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C2008003

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

Utility Telecom Group, LLC (U5807C)

Complainant,

vs.

Bandwidth.com CLEC, LLC (U7038C),

Defendant.

Case (C.) _____

Complaint
(Rule 4.2)

COMPLAINANT	DEFENDANT
Utility Telecom Group, LLC (U5807C) Attn: John Clark, Esq. 4202 Coronado Avenue Stockton, CA 95204 T: (415) 765-8443 Email 1: jlark@goodinmacbride.com	Bandwidth.com CLEC, LLC Attn: Lisa Jill Freeman 900 Main Campus Drive, Suite 100 Raleigh, NC 27606 Telephone: (919) 439-3571 E: ljfreeman@bandwidth.com
ATTORNEY FOR COMPLAINANT	
John L. Clark, Esq. GOODIN, MACBRIDE, SQUERI & DAY, LLP. 505 Sansome Street, Suite 900 San Francisco, California 94111 T: (415) 765-8443 Email: jlark@goodinmacbride.com	

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Utility Telecom Group, LLC (U5807C)

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Defendant

COMPLAINT BY UTILITY TELECOM GROUP, LLC (U5807C)

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Attorneys for Utility Telecom Group, LLC

Dated: July 30, 2020

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COMPLAINT BY UTILITY TELECOM GROUP, LLC (U5807C)

Pursuant to Public Utilities Code §§ 1702 and 1707 and Article 4 of the Commission’s Rules of Practice and Procedure, Utility Telecom Group, LLC (“UTG” or “Complainant”) submits this Complaint against Bandwidth.com CLEC, LLC (“Defendant”) for on-going failures to port telephone numbers in violation of Public Utilities Code § 451.

I. Identification of Complainant and Communications

Complainant’s name, address, and telephone number are as follows:

Utility Telecom Group, LLC
4202 Coronado Avenue
Stockton, CA 95204
Telephone: (877) 965-7800

All communications regarding this matter should be directed to UTG’s attorneys
as follows:

John L. Clark
Goodin, MacBride, Squeri & Day, LLP
505 Sansome Street, Suite 900
San Francisco, California 94111
Telephone: (415) 765-8443
Email: jclark@goodinmacbride.com

II. Identification of Defendant

Defendant's name, address, and telephone number are as follows:

Bandwidth.com CLEC, LLC
Attn: Lisa Jill Freeman
900 Main Campus Drive
Raleigh, NC 27606
Telephone: (919) 439-3571

III. Statement of Complaint

1. UTG is a competitive local exchange carrier ("CLEC") and interexchange carrier based in Stockton, California and has been operating in California since 1996.¹ UTG provides retail and wholesale voice and data telecommunications, including SD-WAN, on-demand conferencing solutions, unified communication applications, business telephone systems, high speed internet, and hosted VoIP.

2. Defendant is a CLEC and interexchange carrier. UTG is informed and believes that Defendant provides various telecommunications services on a retail and wholesale basis.

3. In 2018, UTG and a certain limited liability company (the "Customer") entered into an agreement for UTG's provision of telecommunications service. In connection with UTG's provision of service, UTG assigned telephone numbers to the Customer and programmed its switch so that calls dialed to those telephone numbers would be routed to the Customer.

4. Subsequently, the Customer decided to switch providers to a company known as NumberBarn, LLC (U-1639-C) ("NumberBarn"), a VoIP provider. UTG is informed and

¹ UTG initially conducted operations as Utility Telephone, Inc. In 2015, Utility Telephone, Inc. transferred its operating authority and operations to UTG as part of a corporate restructuring.

believes that NumberBarn and Defendant had and continue to have a wholesale service arrangement under which Defendant is responsible for administering numbering resources assigned to NumberBarn's customers, specifically including managing number porting requests. Accordingly, when the Customer switched its service to NumberBarn, UTG received a port-out request from Defendant to release the Customer's telephone numbers for porting to Defendant's network on behalf of the Customer. UTG complied with this request on September 4, 2019.

5. Earlier this year, the Customer decided to return to UTG's service. In accordance with the Customer's service request, UTG submitted a request to port-in the Customer's telephone numbers, which included the following numbers:

213-888-8888
310-788-8888
213-888-8000
949-277-7777

6. However, Defendant refused to release the telephone numbers for porting. As a result, UTG is unable to serve those numbers in accordance with its service agreement with the Customer. Moreover, UTG is informed and believes that Defendant has deactivated the telephone numbers on its network, meaning that calls to or from those numbers cannot be completed.

7. UTG is informed and believes that Defendant's refusal to honor UTG's porting request is in response to its receipt of information from one Anita Taff-Rice, an attorney representing Jonathan Finestone, an individual who claims to own the subject telephone numbers. UTG is informed and believes that Ms. Taff-Rice threatened action against Defendant if it ported out the numbers or otherwise failed to preserve them for Mr. Finestone's number collection.

8. Mr. Finestone's claim to the numbers is the subject of a federal court action brought by Mr. Finestone against UTG, in which Mr. Finestone asserts ownership of the subject telephone numbers and a thousand or so other numbers based on some agreement he supposedly had with a now-defunct carrier whose assets were acquired by UTG in 2015. Since acquiring those assets, which included the defunct carriers' numbering resources, none of the subject telephone numbers and none of the other numbers to which Mr. Finestone claims ownership were ever used by UTG or any other carrier to serve Mr. Finestone, except for a few numbers that were assigned to circuits once serving a PBX owned by a company operated by Mr. Finestone but that were taken out of service years ago. For this reason, UTG's position, now and in the federal lawsuit, is that Mr. Finestone has no cognizable rights or interests in any of the thousand or so telephone numbers, including the subject telephone numbers.

9. Irrespective of the validity, or lack of validity, of the grounds for Mr. Finestone's lawsuit against UTG, neither the pendency of Mr. Finestone's claims nor Ms. Taff-Rice's threats, justify Defendant's refusal to release the subject telephone numbers for porting.

10. At the time that UTG submitted its porting request, the subject numbers were assigned to the Customer and had already been in use to serve the Customer for two or more years. As such, the telephone numbers were subject to the right of the Customer to retain the numbers when it first switched from UTG to NumberBarn and also when it subsequently switched back from NumberBarn to UTG.

11. Federal Communications Commission ("FCC") Rule 52.34(c) provides: "Telecommunications carriers [such as Defendant] must facilitate an end-user customer's valid number portability request either to or from an interconnected VoIP or VRS or IP Relay provider. 'Facilitate' is defined as the telecommunication carrier's affirmative legal obligation to

take all steps necessary to initiate or allow a port-in or port-out itself, subject to a valid port request, without unreasonable delay or unreasonable procedures that have the effect of delaying or denying porting of the NANP-based telephone number." There is no provision in the FCC's Rules or any other federal or state law that allows a telecommunications carrier in Defendant's position from refusing to honor a valid request to port an end user's telephone number or for delaying porting. Under FCC Rule 52.35(a), the timeframe for the completion of a simple port request, such as the request submitted on behalf of the Customer by UTG, is one business day.

12. Defendant's ongoing refusal to release the Customer's telephone numbers for porting to UTG as required by the FCC rules violates Defendant's general obligation under Public Utilities Code § 451, which requires, among other things, that every public utility furnish and maintain just and reasonable service promoting the convenience of its customers and the public. Further, Defendant's refusal is in direct conflict with Part 1 of the Commission's General Order No. 168, which provides, in pertinent part: "Consumers have the right to change voice service providers within the same local area and keep the same phone number in accordance with the rules set forth by FCC regulations regarding Local Number Portability."

IV. Prayer

Based on the foregoing, UTG requests the following relief:

1. That the Commission order Defendant to immediately release the subject numbers for porting to UTG and undertake all related actions and steps needed allow the porting to be completed without further delay..

2. That the Commission impose a fine of up to \$100,000 per day for each day of Defendant's continuing violations in accordance with Public Utilities Code §§ 2107 and 2108.

3. That the Commission impose such other and further relief as the Commission deems appropriate under the circumstances.

V. Scoping Information

Categorization: Complainant submits that this proceeding should be categorized as adjudicatory.

Need for Hearing: Complainant believes that Defendant may be entitled to an evidentiary hearing in connection with the determination of the appropriate level of a fine, but Complainant does not believe that an evidentiary hearing is otherwise required.

Issues: (i) Should Defendant be ordered to comply with FCC Rules requiring timely porting of telephone numbers as requested by UTG on behalf of the Customer? (ii) What amount of fine is appropriate to sanction Defendant for its ongoing violation of its number porting obligations under FCC rules and General Order No. 168? (iii) Are other remedial measures needed to fully address Defendant's misconduct?

Proposed Schedule:

1. Complaint Filed
2. Answer to Complaint due 30 days after service of Complaint
3. Prehearing Conference ("PHC"): 20 days after Answer
4. If Defendant requests a hearing:
 - a) Opening Testimony on sanctions: 90 days after Prehearing Conference
 - b) Complainant's Reply Testimony on sanctions: 30 days after Defendant's Opening Testimony
 - c) Defendant's Rebuttal Testimony on sanctions: 20 days after Complainant's Reply Testimony

- d) Evidentiary Hearing: 10 days after Defendant's Rebuttal Testimony
- 5. Concurrent Opening Briefs: 30 days after PHC or evidentiary hearing, if requested.
- 6. Concurrent Reply Briefs: 30 days after Concurrent Opening Briefs
- 7. Presiding Officer's Decision: 90 days after submission

Respectfully submitted July 30, 2020.

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By /s/ John L. Clark

John L. Clark

Attorneys for Utility Telecom Group, LLC

VERIFICATION

I, William Wilde, am Director of Sales Engineering for Utility Telecom Group, LLC (“UTG”), and am authorized to make this declaration on its behalf.

I have read the Complaint, which was prepared at and under my direction. The allegations stated therein are true and correct to the best of my knowledge and belief, and based on my direct knowledge or on review of UTG's records maintained in the ordinary course of business, if called as a witness I could testify truthfully as to the facts stated in the Complaint.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 30th day of July 2020.

/s/ William Wilde

William Wilde