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TO PARTIES OF RECORD IN CASE 24-12-012:

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This proceeding was filed on December 26, 2024, and is assigned to Commissioner John Reynolds and Administrative Law Judge (ALJ) Jeffrey Lee. This is the decision of the Presiding Officer, ALJ Lee.

C2412012

Any party to this adjudicatory proceeding may file and serve an Appeal of the Presiding Officer's Decision within 30 days of the date of issuance (*i.e.*, the date of mailing) of this decision. In addition, any Commissioner may request review of the Presiding Officer's Decision by filing and serving a Request for Review within 30 days of the date of issuance.

Appeals and Requests for Review must set forth specifically the grounds on which the appellant or requestor believes the Presiding Officer's Decision to be unlawful or erroneous. The purpose of an Appeal or Request for Review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight.

Appeals and Requests for Review must be served on all parties and accompanied by a certificate of service. Any party may file and serve a Response to an Appeal or Request for Review no later than 15 days after the date the Appeal or Request for Review was filed. In cases of multiple Appeals or Requests for Review, the Response may be to all such filings and may be filed 15 days after the last such Appeal or Request for Review was filed. Replies to Responses are not permitted. (*See*, generally, Rule 14.4 of the Commission's Rules of Practice and Procedure at www.cpuc.ca.gov.)

If no Appeal or Request for Review is filed within 30 days of the date of issuance of the Presiding Officer's Decision, the decision shall become the decision of the Commission. In this event, the Commission will designate a decision number and advise the parties by letter that the Presiding Officer's Decision has become the Commission's decision.

/s/ MICHELLE COOKE

Michelle Cooke

Chief Administrative Law Judge

MLC:hma
Attachment

C.24-12-012 ALJ/POD-JYL/hma

Decision **PRESIDING OFFICER'S DECISION OF ALJ LEE** (Mailed 12/2/2025)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

North County Communications
Corporation (U5631C),

Complainant,

vs.

Vaya Telecom, Inc. (U7122C) and O1
Communications, Inc. (U6065C),

Defendants.

Case 24-12-012

**PRESIDING OFFICER'S DECISION DISMISSING COMPLAINT WITHOUT
PREJUDICE**

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Summary

This decision grants Defendants Vaya Telecom, Inc. and O1 Communications, Inc.'s Special Appearance Motion to Quash Service and Dismiss the Complaint of Complainant North County Communications Corporation on the grounds that complaint 24-12-012 was filed prematurely and must be dismissed without prejudice pursuant to California Public Utilities Commission decision 24-01-037, issued January 26, 2024.

This decision also establishes that decision 24-01-037 equitably tolled the applicable statutes of limitation from the March 13, 2023 filing date of those claims, first raised in complaint 23-03-006, until final resolution of all litigation related to complaint 17-09-023. Tolerated claims relate back to the March 13, 2023 filing date of those claims, as first raised in complaint 23-03-006. Eligible tolled claims may be refiled no later than 90 days after final resolution of all litigation related to complaint 17-09-023 or expiration of appeal rights to the tribunal of last resort, whichever is later.

Complaint 24-12-012 is dismissed without prejudice.

This proceeding is closed.

1. Background

The present complaint arises from prior proceedings involving the parties before the California Public Utilities Commission (Commission) and in judicial *fora*.¹ We summarize below only those facts and proceedings necessary for an understanding of our decision today.

¹ For a background of the parties' previously-filed matters before the Commission that are relevant to this decision, see our decision (D.) 24-01-037, issued January 26, 2024 (dismissing complaint (C.) 23-03-006 without prejudice). For additional background, see D.23-11-008, issued November 6, 2023 (addressing Phase 3 *alter ego* liability issues in C.17-09-023); D.24-12-078, issued December 20, 2024 (modifying D.23-11-008 in C.17-09-023). C.17-09-023 is a separate

Footnote continued on next page.

1.1. C.24-12-012

On December 26, 2024, Complainant North County Communications Corporation (NCC) filed complaint (C.) 24-12-012 against Vaya Telecom, Inc. (Vaya) and O1 Communications, Inc, (O1) (jointly, Defendants). In C.24-12-012, NCC seeks, *inter alia*, findings that Vaya and O1 (1) breached the parties' interconnection agreement (ICA) by delivering to NCC "interLATA" telephone traffic over local interconnection trunks; and (2) violated Ordering Paragraph 3 of decision (D.) 14-01-006 and Section 702 of the Public Utilities Code by delivering to NCC interLATA traffic over local interconnection trunks.² Significantly for this decision, NCC also seeks a specific "finding that Vaya and O1 are jointly and severally liable for such violations under *alter ego* and/or single business enterprise liability."³

1.2. Motion to Quash or Dismiss Complaint

On February 21, 2025, Defendants filed a joint answer and a joint Special Appearance Motion to Quash Service and Dismiss the Complaint (Motion). Defendants' Motion sought dismissal, *inter alia*, on the following grounds: (1)

Commission proceeding with a lengthy multi-phased docket that involves AT&T California as complainant against Vaya as defendant. O1 and O1 Holding Company, the parent company of both Vaya and O1, are also parties. As described in D. 24-01-037, in C.17-09-023, AT&T asserts that Vaya is in violation of an interconnection agreement approved in D.14-01-006 that arose from consolidated proceedings C.10-12-001 and C.11-02-015.

² C.24-12-012 at 8. The Telecommunications Act of 1996 is the primary federal statute governing "InterLATA" services. That statute reformed United States telecommunications law by promoting competition and reducing barriers to competition by removing regulations that had created monopolies for local phone services.

As defined in 47 USC section 153(26), "The term 'interLATA service' means telecommunications between a point located in a local access and transport area [LATA] and a point located outside such area." As defined in 47 USC section 153(31), LATAs are designated, contiguous geographic areas that help manage the routing of telecommunications traffic, ensuring efficient communication across different areas.

³ C.24-12-012 at 8.

lack of Commission jurisdiction over Defendants with expired Certificates of Public Convenience and Necessity (CPCN's);⁴ (2) applicable statutes of limitations had expired for alleged violations as of the December 26, 2024 filing date of C.24-12-012;⁵ (3) *res judicata* bars all claims raised in C.24-12-012;⁶ and (4) the complaint fails to state a claim.⁷ The Motion was accompanied by Exhibits 1 through 8, for which Defendants sought official notice by the Commission. NCCC filed its response to the Motion on March 14, 2025 (Response). Defendants filed a reply on March 28, 2025 (Reply).

The Assigned Administrative Law Judge (ALJ) held a law and motion hearing on April 3, 2025. In briefs and at the law and motion hearing, the parties established that the instant complaint C.24-12-012 presented identical or similar issues, including alleged *alter ego* liability of the same defendants, Vaya and O1, as NCC's prior complaint in C.23-03-006 that we dismissed without prejudice in decision D.24-01-037.⁸

⁴ Motion at 2-6.

⁵ Motion at 12-15.

⁶ Motion at 16-18.

⁷ Motion at 18-20.

⁸ April 3, 2025 Law and Motion Hearing Transcript (L&M Tr.) at 38:2-16 (NCC admitting that present complaint and complaint in C.23-03-006 are "identical"); L&M Tr. at 22:15-22 (NCC filed same complaint in C.23-03-006 and present case). *See also*, Reply at 2 ("NCC filed its Complaint on December 26, 2024 ("Complaint"), which is literally identical to the complaint filed by NCC in C.23-03-006. The only difference between the two complaints is the date.") (footnote omitted); Reply at 8 ("NCC simply changed the date on its 2023 complaint and refiled it anew.").

NCC's complaints in C.24-12-012 and C.23-03-006 allege the following:

1. Vaya and O1 are a single business enterprise.
2. Vaya violated its interconnection agreement with NCC.
3. O1 violated its traffic exchange agreement with NCC.

Footnote continued on next page.

In support of dismissal, Vaya and O1 argued at the hearing that a Petition for a Writ of Review pending in the California Court of Appeal, 4th District, Division 3 as Case No. G065120 (Petition for Writ of Review), might resolve the issue of alleged *alter ego* liability of Vaya and O1 in this and other proceedings before the Commission.⁹ That Petition for Writ of Review challenged Commission imposition of *alter ego* liability between them in decisions D.23-11-008 and D.24-12-078. Defendants argued at the hearing that the pending Petition for Writ of Review required dismissal.¹⁰ NCC stated at the hearing that it would not object to dismissal without prejudice during the pendency of that Petition for a Writ of Review.¹¹

During the law and motion hearing, the ALJ ordered the parties to file additional information in response to issues raised at the hearing. Defendants and NCC filed supplemental briefing and information on April 7, 2025 and April 8, 2025, respectively. NCC also filed a Motion to Strike Defendants' supplemental information filing on April 8, 2025. Defendants responded on April 23, 2025. On

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4. Vaya and O1 failed to pay intercarrier compensation, to NCC's detriment.
 5. Vaya and O1 enabled the fraudulent misrepresentation of telephone call origin jurisdiction, to NCC's detriment.
 6. Vaya and O1 enabled the fraudulent misrepresentation of telephone call numbers, to NCC's detriment.
 7. Vaya and O1 deprived NCC of compensation.

⁹ See L&M Tr. at 9:10-11:5 (Petition for Writ of Review is pending in California Court of Appeals to address Commission authority to impose *alter ego* liability between Vaya and O1).

¹⁰ See L&M Tr. at 67:14-69:1 (Defendants requesting dismissal because D.24-01-037 conditions are not met to file complaint C.24-12-012 while Petition for Writ of Review is pending in any court); and L&M Tr. at 80:9-19 (Defendants renewing motion to quash and dismiss complaint on basis that D.24-01-037 conditions are not met to file C.24-12-012 while Petition for Writ of Review is pending in any court).

¹¹ See L&M Tr. at 77:1-21 (NCC would not object to dismissal without prejudice of present complaint C.24-12-012 while Petition for Writ of Review is pending in any court).

April 24, 2025, NCC filed a second motion to strike Defendants' response to the April 8, 2025 motion to strike by NCC.

1.3. Litigation Status

On September 29, 2025, the ALJ issued a ruling ordering Vaya and O1 to file a Related Litigation Status Report on or by October 6, 2025 regarding the current schedule and status of the Petition for a Writ of Review, including the estimated date for its conclusion and available appellate remedies. In addition, the ALJ ruling directed Vaya and O1 to file updated Related Litigation Status Reports, as may become necessary.

On October 1, 2025, Defendants filed a Related Litigation Status Report in response to the ALJ's September 29, 2025 ruling (October 1, 2025 Vaya and O1 Related Litigation Status Report). Defendants reported that the Petition for Writ of Review was scheduled for oral argument in the Court of Appeal on October 24, 2025 and that the court would likely require several months to prepare its decision.¹² Defendants estimated that no decision by the Court of Appeal issue by the December 26, 2025 statutory deadline to complete our instant proceeding in C.24-12-012.¹³ Moreover, they noted that the parties may file an appeal to the California Supreme Court after the Court of Appeal issues its decision, thereby extending the litigation.¹⁴

On October 20, 2025, NCC filed a motion to waive and extend the 12-month statutory deadline to await completion of all appeals, *e.g.*, the Petition for Writ of Review. Defendants filed a response on November 3, 2025, opposing NCC's request and arguing that the claims of C.24-12-012 – and C.23-03-006 – are

¹² October 1, 2025 Vaya and O1 Related Litigation Status Report at 2.

¹³ October 1, 2025 Vaya and O1 Related Litigation Status Report at 2.

¹⁴ October 1, 2025 Vaya and O1 Related Litigation Status Report at 2-3.

barred by the statute of limitations because Commission decision D.24-01-037, dismissing C.24-12-012 without prejudice pending completion of pending litigation, did not toll the statute of limitations.

1.4. Submission Date

This matter was submitted on October 1, 2025 upon filing of Vaya and O1's Related Litigation Status Report.

2. Jurisdiction and Burden of Proof

Complainant filed the Complaint pursuant to Commission's Rule of Practice and Procedure (Rule) 4.1(a).¹⁵ To prevail on the merits of its complaint, NCC bears the burden of proof to show that Vaya and/or O1 violated a rule, order, law, or tariff approved by the Commission.¹⁶ NCC must meet that burden of proof by a preponderance of the evidence.

The Commission has jurisdiction over the activities of public utilities.¹⁷ Vaya and O1 argue in the Motion that the Commission lacks jurisdiction over either entity because neither was a public utility on the December 26, 2024 filing date of C.24-12-012.

Nevertheless, Vaya and O1 were each authorized to operate as a public utility in the past under separate Commission CPCN's that were revoked by the

¹⁵ All Rules cited in this decision refer to the Commission's Rules of Practice and Procedure, unless otherwise specified.

¹⁶ *In Complaint of Service-All-Tech, Inc. v. AT&T Co.* (Cal. PUC, 1977) 83 CPUC 135, Decision (D.) No. 88223 (complaint relating to the disconnection of telephone service where the court found that complainant had the burden of proof and that complainant's "failure to present any evidence present[ed] a total lack of meeting that burden"); *see also Pacific Bell Telephone Company, d/b/a AT&T California vs. Fones4All Corporation* (Cal. PUC, 2008) D.08-04-043, 2008 Cal. PUC LEXIS 132.

¹⁷ Pub. Util. Code section 216(a).

Commission. O1's CPCN was revoked by the Commission on June 2, 2022.

Vaya's CPCN was revoked by the Commission on November 6, 2023.¹⁸

We considered a similar challenge to our jurisdiction over Vaya and O1 in D.24-01-037. In C.23-03-006, defendant O1 filed a Motion For Special Appearance, arguing that "it is not a regulated utility and therefore it is not the proper subject of a complaint at the Commission."¹⁹ We initially determined that "[t]he disposition of C.17-09-023 will likely resolve the issue of the Commission's regulatory authority regarding O1."²⁰ Subsequently, in D.24-12-078, we determined that the Commission has jurisdiction over Vaya, O1, and their corporate holding company, O1 Holding, by virtue of our authority over both public utilities and "cognate non-utilities," as well as through our imposition of *alter ego* liability in the case of those particular entities.²¹ That decision stated our

¹⁸ For its part, NCC was also a public utility holding a CPCN. NCC's CPCN was revoked by the Commission on June 11, 2020.

¹⁹ D.24-01-037 at 6-7 (citation omitted).

²⁰ D.24-01-037 at 6-7 (citation omitted).

²¹ More specifically, in D.24-12-078 at 15-16, we opined that

Vaya argues that the Commission lacks jurisdiction to extend Vaya's Phase II liabilities because O1 and O1 Holding are *not public utilities* and applying the alter ego doctrine is not cognate and germane to regulation of Vaya. (citation omitted) Vaya is wrong.

We have broad constitutional and statutory authority to regulate public utilities, including section 701 which vests us with expansive authority to "superwise and regulate every public utility in the State and ... do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction." In exercising our powers, we may exert limited jurisdiction over non-utilities when cognate and germane to utility regulation, absent an express Legislative mandate to the contrary. (PG&E Corp. v. Public Utilities Com. (2004) 118 Cal.App.4th 1174, 1197-1201.) These requirements to exert limited jurisdiction are met here.

Footnote continued on next page.

regulatory authority in C.17-09-023 and is now the continuing subject of the pending Petition for Writ of Review. Accordingly, for the limited purpose of deciding the Motion in the present proceeding, we similarly assert limited cognate jurisdiction over Vaya and O1.

3. Issue Before the Commission

We determine the following fundamental issues raised by Vaya and O1's Motion and/or addressed by the parties at the law and motion hearing:

- a. Whether NCC's complaint C.24-12-012 against Vaya and O1 satisfies the filing requirements of Commission decision D.24-01-037 where Vaya and O1's related Petition for a Writ of Review remains pending with a court.
- b. Whether Commission decision D.24-01-037 tolled the statutes of limitations for the claims presented in NCC's complaint C.24-12-012 against Vaya and O1.

Despite Vaya's allegations regarding limitations on our authority to impose the alter ego doctrine, no such limitations exist. (citation omitted) And by its very nature, application of the doctrine is cognate and germane to our authority over regulated entities such as Vaya, wherein the alter egos are in fact one and the same corporate entity for regulatory purposes. (See *Tarter, Webster & Johnson, Inc. v. Windsor Developers, Inc.* (1963) 217 Cal.App.2d Supp. 875, 879-880 ["The general purpose of the alter ego theory is to look through the fiction of the corporation and to hold [those] doing business in the name of the corporation liable...."]; see also *Pratt, supra*, 228 Cal.App.2d at 150 [in order to fulfill its regulatory duties, it was necessary for the Commission to determine whether the company was an alter ego].)

In other words, we are authorized to hold unregulated entities liable for the acts of their regulated alter egos in order to effectively and comprehensively enforce and deter violations of the Public Utilities Code and Commission decisions. (See, e.g., §§ 2107, 701; D.14-06-004 at 14 [imposing a fine to deter future violations of the Public Utilities Code by the applicants and other parties].) Accordingly, we may exert limited jurisdiction over O1 and O1 Holding pursuant to the alter ego doctrine. (emphasis added).

For purposes of this decision, we need not decide the other grounds for dismissal raised in the Motion.

4. Discussion

Rule 11.2 allows parties to file “a motion to dismiss the proceeding based on the pleadings.” The Commission first “accept[s] the facts as stated, the[n] . . . examines them in the light of applicable law and policy.”²² A complaint should be dismissed if, “taking the well-pleaded factual allegations of the complaint as true, the defendant is entitled to prevail as a matter of law.”²³

Representations in a complaint, as well as statements and omissions in pleadings, briefs, and arguments are considered as admissions of legal and factual points relevant to deciding a motion.²⁴ The Commission may also properly take official notice of, and consider, the files and records of court and Commission proceedings in ruling on a motion to dismiss.²⁵

²² D.18-01-002 at 4 and n.20 (citing D.12-03-037 at 7).

²³ D.18-01-002 at 4 and n.18 (citing D.17-08-016 at 4).

²⁴ See *Brandwein v. Butler* (2013) 218 Cal.App.4th 1485, 1515 n.19, 161 Cal.Rptr.3d 728 [affirming order sustaining demurrer without leave to amend and relying on the factual allegations and omissions in the complaint, together with factual admissions in the trial court and in briefs]; *Federer v. County of Sacramento* (1983) 141 Cal.App.3d 184, 186, 190 Cal.Rptr. 187 [admission in opening brief was “the equivalent of a concession”]; *Ramona v. Superior Court* (1997) 57 Cal.App.4th 107, 112, fn. 6, 66 Cal.Rptr.2d 766 [concessions made by plaintiff’s counsel during oral argument showed there was no basis for a cause of action]; *Fassberg Construction Co. v. Housing Authority of City of Los Angeles* (2007) 152 Cal.App.4th 720, 725, 60 Cal.Rptr.3d 375 [oral statement by counsel in action was binding judicial admission]; *Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 93 (Thompson, J., concurring and dissenting) [“We accept the factual allegations of the verified first amended complaint as true . . . We also take into account briefs and arguments, which are ‘reliable indications of a party’s position on the facts as well as the law, and a reviewing court may use statements in them as admissions against the party.’ [Citations.] . . . An express concession or assertion in a brief is frequently treated as an admission of a legal or factual point, controlling in the disposition . . .”].

²⁵ See, e.g., D.12-03-037 at 7 (quoting D.99-11-023). See also, *Rodas v. Spiegel* (2001) 87 Cal.App.4th 513, 518 [taking judicial notice of admissions in demurrer opposition].

4.1. Prior Dismissal of C.23-03-006 in D.24-01-037

In D.24-01-037, issued January 26, 2024, the Commission dismissed C.23-03-006 without prejudice because C.23-03-006 involved central factual and legal contentions in common with a separate Commission proceeding, C.17-09-023, that was “still being actively litigated and has not been fully and finally adjudicated.”²⁶ We required that all appeals related to the claims in C.17-09-023 be resolved to finality before we would consider the issues raised in C.23-03-006.²⁷

Our decision recognized in particular that both proceedings involved identical or similar issues of *alter ego* liability of Vaya and O1:

The assertions raised in the present C.23-03-006 proceeding regarding the single business enterprise nature of Vaya and O1 are either identical to or very similar to those raised in C.17-09-023 in regard to the single enterprise nature of Vaya and O1. In that regard, the factual and legal conclusions that will be determined in C.17-09-023 are reasonably understood to necessarily become binding upon the similar factual and legal issues that are present in the C.23-03-006 proceeding.²⁸

²⁶ D.24-01-037 at 5. C.17-09-023 is a separate Commission proceeding that involves AT&T California as Complainant against Vaya as Defendant. O1 and O1 Holding Company, the parent company of both Vaya and O1, are also parties in that proceeding. In C.17-09-023, A&T asserts that Vaya is in violation of an interconnection agreement approved in Decision (D.) 14-01-006 which arose from consolidated proceedings C.10-12-001 and C.11-02-015. See D.24-01-037 at 3.

²⁷ As we summarized in D.24-01-037 at 3: “C.17-09-023 is a separate Commission proceeding with an unusually lengthy multi-phased docket which involves AT&T California as Complainant against Vaya as Defendant. O1 and O1 Holding Company, the parent company of both Vaya and O1, are also parties in that proceeding. In that proceeding, A&T asserts that Vaya is in violation of an interconnection agreement approved in Decision (D.) 14-01-006 which arose from consolidated proceedings C.10-12-001 and C.11-02-015.”

²⁸ D.24-01-037 at 5.

We dismissed C.23-03-006 without prejudice, subject to the final resolution of all appeals related to C.17-09-023. Our decision addressed the timing of our review of C.23-03-006 rather than the merits of the issues presented, stating as follows:

It would be imprudent for the Commission to proceed with the instant proceeding [C.23-03-006] while C.17-09-023, addressing factual and legal issues that overlap with those raised by the present complaint [C.23-03-006], is still actively being adjudicated. The risk of inconsistent outcomes is avoided, and the interests of judicial economy preserved, through awaiting the full and final outcome of C.17-09-023 prior to adjudicating the NCC's present complaint [C.23-03-006] against Vaya and O1.²⁹

4.2. Consequences of Pending Litigation Related to Claims Raised in C.17-09-023

We take official notice that the Petition for a Writ of Review is pending in the California Court of Appeal, 4th District, Division 3 as Case No. G065120.³⁰ That petition arises from a challenge to the Commission's imposition of *alter ego* liability in proceeding C.17-09-023. The pendency of ongoing adjudication to resolve that issue in C.17-09-023 was a basis for the dismissal without prejudice of the identical complaint in C.23-03-006 in D.24-01-037.

There, we anticipated that C.17-09-023 would not be fully and finally adjudicated in a reasonably foreseeable timeframe to allow C.23-03-006 to proceed within its allotted statutory time. The risk of inconsistent decisions and interests of judicial economy compelled dismissal of C.23-03-006 until completion of all related adjudication.

²⁹ D.24-01-037 at 7. *See also* D.24-01-037 at 5 and n. 2 (citing *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322 (1979)).

³⁰ *See* Vaya and O1 April 7, 2025 Supplemental Information at 2-3 and Exhibits 5 and 7; Vaya and O1 October 1, 2025 Related Litigation Status Report at 2.

Here, those circumstances continue to exist with respect to the identical complaint in our present proceeding, C.24-12-012. The risk of inconsistent decisions and interests of judicial economy also compel dismissal of C.24-12-012 until completion of all litigation related to C.17-09-023.

In addition, Vaya and O1's Petition for a Writ of Review is not expected to be resolved by the Court of Appeal by the Commission's current December 26, 2025 statutory deadline to resolve this proceeding. Moreover, a decision by the California Court of Appeal on Vaya and O1's Petition for a Writ of Review may result in additional appellate review by the California Supreme Court.³¹ In light of the uncertain timeframe for a final resolution, the Commission will not maintain this complaint proceeding in abeyance.

This dismissal addresses only the timing of the complaint filing that the parties agree should follow final resolution of the Petition for a Writ of Review.³² To that purpose, we find that C.24-12-012 was filed prematurely. As with C.23-03-006 (through D.24-01-037), C.24-12-012 must be dismissed without prejudice pending final resolution of the Petition for a Writ of Review and all litigation related to C.17-09-023.

4.3. Statutes of Limitation Equitably Tolled

Finally, the present claims are dismissed *without prejudice* because D.24-01-037 equitably tolled the statutes of limitations for the identical claims raised in C.23-03-006 and C.24-12-012, from March 13, 2023 until the final resolution of all litigation related to C.17-09-023, including the Petition for a Writ of Review.

³¹ See Vaya and O1 October 1, 2025 Related Litigation Status Report at 2-3.

³² NCC conceded that it would not object to a dismissal without prejudice to filing its claims after final adjudication of the Petition for a Writ of Review. See L&M Tr. at 77:1-21.

Defendants raised the affirmative defense that applicable statutes of limitations bar the claims presented in C.24-12-012 due to its December 26, 2024 filing date being beyond the potential filing period(s) of the alleged violations and/or the last date of public utility status under the now-revoked CPCN's.³³ NCC responded that the statutes of limitations do not bar the claims because of its later discovery of the fraud alleged.³⁴

At the law and motion hearing, the parties discussed whether the Commission decision D.24-01-037, dismissing without prejudice the identical claims raised in C.23-03-006, tolled the statutes of limitations for those claims until final resolution of all related litigation in C.17-09-023, including the Petition for a Writ of Review. That tolling would apply to the identical claims in C.24-12-012.

D.24-01-037 did not *expressly* toll the statutes of limitation pending final resolution of all related litigation in C.17-09-023. Defendants did not waive any statute of limitations defenses to the claims. However, regarding the limited question of whether NCC could refile those claims under D.24-01-037, Defendants reasonably acknowledged at the law and motion hearing that D.24-

³³ See Answer at paragraph 33 (raising affirmative defense); Motion at 4, 8-9, 12-15, 18-19; L&M Tr. at 14:23-17:9; 23:5-29:15 (colloquy with Defendants' counsel addressing potentially applicable statutes of limitations and implicit or "equitable" tolling of statutes of limitations under D.24-01-037); 31:16-36:12; 42:14-48:11 (NCC arguing statutes of limitation apply from discovery of fraud); 55:7-56:7; 67:7-68:7 (Defendants' counsel stating "I think even if we were to say that the prior ALJ's holding is that 'I'm tolling the statute of limitations so that North County can come back and refile a complaint,' it explicitly says 'only at the conclusion of all appeals,' and the appeals have not been concluded at this point, so we believe at the very least they should be dismissed again without prejudice, if - if that's your inclination because the - the criteria for refiling the complaint has simply not been met."); 68:8-69:1 (refiling of complaint may present further statute of limitations issues).

³⁴ See Response at 2-4; L&M Tr. at 42:14-48:11 (NCC arguing statutes of limitation apply from discovery of fraud).

01-037 may have implicitly or “equitably” tolled the applicable statutes of limitations to allow refiling of those claims raised in C.23-03-006 that we expressly dismissed “without prejudice.”³⁵

We therefore consider whether – and how- equitable tolling may apply to the claims raised in this proceeding. Equitable tolling is a “judicially created, nonstatutory doctrine” that “‘suspend[s] or extend[s] a statute of limitations as necessary to ensure fundamental practicality and fairness.’”³⁶ The doctrine exists to “soften the harsh impact of technical rules which might otherwise prevent a good faith litigant from having a day in court.”³⁷ An adjudicatory tribunal draws authority to toll a filing deadline from its inherent equitable powers.³⁸

Equitable tolling may apply so that a claimant can proceed after expiration of a statutory filing deadline because that deadline for filing a claim was extended by a period of time, such as having to await a pending decision in another forum. For our purposes, to equitably toll the identical claims dismissed in C.23-03-006 and the present complaint, three conditions must be met:

- 1) Defendant(s) received timely notice that claimant was awaiting an event to occur instead of filing its claim;

³⁵ See L&M Tr. at 14:23-17:9; 23:5-29:15 (colloquy with Defendants’ counsel addressing potentially applicable statutes of limitations and implicit or “equitable” tolling of statutes of limitations under D.24-01-037); 67:7-68:7 (Defendants’ counsel stating “I think even if we were to say that the prior ALJ’s holding is that ‘I’m tolling the statute of limitations so that North County can come back and refile a complaint,’ it explicitly says ‘only at the conclusion of all appeals,’ and the appeals have not been concluded at this point, so we believe at the very least they should be dismissed again without prejudice, if – if that’s your inclination because the – the criteria for refiling the complaint has simply not been met.”);

³⁶ *McDonald v. Antelope Valley Community College Dist.* (2008) 45 Cal.4th 88, 99.

³⁷ *Addison v. State* (1978) 21 Cal.3d 313, 316.

³⁸ See, e.g., *Elkins v. Derby* (1974) 12 Cal.3d 410, 420, fn. 9.

- 2) The facts of a timely claim are so similar that an investigation of the claim gave or would have given defendant the information needed to defend the tolled claim; and
- 3) Claimant was acting reasonably and in good faith by delaying its claim filing until occurrence of an event.³⁹

Significantly, California courts recognize that mandatorily awaiting completion of a separate proceeding results in automatic tolling under the doctrine.⁴⁰ In the present circumstances, all three conditions are met.

First, Defendant(s) received timely notice through D.24-01-037 that NCC's identical claims in C.23-03-006 – first filed on March 13, 2023 -- were dismissed without prejudice to refile for a mandatory period to await a final resolution of all related litigation in C.17-09-023. This undisputed fact alone triggers the automatic equitable tolling under the doctrine.

Second, facts of the claims dismissed without prejudice in C.23-03-006 and C.24-12-012 are more than similar. They are identical. An investigation of the claims gave and/or would have given Defendants the information needed to defend the tolled claims, if and when they are refiled correctly under D.24-01-037.

³⁹ See *Addison v. State* (1978) 21 Cal.3d 313, 319; *McDonald v. Antelope Valley Community College Dist.*, 45 Cal.4th at 101 (citation omitted). See also, *California Civil Jury Instructions* (CACI) No. 457 (2025).

⁴⁰ The court stated in *MacDonald*: "Where exhaustion of an administrative remedy is *mandatory prior to filing suit*, equitable tolling is automatic: 'It has long been settled in this and other jurisdictions that whenever the exhaustion of administrative remedies is a prerequisite to the initiation of a civil action, the running of the limitations period is tolled during the time consumed by the administrative proceeding.' This rule prevents administrative exhaustion requirements from rendering illusory nonadministrative remedies contingent on exhaustion." *McDonald v. Antelope Valley Community College Dist.*, 45 Cal.4th at 101 (emphasis added; citation omitted). See also, *California Civil Jury Instructions* (CACI) No. 457 (2025).

Third, although NCC's filing of the identical claims in C.24-12-012 was premature, as discussed above, that premature filing neither constitutes an absence of good faith, nor prejudices Defendants. Upon discussion at the law and motion hearing, NCC conceded that dismissal without prejudice would not be objectionable as long as NCC could refile surviving claims upon a final resolution of the litigation related to C.17-09-023.⁴¹ Therefore, NCC will continue to act reasonably and in good faith by delaying its claim filing until such a final resolution.

As a result, we find that because D.24-01-037 dismissed without prejudice the claims raised in C.23-03-006, it equitably tolled the statutes of limitations from the March 13, 2023 filing date of those claims until final resolution of all litigation related to C.17-09-023, including the Petition for a Writ of Review.

The claims prematurely presented to the Commission in C.24-12-012 are being dismissed for the same reasons as we stated in D.24-01-037. Therefore, to avoid confusion, those identical claims are again being dismissed without prejudice pending final resolution of the Petition for a Writ of Review and all litigation related to C.17-09-023.

Accordingly, statutes of limitations on the identical claims presented C.24-12-012 and C.23-03-006 remain tolled from the March 13, 2023 filing date of C.23-03-006 until final resolution of all litigation related to C.17-09-023, including the Petition for a Writ of Review.

⁴¹ See L&M Tr. at 77:1-21 (NCC would not object to dismissal without prejudice of present complaint C.24-12-012 while Petition for Writ of Review is pending in any court).

4.4. Tolling Period and Relation Back to March 13, 2023 for Dismissed Claims

Upon final resolution of litigation related to C.17-09-023, the parties, liability theories, and issues should be clarified. Any surviving claims that have been equitably tolled may be refiled with the Commission. The filing date of such claims shall relate back to the March 13, 2023 filing date of C.23-03-006.

Moreover, the end of the equitable tolling period is presently uncertain, but not perpetual. Accordingly, NCC may not file any surviving tolled claim later than 90 calendar days after the (1) date of final disposition of all litigation related to C.17-09-023, including the Petition for a Writ of Review, by the tribunal of last resort or (2) expiration of appeal rights to that final disposition to such tribunal, whichever is later.

Our determination here does not preclude Defendants from raising the statutes of limitations affirmative defenses or presenting evidence to fully develop their theories based on the March 13, 2023 relation back date, should the tolled claims be refiled with the Commission. Likewise, NCC may present its positions and evidence to fully develop its opposition to Defendants' affirmative defenses based on the March 13, 2023 relation back date.

5. Conclusion

In conclusion, we find that NCC's new complaint C.24-12-012 presents identical claims to those raised in C.23-03-006 that the Commission dismissed in D.24-01-037, pending final resolution of all C.17-09-023-related litigation. The terms of D.24-01-037 bar Complainant from filing the claims presented in C.24-12-012 prior to final resolution of all related litigation in C.17-09-023.

The Petition for a Writ of Review, pending in the California Court of Appeal, constitutes litigation related to the claims presented in C.17-09-023, and those dismissed without prejudice in C.23-03-006. Complainant refiled the

dismissed claims through C.24-12-012 prior to the final resolution of the Petition for a Writ of Review.

As a result, C.24-12-012 was filed prematurely. As with C.23-03-006, C.24-12-012 must be dismissed without prejudice pending final resolution of that Petition for a Writ of Review and all related litigation in C.17-09-023.

Moreover, the Petition for a Writ of Review is not expected to be resolved by that court by the Commission's statutory deadline to resolve our instant proceeding. Moreover, a decision by the Court of Appeal on the Petition for a Writ of Review would be subject to potential additional appellate review by the California Supreme Court. In light of the uncertain timeframe for a final resolution, the Commission will not maintain this complaint proceeding in abeyance.

D.24-01-037 dismissed without prejudice the claims raised in C.23-03-006, and equitably tolled the statutes of limitations from the March 13, 2023 filing date of those claims until final resolution of all litigation related to C.17-09-023, including the Petition for a Writ of Review. The claims prematurely presented to the Commission in C.24-12-012 are identical to those raised in C.23-03-006 and are being dismissed without prejudice, pending final resolution of the Petition for a Writ of Review and all litigation related to C.17-09-023, for the same reasons as we stated in D.24-01-037. Statutes of limitations on those identical claims in C.24-12-012 and C.23-03-006 remain tolled from the March 13, 2023 filing date of those claims in C.23-03-006.

Accordingly, Vaya and OI's Motion is granted. C.24-12-012 is dismissed without prejudice pending final resolution of the Petition for a Writ of Review and all related litigation in C.17-09-023 pursuant to our prior decision D.24-01-037.

C.24-12-012 is closed.

6. Category of Proceeding

This matter has been categorized as adjudicatory. Hearings are not necessary.

7. Appeal or Review of Presiding Officer's Decision

The presiding officer's decision in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code. Pursuant to Rule 14.4 of the Commission's Rules of Practice and Procedure, any party may file an appeal of the presiding officer's decision within 30 days of the date the decision is served. In addition, any Commissioner may request review of the presiding officer's decision by filing a request for review within 30 days of the date the decision is served.

8. Assignment of Proceeding

John Reynolds is the assigned Commissioner and Jeffrey Lee is the assigned ALJ and Presiding Officer in this proceeding.

Findings of Fact

1. The terms of D.24-01-037 barred Complainant from filing the claims presented in C.23-03-006 prior to final resolution of all litigation related to C.17-09-023.
2. The claims raised in C.23-03-006 were filed on March 13, 2023.
3. NCC's complaint C.24-12-012 presents identical claims to those raised in C.23-03-006 that the Commission dismissed without prejudice in D.24-01-037.
4. The Commission takes official notice that a Petition for a Writ of Review is pending in the California Court of Appeal, 4th District, Division 3 as Case No. G065120.
5. The Petition for a Writ of Review, pending in the California Court of Appeal, constitutes litigation related to the claims presented in C.17-09-023.

6. Complainant filed C.24-12-012 prior to the final resolution of the Petition for a Writ of Review, pending in the California Court of Appeal.

7. C.24-12-012 was filed prematurely under the terms of D.24-01-037.

8. The Petition for a Writ of Review, pending in the California Court of Appeal, is not expected to be resolved by that court by the Commission's statutory deadline to resolve this proceeding.

9. A decision by the California Court of Appeal on the Petition for a Writ of Review would be subject to potential additional appellate review by the California Supreme Court.

10. Defendants received timely notice through D.24-01-037 that NCC's identical claims in C.23-03-006 – first filed on March 13, 2023 -- were dismissed without prejudice to refiling for a mandatory period to await a final resolution of all related litigation in C.17-09-023.

11. The facts of the claims dismissed without prejudice in C.23-03-006 and C.24-12-012 are identical so that investigation of the claims gave and/or would have given Defendants the information needed to defend the claims, if and when refilled properly under D.24-01-037. NCC's premature filing of the claims in C.24-12-012 neither constitutes an absence of good faith, nor prejudices Defendants.

12. NCC will act reasonably and in good faith by delaying its claim filing until such a final resolution of the litigation related to C.17-09-023.

13. D.24-01-037 equitably tolled the statutes of limitations from the March 13, 2023 filing date of the identical claims dismissed without prejudice in C.23-03-006 and C.24-12-012, until final resolution of all litigation related to C.17-09-023, including the Petition for a Writ of Review.

Conclusions of Law

1. Under D.24-01-037, C.24-12-012 should not be adjudicated prior to final resolution of all litigation related to C.17-09-023, including while the Petition for a Writ of Review remains pending in the California Court of Appeal or in a subsequent reviewing court.

2. Under D.24-01-037, the statutes of limitations for claims raised in C.24-12-012 should be tolled from the March 13, 2023 filing date of those claims first raised in C.23-03-006, until final resolution of all litigation related to C.17-09-023, including while the Petition for a Writ of Review remains pending in the California Court of Appeal or in a subsequent reviewing court.

3. Claims raised and dismissed without prejudice in C.24-12-012 should relate back to the March 13, 2023 filing date of those claims, as first raised in C.23-03-006.

4. NCC should not file any surviving tolled claim later than 90 calendar days after the (1) date of final disposition of all litigation related to C.17-09-023, including the Petition for a Writ of Review, by the tribunal of last resort or (2) expiration of appeal rights to that final disposition to such tribunal, whichever is later.

5. The Motion of Vaya Telecom, Inc. and O1 Communications, Inc. should be granted.

6. C.24-12-012 should be dismissed without prejudice subject to D.24-01-037.

7. All pending motions that have not been expressly resolved by the assigned Administrative Law Judge should be denied.

8. Case 24-12-012 should be closed.

O R D E R

IT IS ORDERED that:

1. The Special Appearance Motion to Quash Service and Dismiss the Complaint of Complainant North County Communications Corporation of Vaya Telecom, Inc. and O1 Communications, Inc.'s is granted.
2. Complaint 24-12-012 is dismissed without prejudice subject to the terms of decision 24-01-037.
3. Statutes of limitation for claims raised in complaint 24-12-012 are tolled from the March 13, 2023 filing date of those claims first raised in complaint 23-03-006, until final resolution of all litigation related to complaint 17-09-023, including while the Petition for a Writ of Review pending in the California Court of Appeal, 4th District, Division 3, as Case No. G065120, remains pending in the California Court of Appeal or in a subsequent reviewing court.
4. Claims raised and dismissed without prejudice in complaint 24-12-012 relate back to the March 13, 2023 filing date of those claims, as first raised in complaint 23-03-006.
5. Any surviving tolled claim must be filed no later than 90 calendar days after the (1) date of final disposition of all litigation related to complaint 17-09-023, including the Petition for a Writ of Review pending in the California Court of Appeal, 4th District, Division 3, as Case No. G065120, by the tribunal of last resort or (2) expiration of appeal rights to that final disposition to such tribunal, whichever is later.
6. All pending motions that have not been expressly resolved by the assigned Administrative Law Judge are denied.
7. Hearings are not necessary.
8. Case 24-12-012 is closed.

This order is effective today.

Dated __, 2025 at San Francisco, California