

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



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North County Communications
Corporation (U 5631 C),

Complainant,

v.

Vaya Telecom, Inc. (U 7122 C), and O1
Communications, Inc. (U6065C) for
Violation of Interconnection Agreement,
Failure to pay Inter Carrier Compensation,
Fraud regarding Spoofing and Robocalls,
and for Other Further Relief,

Defendants.

C.23-03-006
(Filed March 12, 2023)

**VAYA TELECOM, INC (U 7122 C) RESPONSE
TO NORTH COUNTY COMMUNICATIONS CORPORATION (U 5631 C)
MOTION TO STRIKE VAYA FILINGS**

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Dated: May 25, 2023

Pursuant to Rule 11.1(e) of the Commission’s Rules of Practice and Procedure, Vaya Telecom, Inc. (“Vaya”) (U 7122 C), hereby submits this Opposition to North County Communications Corporation (“NCC”)’¹ Motion to Strike Vaya Telecom, Inc. Because it is a Suspended Corporation in the above captioned Complaint, NCC’s Motion should be denied because it is based on false statements of fact and law.

The entire basis of NCC’s Motion to strike Vaya’s filings in this proceeding is the false claim that Vaya is a suspended corporation.² Vaya is *not* a suspended corporation. It is a dissolved corporation. The difference between the two is substantial.

Under California law a suspended corporation has no right to engage in court proceedings. A dissolved corporation, however, retains all rights to prosecute and defend legal actions. The attachment to NCC’s own pleading demonstrates that Vaya is a dissolved corporation, not a suspended corporation. NCC’s Motion to Strike should be denied because it is based on factual and legal error.

I. VAYA IS NOT A SUSPENDED CORPORATION

NCC itself offers evidence in Exhibit A to its Motion to Strike that Vaya is a dissolved corporation. That exhibit is a copy of Vaya’s certificate of dissolution. In addition, NCC states in the Motion to Strike that, “[o]n December 14, 2020 VAYA [sic] filed a Certificate of Dissolution with the Secretary of State of California.”³ Oddly, NCC then devotes the majority of

¹ NCC’s CPCN was revoked on June 11, 2020 in Resolution T-17676. According to the Commission’s Rules of Practice and Procedure and the Public Utilities Code, only certificated utilities may use a “U-number”. Therefore, Vaya feels it is inappropriate to continue to use NCC’s U-number, other than the caption where it is required.

² NCC Motion to Strike Vaya Filings, at p.1.

³ North County Communications Corporation (U 5631 C) Motion to Strike Vaya Telecom, Inc (U 7122) [sic] Filings Because it is a Suspended Corporation, at p. 1 (“Motion to Strike”).

its Motion to Strike arguing that Vaya’s filings should be stricken because it is purportedly a *suspended* corporation.⁴

NCC’s argument appears to be purposeful effort to mislead the Commission rather than a misunderstanding because the very case on which NCC relies distinguishes dissolved corporations from suspended corporations and explains that dissolved corporations are able to engage in court proceedings. NCC’s Motion recites:

A suspended corporation in the State of California is barred from prosecuting or defining an action in California. *Timberline, Inc. v. Jaisinghani*, (1997) 54 Cal. App. 4th 1361. (Stating a suspended corporation is disqualified from exercising any right, power, or privilege, including prosecuting or defending an action, or appealing a judgment). A suspended corporation may not prosecute or defend an action in a California court. (*Ransome-Crummey Co. v. Superior Court* [54 Cal.App.4th 1366] (1992) 188 Cal. 393, 396- 397 [205 P. 446]; *Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp.* (1957) 155 Cal.App.2d 46, 50-51 [317 P.2d 649].)⁵

The rules applying to suspended corporations are set forth in Rev. & Tax. Code, § 23301.5, which states that the powers, rights and privileges of a domestic or foreign corporation “may be” suspended or forfeited respectively if the corporation fails to pay taxes or submit certain mandatory annual filings to the California Franchise Tax Board.⁶

The *Timberline* opinion, on which NCC relies, explicitly notes that dissolved corporations may engage in court proceedings. From *Timberline*, “[o]n the other hand, a dissolved corporation maintains considerable corporate powers to conduct whatever business is required to wind up its affairs--including prosecuting actions and enforcing judgments. (See, e.g., Corp. Code, § 2010; *Pensaquitos, Inc. v. Superior Court*, supra, 53 Cal. 3d 1180, 1185 [dissolved corporation continues to exist for an indefinite period as a legal entity for the purpose of winding

⁴ NCC Motion to Strike, at p. 1-2.

⁵ NCC Motion to Strike, at p. 1-2.

⁶ *Timberline*, 54 Cal.App.4th, at 1365.

up its affairs].)⁷ The *Alhambra-Shumway Mines* opinion explains that suspended corporations are barred from engaging in court actions: “the policy is clearly to prohibit the delinquent corporation from enjoying the ordinary privileges of a going concern, in order that some pressure will be brought to bear to force the payment of taxes.”⁸

NCC’s Motion to Strike is completely without merit. The cases NCC cites clearly distinguish between the corporate rights of suspended and dissolved corporations to engage in court proceedings, and NCC itself submitted evidence that Vaya is a *dissolved* corporation. Yet NCC misleadingly argues that Vaya’s filings should be stricken because it purportedly is a suspended corporation. It is not reasonable to believe that NCC overlooked this distinction.

Vaya submits that NCC’s Motion to Strike Vaya’s Filings is beyond frivolous. It is a deliberate effort to obtain a desired result through false statements of fact and law. Even though NCC is self-represented (via Mr. Lesser who is a non-attorney litigant), NCC and Mr. Lesser are required to comply with Rule 1.1 of the Commission’s Rules of Practice and Procedure, which requires *all* persons appearing at the Commission “never to mislead the Commission or its staff by an artifice or false statement of fact or law.”

Vaya notes that Mr. Lesser must be well aware of the Commission’s processes and Rules, including Rule 1.1, because even though NCC’s CPCN was revoked, Mr. Lesser owns and operates two CLECs in California: Channel Islands Telephone Company (U 7068 C) and Shasta County Telecom, Inc. (U 7129 C).⁹ Not only has NCC, through Mr. Lesser, made a

⁷ *Timberline*, 54 Cal. App. 4th 1361, at 1368-1369.

⁸ *Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp.* (1957) 155 Cal.App.2d 46, 49.

⁹ Vaya notes that Shasta Telecom’s CASF award was stripped due to its failure to comply with Commission rules. 2016 Cal. PUC LEXIS 452, (Cal. P.U.C. August 18, 2016), at p. 6-7. “D.12-02-015 requires that grantees [Shasta County Telecom] submit quarterly progress reports on the status of the project irrespective of whether grantees request reimbursement or payment. Shasta County Telecom, Inc., has not filed any of the required quarterly progress reports related to its grant since April 27, 2015. . . .

false statement of law and fact in its Motion to Strike, it has repeatedly failed to follow the Commission's *ex parte* and procedural rules in this proceeding. Mr. Lesser has served documents that have not been filed with the Docket Office, has sent emails to Judge Jungreis with Vaya's counsel's email address removed, continued to use a Utility number for NCC despite its CPCN having been revoked more than two years ago, and filed a complaint followed by an novel motion to stay its own complaint.¹⁰ NCC and Mr. Lesser's inappropriate conduct, including filing a specious Motion to Strike on the basis that Vaya is a suspended corporation, needlessly consumes the Commission's and Vaya's resources and should not be condoned.

Vaya respectfully requests that the Commission deny NCC's frivolous Motion to Strike, rule that the Motion to Strike violates Rules 1.1. and impose an appropriate penalty.

Dated: May 25, 2023

Respectfully submitted,

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“CD [Communications Division] has checked with local sources, including the Northeast California Connect Consortium, and found no evidence that any service has been offered by Shasta County Telecom, Inc. Further, the California Broadband Availability Map indicates that most of the area that was to be covered by this project remains underserved. Despite numerous requests, the grantee has not contacted CD in more than a year. Because the grantee has not complied with CASF program requirements and has failed to fulfil its obligation to report any delays under the terms in Section V (B) of Resolution T-17439, CD recommends that the grant be rescinded.” Fortunately for the Commission and CD, no funds had yet been distributed.

¹⁰ Vaya can find no other instance in which the Complainant filed a motion to stay its own complaint.