

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 22-047

**CHARTER COMMUNICATIONS, INC., COGECO US FINANCE, LLC
d/b/a BREEZELINE, AND COMCAST CABLE COMMUNICATIONS, LLC**

Petition for Resolution of Rate Dispute

Order Denying Motion for Rehearing

ORDER NO. 26,787

March 21, 2023

In this order the Commission denies Consolidated's motion for rehearing in part. The Commission denies the request to rehear Commission Order No. 26,674, in which the Commission previously denied Consolidated's motion to dismiss. This order does not address Consolidated's request for rehearing of Commission Order No. 26,775, the Commission's final order on the petition in this docket. The Commission will address all requests for rehearing of Order No. 26,775 in a single order that will issue after the period to request rehearing has run.

I. RELEVANT PROCEDURAL HISTORY

This proceeding was initiated by a Petition for Resolution of Rate Dispute (Petition) dated August 22, 2022, filed by Charter Communications, Inc., Cogeco US Finance, LLC d/b/a Breezeline, and Comcast Cable Communications, LLC (collectively, the Petitioners). The Petition requested that the Commission resolve Petitioners' dispute with Consolidated Communications of Northern New England Company, LLC (Consolidated) over pole attachment rates.

Before the hearing, Consolidated filed a motion to dismiss the Petition. The Petitioners objected, filing both an objection and supplemental objection. On January 23, 2023, the Commission issued Order No. 26,764 denying the motion to dismiss.

And on February 17, 2023, the Commission issued Order No. 26,775, the final order on the petition for resolution of the rate dispute. Within the statutory period for seeking rehearing of Order No. 26,764, Consolidated moved for the Commission to rehear or reconsider both Order No. 26,674 and part of Order No. 26,775. The Petitioners subsequently filed a timely objection to the motion for rehearing.

II. STANDARD OF REVIEW

The standard for seeking rehearing of Commission final orders is described in statute, with objection practice addressed in administrative rule. Under RSA 541:3, any party or interested person may seek rehearing of a final order by filing a motion within 30 days of that order. The Commission may grant rehearing or reconsideration for “good reason” if the moving party shows that an order is unlawful or unreasonable. See RSA 541:3 and RSA 541:4. A successful motion must establish “good reason” by showing that there are matters that the Commission “overlooked or mistakenly conceived in the original decision,” *Dumais v. State*, 118 N.H. 309, 311 (1978) (quotation and citations omitted), or by presenting new evidence that could not have been presented at the hearing. See *Appeal of Gas Service Inc.*, 121 N.H. 797, 801 (1981).

III. COMMISSION ANALYSIS

Typically, a successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome. See, e.g., *Pub. Serv. Co. of N.H.*, Order No. 25,970, at 4–5 (citing *Pub. Serv. Co. of N.H.*, Order No. 25,676 at 3 (June 12, 2014); *Freedom Energy Logistics*, Order No. 25,810 at 4 (September 8, 2015)). Consolidated has not provided any new arguments, nor has it provided any new evidence that would justify granting rehearing of our denial of Consolidated’s motion to dismiss. Nonetheless, for greater clarity we will respond to Consolidated’s legal

arguments raised in its motion for rehearing regarding Commission Order No. 26,674. Specifically, Consolidated argues that because it has voluntary pole attachment agreements with the Petitioners, the Commission lacks jurisdiction over this matter and the Petitioners only recourse is that which is available under the agreements.

The Commission's authority to resolve complaints concerning pole attachment agreements is found in RSA 374:34-a, VII.:

The commission shall have the authority to hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments.

The statutory text grants the commission authority to hear and resolve complaints concerning voluntary agreements relative to pole attachments. Such voluntary agreements include the existing pole attachment agreements between Consolidated and each of the Petitioners.

By administrative rule, the Commission has further developed the process for a party to a pole attachment agreement to seek Commission review of attachment rates:

Puc 1303.03 Dispute Following Agreement or Order. A party to a pole attachment agreement, or a party subject to an order of the commission establishing rates, charges, terms, or conditions for pole attachments, may petition the commission pursuant to Puc 203 for resolution of a dispute arising under such agreement or order.

N.H. Admin. R., Puc 1303.03.

Properly adopted administrative rules are considered the proper interpretation of the matter that they refer to. RSA 541-A:22. Valid administrative rules are binding on the persons they affect and have the force of law unless expired or a court of competent jurisdiction determines otherwise. *See id.* Consolidated makes no argument N.H. Admin. R. Puc 1303.03 was improperly adopted, has been held by a court to lack

the force of law, or is otherwise unlawful. Accordingly, N.H. Admin. R., Puc 1303.03 governs this proceeding.

The plain text of the administrative rule allows a party, after entering into an agreement, to seek Commission review of rates should a dispute later develop under the agreement. Further, the Commission has previously engaged in such a review of an existing pole attachment agreement. *See Time Warner Entm't Co., L.P.*, Order No. 25,387 (July 3, 2012).

The Commission does not take review of voluntary agreements relative to pole attachments lightly. The Commission recognizes the importance of permitting and encouraging voluntary contractual agreements. The Commission's administrative rules reflect this by imposing the burden of proof on the party asserting the terms of an existing pole attachment agreement are unjust or unreasonable:

Puc 1304.01 Voluntary Agreements. A pole attachment agreement submitted to the commission for adjudication shall be deemed a voluntary agreement pursuant to RSA 374:34-a, VII. A party filing a petition under this part *shall have the burden of proving* that an agreement is not just, reasonable, and nondiscriminatory.”

N.H. Admin. R., Puc 1304.01 (emphasis added).

In this matter, the existing attachment agreements are dated between 2002 and 2004 for each of the Petitioners. The agreements were originally negotiated with Verizon and subsequently transferred to FairPoint and then to Consolidated. Exhibits 5, 6, and 7. The current attachment rates, have been in effect since around 2009–2011. Exhibit 4 at 16. The Petitioners attempted on several occasions to negotiate new attachment rates with Consolidated. *See* letters and emails contained in Exhibit 2. Nonetheless, Consolidated refused to negotiate new rates with the Petitioners. The Petitioners subsequently filed a Petition for Resolution of Rate Dispute.

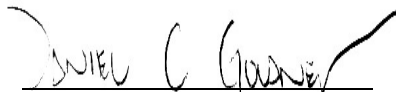
Under the legal authority described above, the Commission previously denied Consolidated's motion to dismiss, holding the Commission has authority to review attachment rates after parties have entered into and begun performance under a voluntary attachment agreement. The Commission finds Consolidated has essentially repeated its prior arguments regarding Commission jurisdiction from its Motion to Dismiss. Consolidated has not provided new arguments as to why the Commission order denying that motion was in error, nor has it provided any new evidence that would justify granting a motion for rehearing.

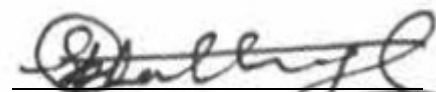
As a result, the Commission finds that Consolidated's motion to rehear the Commission's earlier decision on the Commission's authority to regulate attachment agreements is without merit. Accordingly, the Commission denies Consolidated's Motion for Rehearing as it relates Commission Order No. 26,764.

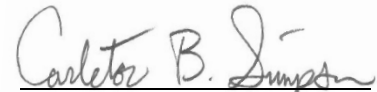
Based upon the above, it is

ORDERED, that Consolidated's Motion for Rehearing of Order No. 26,764 is DENIED.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of March, 2023.


Daniel C. Goldner
Chairman


Pradip K. Chattopadhyay
Commissioner


Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 22-047

Printed: 3/21/2023

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