

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 10-246

**FREEDOM RING COMMUNICATIONS L.L.C. D/B/A/ BAYRING
COMMUNICATIONS**

**Petition for License to Construct and Maintain a Fiber Optic Communications Cable Over
and Across the Public Waters of the Suncook River in the Town of Epsom, New Hampshire**

Order *Nisi* Granting License

ORDER NO. 25,181

December 21, 2010

On September 13, 2010, Freedom Ring Communications L.L.C. d/b/a BayRing Communications (BayRing) filed a petition pursuant to RSA 371:17 for a license to construct and maintain a fiber optic communication cable across the Suncook River in Epsom, New Hampshire. BayRing supplemented its filing on November 12, 2010. The location of the crossing is on the northerly side of the New Hampshire Routes 4, 9, and 202 bridge crossing the Suncook River approximately 0.25 miles east of the Epsom traffic circle. BayRing states that the addition of its communication cable to an existing Concord Electric Company (CECO) crossing¹ is required to accommodate demand growth in the area, that the reasonable requirement of service to the public in the area cannot be met without the additional facilities, and that these facilities will allow a greater level of service reliability. As CECO is now part of Unitil Energy Systems, Inc. (UES), further references to the existing utility poles, or the electrical facilities thereon, will reference UES.

¹ Comcast and Fair Point also have facilities at the crossing location below BayRing's proposed facilities.

In support of its petition, BayRing submitted: (1) a location plan depicting the geographic location of the proposed crossing; (2) a plan and profile drawing depicting the location and projected elevations of the proposed crossing; (3) pole loading analysis reports for the poles at the crossing; and (4) sag calculations for the ambient and weather conditions analyzed.

BayRing states that the new communications crossing will have the same alignment as the existing electrical crossing and will use the existing poles at the crossing location. BayRing will add the new facilities to the existing poles. Additionally, BayRing states that no New Hampshire Department of Environmental Services or New Hampshire Department of Transportation permits are necessary for the construction of this crossing.

BayRing investigated many weather and loading conditions for its design, and used these design conditions to determine the minimum clearance of the conductors to the water, land surfaces, and between its fiber optic cable and the Comcast communications cable and the UES neutral conductor. According to BayRing, all cables and neutral conductors will be sagged to maintain or exceed National Electrical Safety Code, ANSI C2-2007 (NESC) required clearances under the most adverse conditions investigated. BayRing obtained conductor information from the associated utility companies for input into its pole loading analyses. The BayRing pole loading analyses show that, as designed by Bay Ring, the proposed crossing will meet NESC Grade B construction standards under NESC Heavy Load Conditions.

BayRing stated that flood level data at this location of the Suncook River was on the Merrimack County Flood Insurance Rate Map issued by the Federal Emergency Management

Agency. BayRing used the 10-year flood elevation for this location based on that data, as required by the NESC.

BayRing states that the use and enjoyment by the public of these waters will not be diminished in any material respect as a result of the proposed fiber optic line crossing. BayRing further attests that the construction of the crossing will be in accordance with the requirements of the NESC, ANSI C2-2007 and will be maintained and operated in accordance with the NESC.

RSA 371:17 provides, in relevant part, that:

Whenever it is necessary, in order to meet the reasonable requirements of service to the public, that any public utility should construct a ... line of poles or towers and wires and fixtures thereon, over, under or across any of the public waters of this state...it shall petition the commission for a license to construct and maintain the same. For purposes of this section, "public waters," are defined to be all ponds of more than 10 acres, tidewater bodies, and such streams or portions thereof as the Commission may prescribe.

The Suncook River is a public water under RSA 371:17. Therefore, BayRing must obtain a license to construct and maintain wires across it.

Staff of the Public Utilities Commission filed a recommendation on November 22, 2010, recommending approval of the petition. Staff indicated that the petition was reviewed by its engineering consultant, The Accion Group (Accion), and that, according to Accion, BayRing provided sufficient information to justify construction of the proposed crossing. Accion further stated that if the proposed facilities are constructed, operated and maintained as proposed in its filing, BayRing will be able to provide safe and reliable communications service to the public based on sound engineering standards and the NESC.

Based on the information presented by BayRing and Staff's memorandum recommending approval of the petition, we find this crossing necessary for BayRing to meet the reasonable requirements of reliable service to the public as required by RSA 371:17, and that the requested license may be exercised without substantially affecting the public rights in the affected public waters, as required for approval under RSA 371:20. 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 said 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 a fiber optic communications cable over and across the public waters described in its petition and depicted in its exhibits submitted September 13, 2010, supplemented on November 12, 2010, and on file with this Commission; and it is

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

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

FURTHER ORDERED, that Unitil Energy Systems, Inc., Comcast, and FairPoint certify to the Commission that their facilities at this crossing are: (1) in compliance with N.H. Code Admin. Rules Puc 1300; (2) licensed to cross public waters at this location by supplying

the Commission Order Number and date for those licenses; and (3) constructed in conformance with the National Electrical Safety Code that existed at the time the facilities were installed; and it is

FURTHER ORDERED, that if the Unitil Energy Systems, Inc., Comcast, or FairPoint facilities at this crossing are not: (1) in conformance with the attachment requirements of Puc 1300; (2) licensed with the Commission as a crossing of public waters; or (3) in conformance with the National Electrical Safety Code that existed at the time the facilities were installed, those deficiencies be brought into compliance with such requirements and the current National Electrical Safety Code; and it is

FURTHER ORDERED, that Bay Ring shall provide a copy of this Order to the: (1) Town Clerk of Epsom; (2) 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; (3) Unitil Energy Systems, Inc.; (4) Comcast; and (5) FairPoint by first class mail, no later than December 28, 2010, to be documented by affidavit filed with this office on or before January 7, 2011; and it is

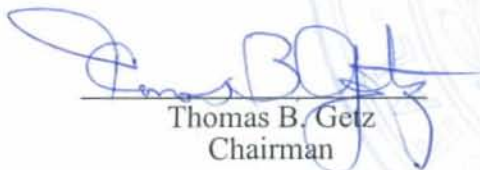
FURTHER ORDERED, that BayRing shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than December 28, 2010 and to be documented by affidavit filed with this office on or before January 7, 2011; and it is

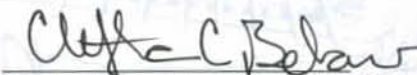
FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than January 3, 2011 for the Commission's consideration; and it is

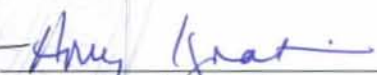
FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than January 5, 2011; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective January 7, 2011, unless BayRing 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 twenty-first day of December, 2010.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius
Commissioner

Attested by:


Debra A. Howland
Executive Director