

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298**FILED**06-25-13  
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Agenda ID # 12176  
Adjudicatory

## TO PARTIES OF RECORD IN CASE 12-07-016

This is the proposed decision of Administrative Law Judge (ALJ) Farrar. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov). Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Farrar at [edf@cpuc.ca.gov](mailto:edf@cpuc.ca.gov) and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

/s/ MARYAM EBKE for  
Karen V. Clopton, Chief  
Administrative Law Judge

KVC:jv1

Attachment

Decision PROPOSED DECISION OF ALJ FARRAR (Mailed 6/25/2013)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Dr. Michael Karr,

Complainant,

vs.

Verizon California, Inc. (U1002C), and  
Metropolitan Telecomm of Calif., Inc. (U6568C),

Defendants.

Case 12-07-016  
(Filed July 20, 2012)

**DECISION DISMISSING COMPLAINT**

Today’s decision dismisses, with prejudice, Case 12-07-016 filed by Dr. Michael Karr against Defendants Verizon California, Inc. and Metropolitan Telecomm of California, Inc.

**Summary**

On July 20, 2012, Dr. Michael Karr (Complainant) filed Case (C.) 12-07-016 with the California Public Utilities Commission (Commission). According to documents filed by Complainant, sometime during February 2012, Complainant determined to switch from Metropolitan Telecomm

of California, Inc (MetTel) internet service and signed up to receive high speed internet service from Sprint/Time Warner Cable.<sup>1</sup> On or about March 23, 2012, after learning that MetTel would charge him for the remaining time on his contract, Complainant called Time Warner to cancel the order and advised them that he was staying with MetTel.<sup>2</sup>

On March 27, 2012, Complainant ordered online ADSL service with MetTel. However, according to Complainant, Sprint/Time Warner Cable didn't cancel the order he'd previously placed with them until April 13, 2012, and by April 14, 2012, Verizon had already ported the phone lines to Sprint/Time Warner Cable. As a result of these events, on April 14, 2012, Complainant had no service on the four phone lines in his office. Complainant claims to have been informed, in an April 16, 2012 conversation with MetTel, that his lines were successfully ported away from MetTel, that he no longer had an account with MetTel, that as the losing carrier MetTel could not open a trouble ticket to fix his phone service, and that it could take MetTel up to five business days to get his phones working again. Complainant asserts that he stated that he would not return to MetTel at the conclusion of this conversation with MetTel.<sup>3</sup>

According to Complainant, between April and May of 2012, Verizon California, Inc. (Verizon) received a request from MetTel to do a "Win Back," refused to work with Sprint/Time Warner Cable to resolve issues related to

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<sup>1</sup> Answer of Dr. Michael Karr to Verizon's Motion to Dismiss dated August 20, 2012, at 1.

<sup>2</sup> First Amended Complaint at 2.

<sup>3</sup> Answer of Dr. Michael Karr to Verizon's Motion to Dismiss dated August 20, 2012, at 3.

Complainant not receiving calls, and “Won Back” additional phone lines. Subsequently, Complainant received bills for phone service in April and May 2012, from both Sprint/Time Warner Cable and MetTel for the same phone lines.

Based on these facts, Complainant alleges that between April and June of 2012 Verizon and MetTel “slammed” his four telephone lines on two separate occasions.<sup>4</sup> By way of relief, on claims of a loss of income, loss of good name and reputation, emotional distress, family hardship, and loss of business, Complainant initially sought \$300,000 plus attorney fees.<sup>5</sup>

Defendants Verizon and MetTel each responded to the complaint on September 4, 2012. Concurrent with its Answer, Verizon moved to dismiss that part of the complaint requesting damages on claims that it was contrary to prevailing law. Verizon also notes that it is the underlying network provider and Complainant has not been a Verizon customer since September 2010. According to Verizon, as the underlying network provider, it is obligated to process porting orders from Sprint/Time Warner Cable and MetTel, and doing so does not amount to slamming. For its part MetTel maintains that any and all porting that occurred was done at Complainant’s request. Both MetTel and Verizon deny any wrong doing and assert that they acted lawfully at all times, argue that Complainant seeks relief (in the form of damages) that the Commission cannot grant, and assert the following affirmative defenses:<sup>6</sup>

1. Complainant fails to allege facts sufficient to state a cause of action;

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<sup>4</sup> First Amended Complaint at 5.

<sup>5</sup> Complaint at 3.

<sup>6</sup> See Verizon Answer at 3-4, and MetTel Answer at 4.

2. The Complaint seeks damages or remedies beyond the jurisdiction of the Commission; and
3. At all times Verizon has acted in accordance with its statutory, contractual and other regulatory obligations with respect to Complainant.

On September 20, 2012, the assigned Administrative Law Judge (ALJ) notified parties that a prehearing conference (PHC) would be held on October 18, 2012. On October 12, 2012, Complainant sent an email requesting eight additional weeks to prepare for the prehearing conference. Complainant stated that he needed the additional time to procure and prepare new representation before the PHC. By email dated October 16, 2012, the presiding ALJ notified parties that the PHC would be rescheduled for November 20, 2012, in Los Angeles, California.<sup>7</sup>

On November 7, 2012, Complainant forwarded the ALJ an email stating that, irrespective of the fact that the PHC was being held at the Commission office nearest his location, he would have “working constraints arriving on time by car, but not participating by phone” and requested permission to participate in the PHC by telephone. The ALJ responded to Complainant’s e-mail on November 7, 2012. After noting that a central purpose of the PHC was to allow argument on Verizon’s motion to dismiss the damages portion of the complaint, the ALJ informed Complainant that either he or his lawyer needed to be there to represent his interests.

On November 16, 2012, two working days before the scheduled PHC, Complainant again e-mailed the ALJ. In addition to stating that he had mailed

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<sup>7</sup> Complainant’s and Verizon’s offices are located in Los Angeles, California.

parties an "Amended Complaint," Complainant stated that he had yet to secure representation and would not be able to attend the PHC as he "had already planned on traveling out of town for Thanksgiving."<sup>8</sup> Given these developments, the PHC was again cancelled, MetTel and Verizon were afforded an opportunity to provide a written response to Complainant's First Amended Complaint, and the PHC was rescheduled. Verizon and MetTel filed responses to the First Amended Complaint on January 14, 2013. However, due to a conflict with another proceeding the November 20, 2012, PHC was again cancelled and the parties were directed to meet and confer to set a schedule for the proceeding.

Complainant failed to appear at the agreed-upon time for the required meet and confer. However, by e-mail dated January 16, 2013, Complainant agreed to the schedule established by MetTel and Verizon. Consistent with this schedule, the PHC was set for February 6, 2013, Discovery was to be conducted between January 16th and March 5th of 2013, Opening Testimony was due on March 4, 2013, and Hearings would be held on March 6, 2013.<sup>9</sup>

After addressing the schedule and some discovery issues, discussions at the PHC focused on the nature of the relief being sought. The Amended

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<sup>8</sup> On November 19, 2012 the Commission's docket office sent Complainant an e-mail noting that: 1) Pursuant to Rules 1.12(a) and 11.1 permission must be obtained from the ALJ before the Amended Complaint could be filed; and 2) the Amended Complaint had yet to be tendered for filing, though it appeared to have been served. All parties were sent a copy of this e-mail which included a copy of Complainant's Amended Complaint as an attachment. By e-mail dated December 4, 2012, Complainant asserts that the document has been tendered for filing.

<sup>9</sup> By e-mail dated January 17, 2013 the ALJ informed Complainant that any subsequent failure to follow the schedule set for this proceeding will result in the claim being dismissed.

Complainant alleges the same set of facts as the original complaint but omits the claim for damages that was the subject of Verizon's motion to dismiss. Instead, in addition to asking that Verizon and MetTel be fined "for the slamming of four telephone lines on two separate occasions at the penalty rate of \$50,000.00 per line," the Amended Complainant seeks reimbursement or credit for business telephone service for a period of 30 days, attorney's fees, and "reparations in an amount according to proof."<sup>10</sup> Moreover, while the First Amended Complaint requested \$350,000, at no point did Complainant state either how the \$350,000 sum was calculated or exactly what it represented. When pressed on this issue at the PHC, Complainant stated that he would like to have his cost reimbursed for the lines that were ported from him but acknowledged that he had not set forth the actual cost of these activities anywhere in the record.<sup>11</sup>

Complainant was directed to provide information related to his cost to all parties within two weeks (as an addendum to the First Amended Complaint). With that information in hand, the parties were to discuss the possibility of mediation. Complainant failed to provide the information in the required time and the parties declined to pursue mediation.

The Addendum to the First Amended Complaint, which was belatedly served, provided the following "break down of demand of reparations:"

1. \$8,000 from Verizon for slamming four phone lines at two different times (at \$1,000 per line);

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<sup>10</sup> Complainant does not identify any statute or Commission decision under which he proposes to proceed.

<sup>11</sup> PHC Transcript at 14, lines 4-8.

2. \$8,000 from MetTel for slamming four phone lines at two different times (at \$1,000 per line);
3. \$2,064.26 plus interest from MetTel since April 17, 2012 for breach of contract;
4. \$5,000.00 plus interest from MetTel for double billing Complainant for services;
5. \$25,000 plus interest from MetTel for serving Complainant a summons for a Civil Action in New York to collect on a disputed bill;
6. \$700 in cost for the loss of four business lines;
7. \$5,000 for Breach of contract by MetTel;
8. \$5,000 from MetTel for loss of dial tone for all four phone lines;
9. \$5,000 for abuse of process by MetTel;
10. \$5,000 for misrepresentation by MetTel;
11. \$2064.26 from MetTel for wrongful billing;
12. For the Commission to find MetTel guilty of slamming four phone lines twice in 2012.

While it is unclear how the sums identified in the Addendum relate to any previously identified amount, on its face the Addendum appears to seek damages and raises a host of new claims. In light of the content of the Addendum, the ALJ determined that Verizon's September 4, 2012, Motion to Dismiss should be revisited. On February 27, 2013 the ALJ canceled the evidentiary hearing scheduled for March 6, 2013, scheduled oral argument on the motion to dismiss for March 6, 2013, and provided Complainant the opportunity to serve a written response to the motion to dismiss.



Complainant served his written Opposition to the Motion to Dismiss on March 4, 2013. Except for his claim that “MetTel has added interest to an unpaid bill that is currently being disputed,”<sup>12</sup> Complainant’s affirmative defenses consist entirely of factual allegations related to MetTel’s and/or Verizon’s porting his phone service to and/or from their lines.<sup>13</sup> While no party disputes that Complainant’s lines were ported (but rather whether or not doing so amounted to slamming or was otherwise unlawful), both defendants urged that, as a matter of law, the relief Complainant seeks is beyond that available in a Commission proceeding. Complainant fails to address defendant’s legal contentions in any way.<sup>14</sup>

On March 6, 2013, the ALJ, counsel for Verizon, and counsel for MetTel appeared at a hearing in Los Angeles on Verizon’s motion to dismiss the complaint. Though provided ample notice of the hearing, Complainant failed to appear at the proceeding.<sup>15</sup>

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<sup>12</sup> While Complainant here asserts that the sum of \$2,064.26 is unpaid, the 3rd and 11th request in Complainant’s Addendum seeks “\$2,064.26 plus interest from MetTel since April 17, 2012 for breach of contract” and “\$2,064.26 for MetTel for wrongful billing.” Addendum at 7, paragraph 8.

<sup>13</sup> Addendum at 7.

<sup>14</sup> As noted above, Verizon maintains that as the underlying network provider, it simply processes porting orders and doing so does not amount to slamming, while MetTel maintains that any and all porting that occurred was done at Complainant’s request.

<sup>15</sup> Counsel for MetTel (which is based in New York) appeared telephonically.

**Conclusion**

Given Complainant's failure to attend oral argument on the motion to dismiss his complaint, the shortcomings associated with Complainant's written Opposition to the Motion to Dismiss, and Complainant's inability to move the litigation forward, the Complaint shall be dismissed with prejudice.

**Comments on the Proposed Decision**

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_ by \_\_\_\_\_ and reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_.

**Assignment of Proceeding**

The assigned Commissioner is Michel Peter Florio and the assigned ALJ is Darwin E. Farrar.

**Finding of Facts**

1. On July 20, 2012, Dr. Michael Karr filed C. 12-07-016 with the California Public Utilities Commission.
2. Complainant alleges that on two separate occasions between April and June of 2012, Verizon and MetTel "slammed" his four telephone lines.
3. Both MetTel and Verizon deny any wrong doing.
4. MetTel and Verizon assert that Complainant fails to allege facts sufficient to state a cause of action.

5. MetTel and Verizon assert that Complaint seeks damages or remedies beyond the jurisdiction of the Commission.

6. On October 12, 2012, Complainant requested eight additional weeks to prepare for the prehearing conference.

7. On November 16, 2012, Complainant served an Amended Complaint.

8. Two working days before the rescheduled PHC, Complainant stated that he had plans to go out of town and would not be able to attend the PHC.

9. Complainant failed to appear at the agreed upon time for a mandatory meet and confer.

10. Complainant was directed to file an Addendum to his Amended Complaint that set forth the costs at issue.

11. , Complainant's late filed Addendum seeks damages and raises new claims.

12. Complainant's written response to the motion to dismiss does not address the legal basis for the motion to dismiss.

13. Complainant failed to appear at the March 6, 2013, hearing in Los Angeles on the motion to dismiss the complaint.

### **Conclusions of Law**

1. Complainant has failed to bring his complaint forward with reasonable diligence.

2. Complainant has failed to rebut the allegations contained in the Motion to Dismiss.

3. The Complaint should be dismissed with prejudice.

**O R D E R**

**IT IS ORDERED** that:

1. Case 12-07-016 is dismissed with prejudice.
2. Case 12-07-016 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.