore grant BayRing's

request for a license to attach to the poles in question. 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.

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 railroad property described in its petition and depicted in the plans and charts submitted on January 12, 2010, and on file with the Commission; and it is

FURTHER ORDERED, that all construction and future 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 state-owned railroad property at the location of the crossing, and (iii) the New Hampshire Department of Transportation. All copies should be provided by first class mail, no later than August 16, 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 16, 2010, and to be documented by affidavit filed with this office on or before September 7, 2010; and it is

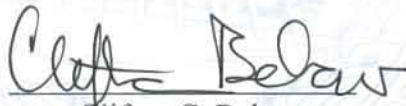
FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than August 23, 2010, for the Commission's consideration; and it is

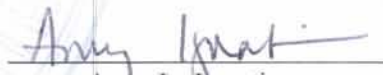
FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than August 30, 2010; and it is

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 fifth day of August, 2010.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius
Commissioner

Attested by:


Debra A. Howland
Executive Director