

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF CALIFORNIA**



**FILED**

09/14/23  
04:59 PM  
C2308005

Jonathan Marcus,  
Complainant,

vs.

Cellco Partnership d/b/a Verizon Wireless  
(U3001C),  
Defendant.

(ECP)  
C. 23-08-005

**ANSWER OF VERIZON TO COMPLAINT**

In accordance with the Commission Instructions to Answer and Hearing Notice of August 25, 2023, Cellco Partnership d/b/a Verizon Wireless (U 3001 C), Defendant (“Verizon”), answer the complaint of Jonathan Marcus (Complainant) as follows:

**INTRODUCTION AND FACTUAL BACKGROUND**

Complainant alleges that Verizon switched him to a new plan without his authorization, and further alleges that the new plan for his wireless phone service includes a data throughput limitation (DTL) point at 50 GB, compared to his old plan, which provided 75 GB without DTL.

These allegations are untrue. As reflected by the attached transaction receipt, Complainant knowingly switched from the Above Unlimited plan to a plan called Get More Unlimited on April 14, 2020; he was provided a copy of the transaction receipt on that day and also was provided a Next Bill Estimate, which indicated the new plan. See Attachment A. Under his new plan – Get More Unlimited

– Complainant has access to unlimited 4G LTE data for up to 75 GB without DTL used for network management during times of network congestion. This is the same amount of data that his former plan provided. Attachment B. The prices for the two plans are the same, but the new plan also offers a \$10 discount if the Complainant were to enroll in auto-pay (which he has not).

Three years after switching to the Get More Unlimited Plan, Complainant filed a complaint with the FCC in March 2023 setting forth the above allegations. Verizon explained in response to the FCC as well as to Complainant that his new plan includes the same amount of data as his old plan and that his old plan is no longer available, as it has been grandfathered.<sup>1</sup> See Attachment C.

Despite the foregoing, Complainant seeks an order compelling Verizon to revert him back to his old plan. As noted in prior letter responses from Verizon to the FCC and the Complainant, Verizon has grandfathered the old plan and it is no longer available. Moreover, Complainant’s main concern about the new plan is unfounded, because it offers him the same amount of data (75 GB) at unlimited speeds without DTL as his old plan.

In summary, the evidence and facts as pled by Complainant show that there is no basis for his claim that he was switched to a new plan without his knowledge nor is it true that the new plan provides less data than his old plan. To the extent that Complainant is unhappy with his plan, he is not locked into the plan and may seek other plan offerings. There is no basis for this complaint and it should be denied. Verizon moves to dismiss the complaint for the reasons set forth below.

## **ANSWER TO MATERIAL ALLEGATIONS OF THE COMPLAINT**

1. Verizon incorporates the above Introduction and Factual summary here. Verizon denies each and every allegation as set forth in the Complaint and attached statement except as expressly admitted herein.

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<sup>1</sup> Grandfathering a plan means that the existing customers on the plan can continue to receive services under that plan but the plan is withdrawn as a new offering and cannot be added or modified on an account, and no new customers to the plan are allowed.

2. Verizon admits that Complainant is currently on a plan called Get More Unlimited, and that he was formerly on a plan called Above Unlimited.

3. Verizon denies that Complainant was switched to the new plan without his knowledge. Verizon discussed the plan details with Complainant and sent him a transaction receipt reflecting the change to the Get More Unlimited plan.

4. Verizon admits that the new plan is the same price as Complainant's former plan, but is subject to a greater discount if Complainant signs up for auto-pay.

5. Verizon denies that Complainant's new plan provides less unlimited data than his former plan provided. Both the Complainant's former plan and his current plan provide the same amount of data (75 GB) at unlimited 4G LTE speeds.

6. Verizon denies that the former plan Above Unlimited is accessible, as it has been grandfathered and is no longer available. In any event, the benefits of Get More Unlimited are the same as the Above Unlimited plan.

## **AFFIRMATIVE DEFENSES**

### **FIRST AFFIRMATIVE DEFENSE**

Complainant's allegations fail to state facts sufficient to state a cause of action under California Public Utilities Code Section 1702 and Article 4 of the Commission's Rules of Practice and Procedure, as it has failed to plead a violation of law, or of Commission's rules or order. As pled, the Complaint alleges that Verizon switched Complainant unknowingly to a new plan, but the evidence reflects that Verizon provided Complainant with a receipt of the plan change and thus he was aware of the change.

**SECOND AFFIRMATIVE DEFENSE**

To the extent that the Complainant seeks an order that Verizon switch him back to his old plan, such a request is beyond the jurisdiction of the Commission. The old plan is no longer available and there is no other remedy that the Commission can award here given the Commission’s limited authority to regulate wireless service rates.

**THIRD AFFIRMATIVE DEFENSE**

Having waited three years to bring this complaint, the Complaint is barred by the doctrine of laches.

**FOURTH AFFIRMATIVE DEFENSE**

At all times alleged in the Complaint, Defendant has acted in accordance with its statutory, contractual and other regulatory obligations with respect to Complainant.

**PROCEDURAL MATTERS**

Verizon does not object to the adjudicatory categorization of this case.

Verizon’s representative for this case is Rex Knowles. Mr. Knowles’ contact information appears below.

WHEREFORE, Verizon requests that the Commission deny the Complaint and the relief sought by Complainant, dismiss the Complaint, and grant such other and further relief, as the Commission deems appropriate.

DATED: September 14, 2023

Respectfully submitted,

*/s/ Rex Knowles*

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## VERIFICATION AND ATTORNEY DECLARATION

I am an attorney for Los Angeles SMSA Limited Partnership d/b/a Verizon Wireless (U3003C) (“Verizon”), and I have been authorized to make this verification on their behalf. The officer who would otherwise make this verification is absent from the county where I am located and pursuant to Commission Rule of Practice and Procedure 1.11(d), I am authorized to verify the Answer on behalf of Verizon’s officer.

I have read the forgoing Answer and know the contents thereof.

I am informed and believe that the matters stated therein are true and on that ground I allege that the matters stated therein are true.

I declare under penalty of perjury that the above statements are true and correct.

Executed on the 14th day of September 2023, at San Francisco, California.

By     /s/ Jane Whang      
Jane Whang  
Attorney for Verizon