

Decision 24-04-040

April 18, 2024

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Jonathan Marcus,

Complainant,

vs.

Cellco Partnership d/b/a Verizon Wireless
(U3001C)

Defendant.

(ECP)
Case 23-08-005

ORDER DENYING REHEARING OF DECISION 24-02-015

I. SUMMARY

In this Order, we dispose of the application for rehearing of Decision 24-02-015 (or Decision)¹ filed by Complainant Jonathan Marcus. In D.24-02-015 we denied Complainant Jonathan Marcus' request for relief and dismissed his complaint. Mr. Marcus' complaint alleged that three years ago Cellco Partnership d/b/a Verizon Wireless (Verizon) fraudulently switched his service without his authorization. Mr. Marcus' sole request was reverting back to his old plan which Verizon no longer offers. We determined that Mr. Marcus did not meet his burden of proving that his service plan was changed as a result of fraud or that Verizon violated any Commission approved or administered rule, law, statute, or tariff. (D.24-02-015, p. 1.)

Mr. Marcus timely filed an application for rehearing of D.24-02-015. Mr. Marcus alleges the Decision is faulty because it incorrectly places the burden of

¹ Unless otherwise noted, citations to Commission decisions issued since July 1, 2000 are to the official pdf versions, which are available on the Commission's website at: <http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx>.

proof on him when it should have been on Verizon to prove the switch was lawful. Mr. Marcus also alleges that there was an ex-parte communication between the Administrative Law Judge (ALJ) and Verizon.

We have carefully considered the arguments raised by Mr. Marcus and are of the opinion that grounds for rehearing have not been demonstrated. Accordingly, rehearing of D.24-02-015 is denied.

II. DISCUSSION

A. **The Decision lawfully places the burden of proving the complaint on the Complainant.**

Mr. Marcus argues the Commission incorrectly places the burden of proving his complaint on him when it should have been on Verizon. Mr. Marcus argues that Verizon was required to provide proof of a written or verbal contract of the change which he states Verizon did not do.

The Decision lawfully placed the burden of proving the complaint on Complainant and provides the legal authority in the Decision.² (D.24-02-015, p. 4.) To prevail on his claim that his service was fraudulently changed without his authorization, Mr. Marcus must present evidence sufficient to demonstrate it is more likely than not that his claim is true (preponderance of the evidence). Mr. Marcus' evidence was the statement in his complaint that his service was switched without his authorization and speculative argument on why Verizon would switch customers to a different plan at the same price.

The Decision lawfully determined Mr. Marcus did not produce evidence necessary to prove his service was fraudulently changed. The evidence demonstrated that Mr. Marcus was left better off with the service plan change because the new plan had a

² The Decision cites Cal. Evid. Code §§ 115, 500; *Sargent Fletcher Inc. v. Able Corp.* (2003) 110 Cal.App.4th 165; and *In Complaint of Service-All-Tech, Inc. v. PT&T Co.* (Cal. PUC, 1977), Decision No. 88223 (complaint relating to the disconnection of telephone service where the Commission 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").

higher data usage threshold and did not result in any price increase. There was no evidence the service change negatively impacted Mr. Marcus' service as three years had passed before filing the complaint. Because Mr. Marcus did not meet his burden of proof, the burden of producing evidence did not shift to the defendant.³

B. There is no evidence of any unlawful ex parte communications.

Mr. Marcus contends there was an ex-parte communication between the ALJ and the Verizon representative because at the conclusion of his Webex hearing the Verizon representative did not exit the hearing immediately. Mr. Marcus states he had participated in the hearing both via the call-in option and the video link. He states that while he terminated the call-in option right away, it took him a minute to terminate the video link and when he went to do so, the Verizon representative was still on the video link. (Rehg. App., p. 1) Mr. Marcus speculates that this must mean the Verizon representative was going to discuss the case with the ALJ. (Rehg. App., p. 1.).

Mr. Marcus' claim is speculation and he cites no evidence that any conversation occurred. There are valid reasons the Verizon representative may not have terminated the weblink immediately. For example, the Verizon representative is permitted to ask procedural questions of the ALJ, although there is no evidence of any conversation here. (Commission Rule of Practice and Procedure 8.2, subd. (b); Cal. Code of Regs., tit. 20 § 8.2 subd. (b).) In any event, Mr. Marcus did not witness any conversation between Verizon and the ALJ and has not demonstrated any unlawful ex parte communication occurred.

³ While Verizon was not required to present evidence and the Decision does not rely on it, Verizon's Answer included a Next Bill Estimate, dated April 25, 2020, that was provided to Mr. Marcus reflecting the change of service.

III. CONCLUSION

For the reasons discussed above, rehearing of D.24-02-015 is denied.

THEREFORE, IT IS ORDERED that:

1. Rehearing of D.24-02-015 is denied.
2. This proceeding, Case 23-08-005, is closed.

This order is effective today.

Dated April 18, 2024, at Sacramento, California.

ALICE REYNOLDS

President

DARCIE L. HOUCK

JOHN REYNOLDS

KAREN DOUGLAS

MATTHEW BAKER

Commissioners