

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 12-012

NEW HAMPSHIRE OPTICAL SYSTEMS, INC.

**Petition for Authorization to Construct and Maintain Fiber Optic Communications Cable
Over and Across Four Public Bodies of Waters
between Lebanon and Littleton (Segment 5)**

Order *Nisi* Granting License

ORDER NO. 25,418

September 27, 2012

I. SUMMARY OF THE PETITION

On January 11, 2012, New Hampshire Optical Systems, Inc. (NHOS)¹ filed a petition pursuant to RSA 371:17 requesting a license to construct and maintain fiber optic cables over and across public waters of the rivers and brooks listed below, located in four New Hampshire towns. NHOS filed revisions to its petition on April 27, 2012.

The fiber optic cable NHOS proposes to install over the listed water bodies will be part of the Network New Hampshire Now (NNHN) Middle Mile Fiber network, which NHOS states will extend the availability of internet access and broadband communications to areas of New Hampshire presently receiving limited, or no service. According to the petition, the project is funded by a grant from the Federal Broadband Technology Opportunities Program (BTOP). In adherence with BTOP guidelines, NHOS asserts that it will build and maintain an open access, non-discriminatory network offering: (1) broadband providers the ability to economically expand their services areas, (2) companies the opportunity to build private networks they own

¹ On August 13, 2010, the Commission authorized NHOS to provide competitive local exchange services in New Hampshire. See *CLEC Authorization CL-08-002-10 (Docket No. DT 10-215)*.

and control, and (3) users more choice and affordability in their internet access and communications products.

A. Crossing Locations and Construction

The proposed crossings are part of Segment 5 (Lebanon to Littleton) of NHOS's 700 mile long broadband build-out containing a total of 17 segments. According to the petition, each proposed crossing will be placed between existing utility poles in existing public rights-of-way.

The locations of the crossings are as follows:

- Haverhill: The Oliverian Brook crossing parallels the southerly side of Route 25 in the vicinity of Back Bay Road, between electric Poles 3/99 and 3/100.
- Bath: The Wild Ammonoosuc River crossing parallels the northerly side of the Rum Hill Road bridge in the vicinity of its intersection with Route 112, between electric Poles 374/50 and 374/51.
- Lisbon: The Ammonoosuc River crossing parallels the northerly side of the Route 10 bridge in the vicinity of Lyman Road, between electric Poles 210/60 and 210/61.
- Orford: The Jacob Brook crossing parallels an easement from the extension of Tannery Road at Dublin Street to Archertown Road, between electric Poles 41/32 and 41/33.

NHOS's petition describes the configurations of the proposed cable crossings as well as the clearance and sag requirements for each crossing. According to NHOS, sag and tension calculations were done pursuant to applicable National Electrical Safety Code (NESC) and statutory requirements.

B. Regulatory Requirements

According to the petition, permits from neither the New Hampshire Department of Environmental Services (NHDES) nor the New Hampshire Department of Transportation (NHDOT) are required for this project.

C. Property Rights

NHOS affirms that each of the proposed water crossings will be placed on existing utility poles within existing public rights-of way.

II. SUMMARY OF STAFF REVIEW

Pursuant to its review of the petition and discussions with NHOS, Commission Staff filed a memorandum on September 11, 2012, finding the proposed construction and sagging design to be in conformance with the applicable sections of the NESC. Staff recommended approval of NHOS's petition for a license to construct and maintain fiber optic lines over and across the rivers and brooks listed above, subject to certain conditions related to ensuring the safe operation and maintenance of the proposed crossings. *See* Staff Recommendation of Randall Knepper, dated September 11, 2012.

III. COMMISSION ANALYSIS

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 of the state whenever such facilities are necessary to meet the reasonable requirements of service to the public. Public waters, as defined in RSA 371:17, means all ponds of more than 10 acres, tidewater bodies, and such streams or portions thereof as the Commission may prescribe. The NHDES is assigned responsibility under RSA 271:20 for preparing, maintaining, and publishing an official list of all public waters in the state. Each body of water listed in the instant petition is included in the official list, which is maintained at http://des.nh.gov/organization/divisions/water/dam/public_waters/index.htm.

Based on the information presented in NHOS's petition and Staff's memorandum recommending approval, we find the proposed crossings necessary for NHOS to meet the reasonable requirements of reliable service to the public within NHOS's authorized service territory, 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 the crossings are in the public good and therefore approve the petition on a *nisi* basis, subject to the conditions recommended by Staff, and contained in the ordering clauses set out below. Our decision is issued on a *nisi* basis in order to provide any interested party the opportunity to submit comments on NHOS's petition or to request a hearing. We note that NHOS is responsible for obtaining any and all other permits required for the installation of the proposed crossings from any federal, state, and local authorities having jurisdiction. Finally, inasmuch as NHDES is responsible by statute for maintaining the official list of public waters, and given NHDOT's oversight of roads and bridges, we require that notice of the proposed crossings be sent to the NHDES and the NHDOT. We also require notice of each crossing to the affected towns and cities.

The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2012/12-012.html>.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, NHOS is authorized, pursuant to RSA 371:17 *et seq.*, to construct, maintain and operate fiber optic and other lines over and across the public waters described in its petition and depicted in its filings; and it is

FURTHER ORDERED, that all construction and future alterations to these approved crossings shall conform to the requirements of the National Electrical Safety Code, in accordance with N.H. Code Admin. Rules Puc 306.01 and Puc 1303.07 and all other applicable safety standards in existence at that time; and it is

FURTHER ORDERED, that NHOS submit any future proposed alterations to the crossing license granted herein at least 60 days prior to any such alteration(s); and it is

FURTHER ORDERED, that copies of all permits, if any, required by the New Hampshire Department of Environmental Services, the New Hampshire Department of Transportation, any other federal, state or local authorities, and any of the affected municipalities for these crossings, be filed with this Commission; and it is

FURTHER ORDERED, that NHOS shall provide a copy of this order to the (i) Town Clerks of Haverhill, Bath, Lisbon and Orford, (ii) New Hampshire Attorney General and owners of the land bordering on said public waters at the locations of the crossings, pursuant to RSA 371:19, (iii) the Department of Environmental Services, and (iv) pursuant to RSA 422-B:13, the New Hampshire Department of Transportation and the Office of Secretary, U.S. Department of Commerce by first class mail, no later than October 8, 2012, and to be documented by affidavit filed with this office on or before October 29, 2012; and it is

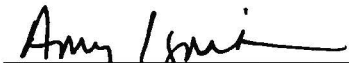
FURTHER ORDERED, that the Petitioner shall cause a summary of this Order *Nisi* and a link to the Commission's website where the Order appears in full to be published once in a statewide newspaper of general circulation, or of circulation in those portions of the state where operations are conducted, such publication to be no later than October 8, 2012 and to be documented by affidavit filed with this office on or before October 29, 2012; 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 October 15, 2012 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 October 22, 2012; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 29, 2012, 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 twenty-seventh day of September, 2012.



Amy D. Ignatius
Chairman



Michael D. Harrington
Commissioner



Robert R. Scott
Commissioner

Attested by:



Debra A. Howland
Executive Director