DE 97-171

VERIZON NEW HAMPSHIRE

Petition for Approval of Statement of Generally Available Terms Pursuant to the Telecommunications Act of 1996

Order Denying Motions for Reconsideration

O R D E R N O. 24,392

October 29, 2004

I. INTRODUCTION

By Order No. 24,340 (June 25, 2004) (*DC Power Order*) the New Hampshire Public Utilities Commission (Commission) revised the power cost study submitted by Verizon New Hampshire (Verizon) in response to the Commission's order granting a limited rehearing in this docket. The limited rehearing addressed the issue of direct current power (DC Power) costs and monthly recurring power rates charged to those competitors who collocate facilities in Verizon's central offices, previously decided in the Commission's earlier orders in this docket.[1] In the *DC Power Order* the Commission set an installation factor of 2.4582 and ordered Verizon to revise the unit investment per amp calculation for the emergency engine section of its cost study. The Commission further ordered that the rates resulting from the adjustments would be effective on the date of the Order.

Verizon filed a Motion for Rehearing and/or Reconsideration (Motion) on July 23, 2004. After requesting and being granted an extension to respond, WorldCom Inc. (MCI) filed an objection to Verizon's Motion on August 6, 2004.

[1] For a full procedural history, see Order No. 24,340 (June 25, 2004).

Freedom Ring Communications LLC d/b/a BayRing Communications (BayRing) also filed a Motion for Rehearing on July 23, 2004. Verizon filed an objection to BayRing's motion on July 27, 2004.

II. MOTIONS FOR REHEARING AND/OR RECONSIDERATION

A. Verizon's Motion for Rehearing or Reconsideration

Verizon requested rehearing or reconsideration of that portion of the *DC Power Order* concerning the calculation of the per amp cost of the emergency engine, which is part of Verizon's DC power charges to CLECs. According to Verizon, the Commission properly found that power provided by the emergency engine is used for two purposes, namely, telecommunications and ancillary services, but erred in assigning 80% of that power to telecommunications usage. As a result, it argues, the Commission understated Verizon's emergency engine investment allocated to ancillary services, resulting in Verizon being deprived of its lawful right to recover all of its costs.

Verizon claims in its Motion that the 80% telecommunications usage factor that the Commission adopted was based on nothing more than the observation and experience of MCI's witness. Verizon asserts instead that the record is undisputed that the cost study establishes that 16% (in urban offices) and 26% (in suburban offices) of the generator output provides power to the rectifiers, which, in turn, power the telecommunications. In its Motion, Verizon calculates new rates that would result if the Commission adopts its proposed telecommunications usage factors and growth principles, resulting in an urban office factor of 41% and a suburban office factor of 48%.

Verizon stated these two factors approximate the generalized 40% factor, which it now endorses.[2]

MCI objects, arguing that throughout the testimony, discovery and hearings process, Verizon had the opportunity to present the 40% telecommunications usage factor, and did not do so, instead submitting the factor for the first time in its reply brief. Now, MCI argues, faced with a Commission decision, Verizon argues in its Motion for three entirely new factors of 41, 48, and 82% for urban, suburban and rural central offices. MCI contends that such *post-facto* changes in position are inappropriate. Further, MCI contends that Verizon's calculation of the factors is illogical and flawed, because 1) the sizing of the equipment in the various central offices is inconsistent, and 2) Verizon asserts that its rectifiers require 38 amps of AC current, rather than 55.6 AC amps, the input MCI used, and which the Commission approved. Such flaws, MCI claims, could only be rebutted by considerable discovery, which no party is entitled to pursue at this point in the proceeding.

Verizon's strategy, according to MCI, is blatantly inconsistent, and should be estopped by the Commission. Further, MCI claims that Verizon's Motion fails to offer any new evidence, and does not establish that the Commission overlooked or failed to properly conceive the telecommunications usage factor. For these reasons, MCI believes Verizon's Motion should be denied.

B. BayRing's Motion for Rehearing

BayRing's motion asked the Commission to extend the effective date of the compliance rates from June 25, 2004, to sixty days from the date its motion was filed,

[2] The evidence presented at the hearings did not contain the new telecommunications usage factors, the growth principles or rates that Verizon now proposes.

which would be September 21, 2004. BayRing asserts that the new rates adopted by the Commission are substantially increased and if applied retroactively will have a significant impact. BayRing requests that competitive local exchange carriers be given time to adjust their power needs, taking the new rates into consideration. BayRing notes that augments to collocation arrangements take approximately 45-60 days to complete, and requests that the effective date be adjusted to accommodate an implementation period.

Verizon objected to BayRing's motion, stating that it has been the Commission's practice throughout this docket (and other related dockets) to make rates effective coincident with the date of the order. Verizon also asserts that BayRing is mistaken in assuming that a change in power needs at the collocation point will be done using the augment process, as such changes will instead follow a scheduled service change process that could entail more than 45 days.

III. COMMISSION ANALYSIS

We turn first to Verizon's motion. To grant such a motion, the movant must demonstrate good reason why the relevant order is unlawful or unreasonable. RSA 541:3 and 541:4. Good reason may be shown by new evidence that was unavailable at the original hearing, or by identifying specific matters that were either "overlooked or mistakenly conceived". *Dumais v. State,* 118 N.H. 309, 386 A.2d 1269 (1978). This must be more than merely reasserting prior arguments and requesting a different outcome. *See, Connecticut Valley Electric Company/Public Service of New Hampshire,* DE 03-330*,* Order No. 24,189 at p. 3 (July 3, 2003).

Among other things, Verizon argues that better evidence exists in various parts of the record than that on which we relied. It contends this other evidence supports allocation of Verizon's total emergency engine costs over fewer DC amps, based on Verizon's contention that 40% of the AC amps are converted to DC amps for telecommunications usage, which would result in a higher rate for DC power. MCI asserts that 80% of the AC amps that are converted to DC amps are for telecommunications usage. We found MCI's evidence persuasive and have found nothing in Verizon's argument that causes us to alter our analysis of previously considered evidence. The observations and experience of the expert witness sponsored by MCI constitutes credible evidence and formed an adequate basis for developing the relevant DC power rate.

In addition, Verizon also suggests that certain evidence was not available during the hearing (*see* Motion p. 3, fn 6), a claim we find unconvincing. Even Verizon recognizes it did not make its case on the record, stating it "regrets" not having more carefully presented evidence to support the "the 40% number," Motion at 2, Fn 4, but it claims it was focused on other "complex points" in the case. Chief among the complex points addressed by other parties, however, was the telecommunications usage factor. Verizon, however, was on notice that this was becoming a significant issue in dispute during the course of the hearings. Furthermore, evidence was Verizon's to develop, and it did not do so. Verizon, therefore, has not demonstrated good cause for introduction of evidence that it could have, but failed, to present. *Appeal of Gas Service*, 121 N.H. 797 (1981) (utility that failed to show why it did not raise issue in hearings did not demonstrate good cause to rehear); *Dumais v. State,* 118 N.H. 309 (1978) (favorable

personnel report in state's possession not made available to employee at time of hearing on discharge, therefore good cause shown to rehear).

In a case involving a rate increase, the burden of proof is on the utility seeking the increase, pursuant to RSA 378:8. Verizon failed to develop a persuasive record on the position it now argues is the correct result. Because there was sufficient competent evidence to support the finding in Order No. 24,340, and because Verizon has shown no good cause why it could not have presented its information in the proceeding, there is no basis for concluding that good reason exists to grant rehearing. Moreover, Verizon has not demonstrated that matters were overlooked or mistakenly conceived in Order No. 23,340. Rather, Verizon's motion merely repackages evidence and argument and requests a different outcome. Accordingly, we find no basis to grant rehearing and will deny the Motion.

With respect to a separate matter, Verizon asserted on page 1 of its Motion that the Commission's finding that AC amps should be converted to DC amps is, "a finding that Verizon NH believes is incorrect but is not challenging here." A motion for rehearing is the appropriate vehicle to challenge the Commission's findings and raise all of its grounds for rehearing. One cannot reserve a "right" to challenge an order after the window to request rehearing has closed. *Appeal of Campaign for Ratepayers Rights*, 145 N.H. 671, 677 (2001).

Finally, we will deny BayRing's motion regarding the effective date of the new rates. The Commission's general practice has been to make rates effective coincident with the issuance of our orders in this docket and we see no basis to alter that approach in this instance.

Based on the foregoing, it is hereby

ORDERED, that the motion of Verizon New Hampshire for rehearing and/or reconsideration is DENIED; and it is

FURTHER ORDERED, that the motion of Freedom Ring Communications LLC d/b/a BayRing Communications for rehearing is DENIED.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of October, 2004.

Thomas B. Getz Chairman	Graham J. Morrison Commissioner

Attested by:

Michelle A. Caraway
Assistant Executive Director