

May 30, 2014

IOWA UTILITIES BOARD

**STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES BOARD**

In the Matter of

The Complaint of Carolyn Frahm

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) **Docket No. FCU-2013-0007**
) **(C-2013-0025)**
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)

VERIZON'S MOTION TO DISMISS

Pursuant to Iowa Code § 476.3 and 199 Iowa Administrative Code 7.12, MCI Communications Services, Inc. d/b/a Verizon Business Services (“Verizon”) moves for its dismissal from this proceeding because there is no allegation of wrongdoing by Verizon, which has already responded to appropriately-scoped discovery regarding its limited knowledge of the events at issue. There is no statutory basis to require Verizon to incur the cost and burden associated with further participation.

Introduction

This formal complaint stems from Windstream of the Midwest, Inc.’s (“Windstream”) alleged failure to complete calls placed by its long distance customer, Ms. Carolyn Frahm (“Complainant”), to a friend in Mediapolis, Iowa. The undisputed record developed over the past ten months confirms that Verizon did not cause the call completion issues experienced by Complainant. To the contrary, after Windstream changed its underlying wholesale long distance provider to Verizon, Complainant’s alleged call completion problems *ceased*. As the Administrative Law Judge (“ALJ”) noted as far back as August 6, 2013, “it appears that Verizon

was not the cause of Ms. Frahm's call completion problems, and instead, was part of the solution."¹

After Verizon sought clarification of its role in this proceeding given that it was indisputably not the cause of Complainant's difficulties, the ALJ issued the *Clarification Order* narrowly circumscribing Verizon's participation to two subjects: "what happened in the communication between Windstream and Verizon when Ms. Frahm's routing was changed," and "what worked *in this case* to solve Ms. Frahm's call completion problems." *Clarification Order* at 7 (emphasis added). Verizon's discovery responses have detailed its interaction with Windstream to implement the routing change and confirmed that Verizon neither knows why several of Complainant's calls to a friend in Mediapolis failed prior to Windstream starting to use Verizon as its wholesale provider, nor why Ms. Frahm's problems ceased after that change. Verizon has no further information to contribute.

Despite this, the Office of the Consumer Advocate ("OCA") continues to subject Verizon to a protracted fishing expedition, serving data requests probing every facet of Verizon's service in Iowa, both wholesale and retail. However, the *Clarification Order* did not authorize a wide-ranging investigation of Verizon's wholesale and retail business practices in Iowa, and Iowa Code § 476.3 certainly does not permit investigating a carrier because it provided high quality, reliable service. The record reflects that Verizon has consistently provided service that meets the requirements of Iowa Code § 476.3(1), and has provided what information it has about the specific calls at issue "*in this case.*" As a result, the Commission should now dismiss Verizon from this proceeding.

¹ See August 6, 2013 "Order Regarding Verizon's Motion for Clarification" ("*Clarification Order*") at 5.

Background

The Complaint

The instant complaint is *not* against Verizon: it is against Complainant's long distance provider, Windstream. Complainant apparently experienced difficulties reliably completing intrastate long distance calls to a friend in the city of Mediapolis, before Windstream began using Verizon as its wholesale long distance provider.² When Windstream changed its call routing process well over a year ago to use Verizon as its underlying provider, Complainant's call completion difficulties ceased (as confirmed most recently at the beginning of this month³). As a result, Verizon was referred to by name in an informal complaint as the wholesale provider whose service resolved Complainant's issues.⁴ The happenstance of that tangential mention resulted in Verizon being dragged into this formal proceeding.

Nearly a year ago, Verizon moved for clarification that it was not the subject of this formal complaint, was not a party to this proceeding, and need not participate further. *See generally, Clarification Motion.* At that time, all parties other than Windstream consented to Verizon's motion (Windstream felt it was too early to excuse any participant). Rather than completely dismiss Verizon from the proceeding at that initial stage, the ALJ issued an order specifically recognizing that Verizon had not caused Complainant's problems, and narrowly circumscribing Verizon's participation in this case. *Clarification Order* at 5. Since that time, Verizon has been forced to incur outside counsel fees for attendance at repeated status hearings, and to expend considerable internal resources responding to discovery as though it were the

² See Verizon's July 19, 2013 Motion for Clarification ("*Clarification Motion*") at 2; *see also* July 15, 2013 "Order Granting Request for Formal Proceeding and Assigning to Administrative Law Judge" ("*Opening Order*") at 1-3.

³ See May 8, 2014 "Order Regarding Fourth Prehearing Conference and Requiring Filing" ("*5/8/14 Order*") at 2.

⁴ Informal complaint C-2013-0025 resulted in this formal proceeding.

target of the Complaint, rather than merely the entity whose wholesale service resolved Complainant's concerns.

OCA's Activity Since the July 2013 Opening Order

Ten months ago, OCA confirmed that it had no objection to releasing Verizon from this proceeding, recognizing that "there is no indication in the informal complaint file that Verizon had any involvement in the difficulties that gave rise to the complaint."⁵ OCA also represented at the first prehearing conference on July 31, 2013 that it did not intend to serve any discovery on Verizon.⁶ Yet, in the intervening ten months, OCA has burdened Verizon with two sets of discovery, most of which is overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and well beyond the narrow scope permitted by the *Clarification Order*. OCA has done so despite the fact that it agrees that "Ms. Frahm's problems have remained corrected since Ms. Frahm's underlying carrier was switched to Verizon." *5/8/14 Order* at 2.

As noted above, the *Clarification Order* delimited Verizon's participation in the case to two narrow topics: what happened in the communication between Windstream and Verizon when Complainant's call routing was changed in the February/March 2013 time frame, and what worked to solve her call completion problems. *Clarification Order* at 7. Rather than hewing to these two circumscribed subjects, OCA served many wide-ranging data requests regarding Verizon's general wholesale and retail business practices, its history of FCC complaints, the implications of the use of Internet Protocol technology, access avoidance schemes specific for calls terminated by Iowa Network Services, and requests for "assurances that call completion

⁵ See OCA's "Response to Motion for Clarification" (July 23, 2013) at 1 ("OCA Response").

⁶ See Affidavit of Deborah Kuhn ("Kuhn Affidavit"), attached hereto, at ¶ 3.

problems will not afflict rural Iowans and those seeking to reach them in the future.” For example, OCA served the following data requests, among others:

5. Has Verizon ever taken action removing an underlying or intermediate carrier from the routing of calls to Iowa destinations following a consumer complaint? If so, please provide the date of each of such action, the identity of the underlying or intermediate carrier, the affected destination or destinations, and the reason for removal. If the carrier was subsequently restored to the routing, please state the date of restoration and the reason for restoration.

9. Please state whether, from and after January 1, 2011, the Federal Communications Commission has made inquiry of Verizon regarding (i) possible call completion failure, post dial delay, poor transmission quality or misidentification of calling party on any calls or faxes placed to or from Iowa, (ii) general statistical information, either limited to Iowa or including Iowa, regarding the call completion problem, or (iii) relations with underlying or intermediate carriers, including their removal from routes or their sanctioning for failure to meet performance requirements. If so, please produce the Commissions’ inquiries, Verizon’s responses, and any follow-up communications. Communications not pertinent to calls to or from Iowa may be omitted.

13. Can Verizon offer any assurances that call completion problems will not afflict rural Iowans and those seeking to reach them in the future? If so, please provide those assurances. If not, please explain any factors that inhibit Verizon’s ability to provide such assurances.⁷

To the extent that OCA’s discovery related to the two discrete subjects identified by the ALJ, Verizon responded. Verizon confirmed that it has no knowledge of what caused the failure of Complainant’s calls to Mediapolis prior to Windstream using Verizon as a wholesale provider, nor why Complainant’s difficulties ceased after Windstream began using Verizon.⁸ Verizon also detailed the process by which Windstream switched its underlying wholesale provider to Verizon in the February/March 2013 time frame. Verizon further clarified that Verizon’s April 24, 2013 response to Board Staff’s request for information relating to the C-file mistakenly identified a

⁷ See OCA’s First Set of Data Requests to Verizon, attached as Exhibit 1 to the Kuhn Affidavit. Verizon suspects that OCA served these requests on Windstream, and then repurposed them as its discovery to Verizon. However, there is no alleged grievance with respect to Verizon’s call routing practices (wholesale or retail), and these types of questions have no bearing on what caused *Windstream’s* call completion problems or why they stopped.

⁸ See Verizon’s Responses to Data Request Nos. 1-3 of OCA’s First Set of Data Requests, attached as Exhibit 2 to the Kuhn Affidavit, at Data Response Nos. 1-2.

TSCI 6000 transaction code as a duplicate service order request from Windstream for a change in underlying wholesale provider, when that code was actually a confirmation from Windstream of the successful completion of the originally-requested change in routing to Verizon. That clarification eliminated any confusion regarding whether the original request had been received and processed (*see Clarification Order* at 6-7).⁹ Verizon’s discovery responses also confirmed that Verizon cannot identify the call routing path over which Complainant’s calls to Mediapolis traveled immediately after Windstream began using Verizon as an intermediate carrier (due both to Windstream’s use of non-standard resale order flow, which prevented Verizon from being able to pinpoint precisely when Windstream began using Verizon, and because records of actual call routing paths for that time frame were no longer available).¹⁰

Windstream’s Activity Since the July 2013 Opening Order

When Verizon filed the *Clarification Motion* in July of last year, Windstream acknowledged that “[b]ased on the allegations of the complaint, it seems unlikely that Verizon will be the target of OCA’s investigation,” but asserted that it was simply “too early” in the proceeding to excuse *any* potential participant.¹¹ With the benefit of ten months of investigation, Windstream has now advised Verizon that it does not oppose Verizon’s motion for dismissal from this proceeding, provided that the motion does not seek an order adjudicating that Verizon has no liability (this motion does not request such a finding), and provided that Verizon can be

⁹ See Kuhn Affidavit, Exhibit 2, Verizon’s Response to Data Request No. 3.

¹⁰ Kuhn Affidavit, Exhibit 2, Verizon’s Response to Data Request No. 3. This response resulted in OCA serving still more discovery, this time asking not about facts, but about “theoretical” call routes that *hypothetically* might have been used in March 2013 and May 2014, and about Verizon’s records retention policies (*see* Data Requests 18 and 19 of OCA’s Second Set of Data Requests to Verizon, attached as Exhibit 3 to the Kuhn Affidavit). Such requests have no bearing on the case at hand, since they are not reasonably calculated to lead to the discovery of admissible evidence. Verizon has already confirmed that cannot identify the *actual* call routing paths used for Complainant’s calls to Mediapolis in March 2013 because records are no longer available. Hypothetical call routes – whether in use at that time or 14 months later – have no bearing on the *actual* facts, because there is no way to know which call paths were actually used on any particular call since records are unavailable.

¹¹ See July 30, 2013 “Windstream’s Response to Verizon’s Motion” (“*Windstream Response*”) at 1-2.

brought back into the proceeding if subsequent evidence indicates some responsibility on Verizon's part for the calls that were dropped. As such, Windstream – the only party that objected to excusing Verizon from the proceeding a year ago – no longer has an objection. Verizon should, accordingly, now be dismissed from this case.

Argument

There is no legal basis to compel Verizon's continued participation in a complaint case in which there is no allegation that Verizon provided anything other than high quality service that fulfilled the requirements of Iowa Code § 476.3.

First, the initiation of a formal complaint proceeding without naming a specific respondent or respondents is procedurally improper. The discovery experience in this docket demonstrates why: a lack of clarity regarding the role and status of the entities served with the notice of the initiation of the proceeding, impeding their due process rights. Verizon has been dragged into nearly a year of ongoing litigation because it provided high-quality wholesale service that *resolved* the issues Complainant was having with her long distance carrier following the events that resulted in the Complaint. Having done nothing wrong, the mere mention of Verizon's name in the C-file forced Verizon to take on what effectively amounts to "full party" status in a complaint case in which it is not the target, and in which its only role is akin to that of a tangential, non-party witness on matters that have nothing to do with what caused Complainant's difficulties. In other words, Verizon is indisputably not the subject of the Complaint, but has been forced to participate as though it is. The Commission should now dismiss Verizon from this proceeding.

Second, Iowa Code § 476.3(1) offers no basis for the Board to designate a carrier a party to a complaint case and subject it to investigation where there is no allegation (or even hint) of

wrongdoing or substandard service on its part. Iowa Code § 476.3(1) authorizes the initiation of a proceeding upon a written complaint “requesting the board to determine the reasonableness of the rates, charges, schedules, service, regulations, or anything done or omitted to be done by a public utility subject to this chapter *in contravention of this chapter.*” Here, there is no allegation that Verizon did anything “in contravention of this chapter.” To the contrary, all involved agree that Verizon was not the *cause* of Complainant’s problems, but the *solution*. Verizon has confirmed in discovery that it does not know what caused Complainant’s difficulties, cannot offer facts surrounding the routing of Complainant’s calls at the time Windstream abandoned its prior underlying call router and began using Verizon’s wholesale service, and does not know why calls completely successfully after the change. Verizon is not obligated to remain in this case and endure the continued expense and resource consumption of further fishing expeditions about its business practices due to some generalized interest in the subject of call completion.

Third, there is no legal basis to coerce Verizon into serving as what amounts to an unpaid “expert witness” to aid OCA’s prosecution of its case against Windstream. Verizon has cooperated to the extent required of its very tangential role here, but OCA wants Verizon to respond to discovery that has nothing to do with the specific situation at hand and instead relates generically to the subject of rural call completion. OCA’s theory appears to be that, by virtue of Verizon’s ability to provide high-quality wholesale services, it now represents the “gold standard” for rural call completion and should be subject to intrusive, harassing and burdensome participation in this case so that OCA can attempt to argue that if Windstream did not use similar practices, Windstream did not provide “reasonably adequate service” in compliance with Iowa Code § 476.3.

Millions of calls complete successfully in Iowa every day, and the hundreds of carriers involved in carrying those calls are not subject to intrusive discovery in this proceeding by virtue of those calls completing successfully. This is not a generic investigation to collect input from the industry at large on the technological, legal and policy issues at play, but an individual complaint case. The Board should not (and under Iowa Code § 476.3, *cannot*) compel Verizon alone to continue to participate in this proceeding, expending still more valuable time, resources and fees dealing with overbroad and unduly burdensome discovery regarding its general wholesale and retail business practices when there is no allegation that those practices resulted in deficient service. Verizon has provided what little information it has relevant to this case, and the Board should now dismiss it from further participation.

WHEREFORE, for the reasons stated above and in its earlier Motion for Clarification, MCI Communications Services, Inc. d/b/a Verizon Business Services respectfully requests that the Board dismiss it from this proceeding.

Dated: May 30, 2014

**MCI Communications Services, Inc. d/b/a
Verizon Business Services.**

By: /s/ Bret A. Dublinske

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