

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 10-239

COMCAST OF MAINE/NEW HAMPSHIRE, INC.

**Petition for License to Maintain Existing Broadband Communications Lines
Over and Across the Public Water of the Merrimack River in Concord**

Order *Nisi* Granting License

ORDER NO. 25,175

November 30, 2010

On September 9, 2010, Comcast of Maine/New Hampshire, Inc. (Comcast) filed a petition for a license to maintain an existing aerial crossing over the Merrimack River in Concord, New Hampshire. Comcast, a provider of broadband communications services, stated in its petition that maintenance of the existing crossing is necessary to meet the reasonable requirements of its obligation to provide broadband communications services to customers within its franchise areas in and around Concord. The crossing in question consists of four fiber optic cables lashed to a galvanized steel stranded support wire, as well as an abandoned-in-place coaxial trunk cable on existing poles owned by Unitil Energy Systems, Inc. According to Comcast, the facilities in question were originally installed between the years of 1968 and 1972 by Telecable, a former cable franchise holder within the City of Concord.

Comcast filed its petition in this proceeding pursuant to Commission Order No. 25,139 (August 17, 2010) to document the existing Comcast portion of the crossing at the same location referenced in Docket No. DT 10-010. According to the petition, Comcast has modified its existing attachment to comply with both the 2002 and 2007 editions of the National Electric Safety Code (NESC) and executed an agreement with BayRing that permits the overlashing of

BayRing's fiber cable onto Comcast's attachment. Comcast further states that the license requested may be exercised without substantially affecting the rights of the public in the public water of the Merrimack River, that minimum safe 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.

The petition refers to and relies on a Final Revised Drawing dated August 6, 2010, submitted by BayRing Communications (BayRing) in Docket No. DT 10-010 and attached to an August 13, 2010 memorandum filed by Staff in that docket. The Final Revised Drawing, created for and provided by BayRing, contains all the technical and location detail applicable to the Comcast crossing at issue in the present docket, including plan and elevations, cable material and weights, loading conditions, cable sags, midspan clearances, clearances at poles, and clearances from other attachers, including Comcast.

RSA 371:17 requires utilities and corporations 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 November 12, 2010, Staff filed a memorandum in the instant proceeding, in which it recounted its review of Comcast's petition pursuant to RSA 371:17. Staff's review included an examination of the technical details of the facilities in question, compliance with NESC requirements, the applicability of other State agency permitting requirements, and land

ownership associated with the crossing. According to Staff, the Safety Division verified with photo documentation that the re-installation of Comcast's fiber with BayRing overlashing was completed in accordance with the technical specifications referenced in Docket No. DT 10-010, and that all vertical clearances meet NESC requirements. The Safety Division also confirmed that the crossing does not require a permit from the New Hampshire Department of Environmental Services or an individual permit or a general programmatic permitting review from the Army Corps of Engineers. Staff further stated that, based on its review of the petition and applicable code requirements, the Safety Division concurs with Comcast's statements regarding public need and public impact. Staff recommended approval of the petition with the following conditions: 1) that Comcast be required to maintain and operate the crossing in conformance with the NESC, and 2) that all future alterations to the crossings conform to the requirements of both the 2002 and 2007 editions of the NESC.

Based on the record information presented by Comcast, the review and recommendations of the Safety Division as set forth in Staff's November 12, 2010 memorandum, we find the crossing at issue to be necessary for Comcast to meet the reasonable requirements of reliable service to the public, 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 Comcast's petition or to request a hearing. We therefore grant Comcast's request for a license to maintain its existing cable at the crossing in question.

Finally, we direct Comcast to review all of its existing water crossings in New Hampshire and determine whether each crossing requires a license pursuant to RSA 371:17. To the extent

unlicensed crossings of public waters are discovered, Comcast is expected to comply with RSA 371:17 no later than July 1, 2011.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, Comcast is authorized, pursuant to RSA 371:17 *et seq.*, to maintain and operate broadband communications lines over and across the public waters described in its petition and depicted in the plans and charts referenced in the petition and on file with the Commission; and it is

FURTHER ORDERED, that Comcast shall conform to all applicable 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 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 Comcast maintain and operate the crossing in conformance with the National Electrical Safety Code; and it is

FURTHER ORDERED, that Comcast shall provide copies of this order to (i) the City 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 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 December 10, 2010, and documented by affidavit filed with the Commission on or before December 30, 2010; and it is

FURTHER ORDERED, that Comcast 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 December 10, 2010, and to be documented by affidavit filed with this office on or before December 30, 2010; and it is

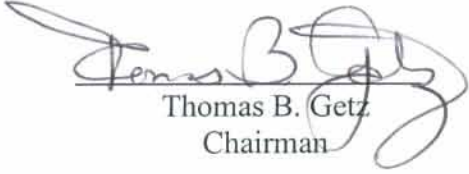
FURTHER ORDERED, that Comcast review all of its existing water crossings in New Hampshire and determine whether each crossing requires a license pursuant to RSA 371:17. To the extent unlicensed crossings of public waters are discovered, Comcast is expected to comply with RSA 371:17 no later than July 1, 2011; 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 December 17, 2010 for the Commission's consideration; and it is

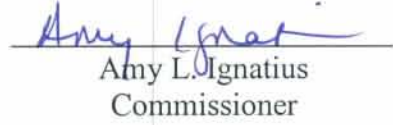
FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than December 24, 2010; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 30, 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.

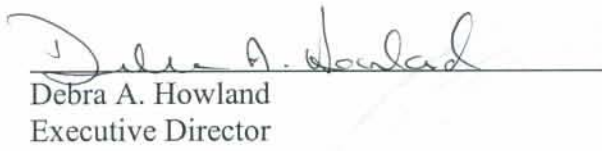
By order of the Public Utilities Commission of New Hampshire this thirtieth day of
November, 2010.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius
Commissioner

Attested by:


Debra A. Howland
Executive Director

