

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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| In the Matter of the Complaint of) | |
| John Kalvich, MD dba Patient First,) | |
| Complainant,) | |
| v.) | |
| Level 3 Communications, Inc., AT&T) | Case No. 07-904-TP-CSS |
| Ohio, and DIECA Communications, Inc.) | |
| dba Covad Communications Company,) | |
| Respondents.) | |

ENTRY

The Commission finds:

- (1) On August 10, 2007, the complainant, John Kavlich MD dba Patient First filed a complaint against Level 3 Communications, Inc. (Level 3) and AT&T Ohio (AT&T) alleging that on July 11, 2007, Patient First was slammed when Level 3 took Patient First's modem line and issued the telephone number to another business without Patient First's knowledge or approval.
- (2) In support of its complaint, Patient First attached a copy of page one of its June 10, 2007, monthly statement from AT&T. However, on September 14, 2007, Level 3 reported that its records reveal that no porting occurred for the primary telephone number on the AT&T bill attached to the complaint.
- (3) In October 2007, the attorney examiner contacted Patient First's office manager by telephone and learned: (a) that the specific telephone number that is the subject of this slamming complaint, which had not been specified in the complaint as originally filed, is (440) 826-4400; (b) that Patient First's office manager was advised by AT&T that this telephone number

was switched by Level 3; and (c) that the port request that precipitated that switch was submitted to Level 3, on June 13, 2007, by a company named DIECA Communications Inc. dba Covad Communications (Covad).¹

- (4) On October 30, 2007, Level 3's counsel filed a letter explaining that the Patient First telephone number in question was accidentally listed on a letter of agency (LOA) by a Covad end user customer who is not the complainant. A copy of the LOA was submitted by Level 3. Consequently, asserts Level 3's counsel, neither Level 3 nor Covad had any reason to doubt the validity of the LOA and the complainant's number was ported to Covad along with three other numbers due to end user error in filling out the LOA and not the result of carrier misconduct (slamming).
- (5) On March 26, 2008, the attorney examiner issued an entry which found Covad to be a necessary party to this proceeding. The entry included a finding that AT&T had not been served with a copy of the complaint and that none of the respondents had yet filed an answer to the complaint. The entry joined Covad as a party to the proceeding and directed all three respondents, Level 3, AT&T, and Covad, to file answers or other responsive pleadings by April 15, 2008. By subsequent entry, Covad was granted an extension, until April 22, 2008, for filing its answer or other responsive pleading. All three respondents timely filed answers to the complaint. On April 22, 2008, Covad filed not only its answer, but also a motion to dismiss this case, on grounds that the Commission lacks subject matter jurisdiction over this proceeding, because the alleged slamming activities relate to the provision of Voice over Internet Protocol (VoIP) services, over which the Commission does not have jurisdiction.
- (6) In support of its motion to dismiss, Covad asserts that the alleged slamming activities involved in this proceeding relate to Covad's provision of VoIP and broadband services to a

¹ Both Level 3 and Covad are competitive local exchange carriers under the Commission's jurisdiction and are certified as such by the Commission.

new customer (not the complainant). Further explaining, Covad says that Level 3 partners with Covad to provide the VoIP service, with Covad serving as the underlying carrier. Upon authorization from Covad's new customer, Covad, following industry practices, placed orders to port all four telephone numbers from the old carrier, AT&T, to Covad, for the provision of interconnected VoIP services to the new customer. Covad says that it does not provide traditional basic local exchange telecommunications services, although it is authorized to do so under the certificate issued by the Commission. Accordingly, the alleged slamming occurred as part of the LOA process associated with the provision of VoIP services, which are beyond the Commission's jurisdiction.

- (7) At the time that this complaint was initially filed, the exact issue of whether the Commission has jurisdiction over VoIP services had not yet been definitively decided. At that time, it was expected that the Commission would answer the question within a generic case that it had initiated on the topic, namely Case No. 03-950-TP-COI, *In the Matter of the Commission Investigation Into VoIP Services Using Internet Protocol*. Instead, as it turns out, the Ohio Legislature acted first and, by enacting Section 4927.03, Revised Code, has statutorily determined that the Commission lacks subject matter jurisdiction of VoIP services.
- (8) We find that the slamming activities alleged in this complaint case relate to the provision of VoIP services over which the Commission, pursuant to Section 4927.03, Revised Code, lacks *subject matter jurisdiction*. Accordingly, the Commission finds that this case should be dismissed for the failure of the complaint to state reasonable grounds for complaint on a subject matter over which the Commission has jurisdiction. To the extent that the complainant desires to pursue a slamming complaint regarding VoIP service, assistance on this topic is available at <http://esupport.fcc.gov/complaints.htm> or by calling toll-free 1-888-CALL-FCC (1-888-225-5322).

It is, therefore,

ORDERED, That, in accordance with the above findings, the complaint is dismissed and this case be closed of record. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

M. Beth Trombold

Lynn Slaby

Asim Z. Haque

DEF/sc

Entered in the Journal

NOV 06 2013

Barcy F. McNeal

Barcy F. McNeal
Secretary