

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 09-C-0524 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures - Appeal by Town of Mamaroneck of the Informal Decision Rendered in Favor of Broadview Networks (712816).

COMMISSION DETERMINATION ON REHEARING

(Issued and Effective April 28, 2014)

By petition filed July 17, 2012, the Town of Mamaroneck (complainant or the Town) seeks rehearing of a Commission determination issued June 18, 2012 (Original Determination), upholding an informal hearing decision in favor of Broadview Networks (BridgeCom¹ or the utility). The Original Determination found that BridgeCom's billing of complainant from February 25, 2005, to August 24, 2007, under an Individual Case Pricing agreement for a month-to-month rate plan signed by the Town on February 18, 2005 (2005 Agreement), was proper. The present determination considers complainant's arguments on rehearing and upholds our Original Determination.

POINTS ON REHEARING

On rehearing, complainant argues that the Original Determination contained the following errors:

1. A statement in the Original Determination's background section - that the specific amount charged for lines was not identified in the 2005 Agreement and, therefore, "could have been

¹ With the approval of the Commission (see Case 04-C-1345, Order [issued December 17, 2004]), BridgeCom International, Inc. (a provider of competitive local exchange services) was acquired by Broadview Network Holdings, Inc., in January 2005. Thereafter Broadview continued to use its BridgeCom subsidiary, and the latter's tariff, to offer telephone service.

interpreted as being either the rate set by the BridgeCom or the Verizon tariff" - was "factually" inaccurate and contrary to New York State law.²

2. Contrary to the Original Determination, complainant did not misunderstand the obligation of telephone utilities to offer telephone service pursuant to their own filed tariffs. Rather, the Town acted reasonably in expecting BridgeCom's discounted rate for Centrex service to be less expensive than Verizon's.

DETERMINATION

Our procedural rules provide that "[r]ehearing may be sought only on the grounds that the commission committed an error of law or fact or that new circumstances warrant a different determination."³ Complainant's current arguments do not show that the Original Determination contains any error warranting a different determination.

As explained in the Original Determination, in June 1999, the Town and Verizon entered into a 120-month contract for Digital Centrex Service. As a result of the 2005 Agreement, BridgeCom assumed the Town's obligations to Verizon for the remainder of the 1999 contract (expiring during 2009), subject to the discount provided by Verizon to resellers of telephone service. The Original Determination rejected complainant's argument that it had been overcharged by BridgeCom under the 2005 Agreement.

On rehearing, complainant first objects to a statement

² Rehearing petition, p. 1.

³ 16 NYCRR §3.7(b).

in the Original Determination (in the background section, page 2) that the ten percent discount of "Line Charges" provided for in the 2005 Agreement "could have been interpreted as ... [applying to] either BridgeCom's or Verizon's charges"); and complainant now argues that since the 2005 Agreement does not specify that the charges to be discounted were to be something other than the "Centrex line rate, BridgeCom should have billed the Town at its tariffed Centrex line rate."⁴

The statement in the Original Determination, to which complainant objects, was, indeed, reasonable as to how the language of the 2005 Agreement "could" have been interpreted.

However, the Original Determination states (in its determination section, page 5):

[R]eview of the limited material available regarding BridgeCom's March to May 2007 billing of the Town indicates that BridgeCom used rates and charges contained in its tariff, as modified by the contract. These rates and charges included a Centrex Line charge and usage charges.

Thus, the Original Determination (page 5) found that BridgeCom "used rates and charges contained in its tariff," including "a Centrex Line charge and usage charges" which were then "modified by the contract," meaning that the discounts specified in the 2005 Agreement were applied as to BridgeCom's Centrex charge and its usage charges. The Original Determination also stated that

⁴ On appeal, complainant contended that an earlier (2003) BridgeCom offer of a ten percent discount of Verizon's charges for Centrex service supported its position that it had not received the discount warranted under the 2005 Agreement.

other charges related to the Centrex lines were not billed by BridgeCom on a discounted basis.⁵

Moreover, as pointed out in the Original Determination, note 3, the quoted rate in the Town's 1999 contract with Verizon did not, itself, cover all "associated [Verizon] charges for provision of the relevant [Centrex] service." Those charges were billed by Verizon, in addition to the charges specified in Verizon's 1999 contract with complainant. In taking over responsibility for telephone service to complainant related to the Centrex lines, BridgeCom became responsible not just for the specific charges noted in the 1999 contract between Verizon and the Town, but also for such associated charges.

Complainant's first argument shows no error in the Original Determination's conclusion that BridgeCom's billing under the 2005 Agreement reflected a discount of that company's tariffed Centrex charge or charges.

We turn now to complainant's second argument on rehearing, that it reasonably expected lower bills from BridgeCom than Verizon had charged for Centrex service. As indicated in the Original Determination: Verizon and BridgeCom had different charges for components of service to Centrex customers; Verizon's rate under its 1999 contract with the Town did not include all of its charges for Centrex service; and the 2005 Agreement did not specify which charges under BridgeCom's tariff were to be discounted.

However, the Town was billed monthly by BridgeCom

⁵ As stated in the Original Determination, p. 5, BridgeCom used, in addition to a discounted Centrex charge, "an undiscounted EUCL charge of \$9 per line per month," as well as other undiscounted charges billed monthly for each Centrex line.

under the 2005 Agreement and was, thus, informed of how much it was being charged. In addition, the 2005 Agreement clearly stated that it was month to month (and that the monthly revenue requirement was zero), meaning that complainant could end the 2005 Agreement at any time without incurring a penalty.⁶ This provision, in itself, made the 2005 Agreement a substantial benefit to the Town, and also offered the Town protection if the 2005 Agreement did not meet its expectations. Nevertheless, complainant did not end the 2005 Agreement for over two years.

Complainant's second argument also shows no error in the Original Determination.

CONCLUSION

Review in response to complainant's rehearing petition shows no error in the Original Determination or new information warranting any different determination. Therefore, the Original Determination is upheld and the rehearing request is denied.

⁶ In contrast, by assuming the Town's liability to Verizon under the Town's original 1999 contract, BridgeCom took the risk that the Town might end its month-to-month 2005 Agreement before its original 120-month contract with Verizon expired in 2009, leaving BridgeCom to fulfill the Town's responsibilities to Verizon.