

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Thomas F. David,

Complainant;

vs.

Los Angeles Smsa Limited Partnership d/b/a
Verizon Wireless (U3003C); California Rsa
No. 4 Ltd. Partnership d/b/a Verizon
Wireless (U3038C); Version Select Services,
Inc. (U5494C); and Verizon Long Distance
LLC d/b/a Verizon Long Distance
(U5732C),

Defendants.

(ECP)
Case 23-04-008

ORDER DENYING REHEARING OF DECISION 23-09-007

I. INTRODUCTION

On September 28, 2023, Thomas F. David filed an application for rehearing of Decision (D.) 23-09-007, *Decision Dismissing the Complaint* (Decision).¹ In D.23-09-007, the Commission denied and dismissed a complaint filed by Mr. David against Los Angeles Smsa Limited Partnership d/b/a Verizon Wireless (U3003C); California Rsa No. Ltd. Partnership d/b/b Verizon Wireless Services, Inc. (U5494C); and Verizon Long Distance LLC d/b/a Verizon Long Distance (U5732C), (Verizon), (collectively the Parties) for failure to prove by a preponderance of the evidence that Verizon failed to be

¹ All citations to Commission decisions after July 2000 are to the official pdf versions which are available on the Commission’s website at: <http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx>.

in compliance with the “terms and conditions” agreed upon by the utility and the consumer. (Decision at pp. 1-2.)

In the rehearing application, Mr. David alleges (1) the findings are not supported by substantial evidence; and (2) it was legal error to deny Mr. David’s request to amend the Complaint.

We have carefully considered Mr. David’s arguments and are of the opinion that the rehearing application should be denied.

II. DISCUSSION

A. The Decision is supported by substantial evidence.

Mr. David alleges that the Decision was in error and he should have received a \$10/month military discount on his Verizon account. (*Application for Rehearing of Decision 23-09-007* (David Rehg. App.), filed by Mr. David on December 28, 2023, at p. 3.) The underlying question in Mr. David’s claim is whether there is substantial evidence in the record to support the Decision.

Review of the Commission’s factual findings is limited to whether those findings are “supported by substantial evidence in light of the whole record.” (*Clean Energy Fuels Corp. v. Public Utilities Com.* (2014) 227 Cal.App.4th 641, 649.)

Accordingly:

[i]t is for the agency to weigh the preponderance of conflicting evidence [citation]. Courts may reverse an agency’s decision only if, based on the evidence before the agency, a reasonable person could not reach the conclusion reached by the agency. [Citations.] (*Id.*)

“‘When conflicting evidence is presented from which conflicting inferences can be drawn, the [PUC’s] findings are final.’ [Citation.]” Therefore, “the Commission’s findings are almost always treated as ‘conclusive’” [citation]. . . .” (*Pacific Gas & Electric v. Public Utilities Com.* (2015) 237 Cal.App.4th 812, 839.)

As discussed below, the record shows that it was proper to dismiss the Complaint and the Decision was based on substantial evidence. Here, CAB reviewed Mr. David’s two informal complaints and determined that Verizon followed its terms and

conditions. (Decision at p. 2.) In response to Mr. David's informal complaint filed with CAB, case # 567654, Verizon explained that Mr. David was not eligible for the \$10/month discount sought because it was not available for people using the Hum² device that was the subject of Mr. David's contract. (*Id.* at p. 4.) However, Verizon explained that Mr. David was receiving a 15% discount on his monthly service charge effective October 19, 2022. (*Ibid.*) Additionally, to resolve his concerns, Verizon provided Mr. David a onetime good faith credit of \$105 equivalent to several months of service. (*Ibid.*)

In the complaint proceeding, the party bringing the claim has the burden of proving the claim. (Decision at p. 5, citing Cal. Evid. Code Section 500; *see also Sargent Fischer Inc. v. Able Corp.* (2003) 110 Cal.App.4th 1658, 1667 (citations omitted).) In response to Mr. David filing a formal complaint, we scheduled an expedited hearing. (*Instructions to Answer and ECP Hearing Notice*, April 23, 2023.) There was no evidence presented at the hearing showing that Verizon violated its terms and conditions with Mr. David. (Decision at p. 6.) The evidence in this proceeding shows that Mr. David is not eligible for the military discount offer he cites in the Complaint because the terms of the offer are that a \$10.00 monthly military discount is available for iPhones, not Hum devices, and is not available for the plan Mr. David is using.³ (*Ibid.*) Additionally, Mr. David admitted that he is currently receiving a discount of 15% off his monthly bill pursuant to another military discount. (*Ibid.*)

There is no evidence before us showing that Verizon did not meet the terms and conditions of its agreement with Mr. David. And Mr. David is receiving the military discount that applies to the device and plan covered by his contract with Verizon. Therefore, the Decision is supported by substantial evidence.

² Per Verizon's website, a Hum device is an all-in-one connected car device that provides help, maintenance reminders, roadside assistance, and car Wi-Fi. (Decision at p. 3, fn. 3.)

³ "Prior to concluding the hearing, Verizon offered to allow David to disconnect his service and was willing to waive the monthly service charge for the month of June if he chose to disconnect his Hum device. The Complainant indicated that he would rather wait for an outcome from the assigned ALJ rather than disconnect his service. The assigned ALJ explained to him the risk of waiting for a formal decision." (Decision at p. 6.)

B. The request to amend the Complaint was properly denied.

Mr. David alleges that it was legal error to deny his request to amend his complaint. (David Rehg. App. at p. 2.) At the conclusion of the evidentiary hearing conducted in this matter on June 23, 2023, both the complainant and the defendant were advised that the record was closed, and that no additional information could be submitted in this matter without a showing of good cause and prior approval of the ALJ. (Decision at p. 2.) Here, Mr. David did not show good cause.

On July 17, 2023, Mr. David emailed the assigned ALJ in this proceeding attempting to add additional information to the record by amending the Complaint. (*Administrative Law Judge's Notice of Ex Parte Communication*, August 4, 2023, at pp. 1-2, Attachment.) In Mr. David's email, he argued that Verizon's wireless plans were not fully explained to the ALJ during the hearing and he provided information about a "5G Start" plan. (*Id.*, Attachment.)

Mr. David's communication fell under our *ex parte* communication rules and the ALJ responded by filing a notice of *ex parte* communication pursuant to Rule 8.4 of the California Public Utilities Commission's Rules of Practice and Procedure.⁴ (*Ibid.*)

⁴ Rule 8.4 (a) Ex parte communications that are subject to these reporting requirements shall be reported by the interested person, regardless of whether the communication was initiated by the interested person. Notice of ex parte communications shall be filed no more than three working days after the communication and, in addition to the service requirements of Rule 1.9, shall be served electronically on the decisionmakers who participated in the communication. The notice may address multiple ex parte communications in the same proceeding, provided that notice of each communication identified therein is timely. A single notice may address an ex parte communication that applies to more than one proceeding, provided that the notice is filed in each applicable proceeding. The notice shall include the following information:

- (1) The date, time, and location of the communication, and whether it was oral, written, or a combination of both, and the communication medium used
- (2) The identities of each decisionmaker involved, the person initiating the communication, and any persons present during such communication;
- (3) The topic of the communication, the applicable proceeding numbers, and a description of the interested person's, but not the decisionmaker's, communication including a summary of all of the points or arguments made in the communication, together with any request, recommendation, or advice provided to the decisionmaker, to which

In the *ex parte* notice, the ALJ explained that the complainant did not establish good cause and failed to obtain prior approval from the ALJ before submitting the additional information. (*Id.* at p. 2.) Accordingly, the ALJ stated that the additional information would not be considered when rendering a decision on the Complaint. (*Ibid.*)

Additionally, the Decision notes that even if the amendment was approved, the information in the amendment would not change the outcome of the Decision. (Decision at p. 2, fn. 1.) As Verizon stated in its response to Mr. David's application for rehearing, Mr. David alleged that his plan was the 5G Start Plan, but his Verizon bill indicates that it is the Unlimited Plan which is not eligible for the discount Mr. David requests.

(*Response of Verizon to Application for Rehearing*, October 13, 2023, at p. 2.) For the reasons stated above, the request to amend the complaint was properly denied.

III. CONCLUSION

For these reasons, good cause has not been shown to grant rehearing of D.23-09-007. Rehearing of D.23-09-007 is denied.

description shall be attached a copy of any written, audiovisual, or other material used for or during the communication.

(b) If an *ex parte* communication is not disclosed as required by Rule 8.2 and this rule until after the Commission has issued a decision on the matter to which the communication pertained, a party not participating in the communication may file a petition to rescind or modify the decision. A petition filed pursuant to this rule shall be filed no later than 30 days after the date the *ex parte* communication is disclosed.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Sections 1701 and 1701.1, Public Utilities Code.

THEREFORE, IT IS ORDERED that:

1. Rehearing of D.23-09-007 is denied.
2. This proceeding, C.23-04-008, is closed.

This order is effective today.

Dated November 16, 2023, at El Centro, California.

ALICE REYNOLDS

President

GENEVIEVE SHIROMA

DARCIE L. HOUCK

JOHN REYNOLDS

KAREN DOUGLAS

Commissioners