

**State of N.Y. ex rel. Phone Admin. Servs., Inc. v  
Verizon N.Y., Inc.**

2022 NY Slip Op 32940(U)

August 31, 2022

Supreme Court, New York County

Docket Number: Index No. 100329/2014

Judge: Melissa Anne Crane

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MELISSA CRANE PART 60M

Justice

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THE STATE OF NEW YORK EX REL. PHONE ADMINISTRATIVE SERVICES, INC.,

Plaintiff,

INDEX NO. 100329/2014

MOTION DATE 08/05/2022

MOTION SEQ. NO. 021

- v -

VERIZON NEW YORK, INC., VERIZON COMMUNICATIONS INC., XO NEW YORK, INC. D/B/A XO COMMUNICATIONS (NEW YORK), XO COMMUNICATIONS SERVICES, LLC, METROPOLITAN TELECOMMUNICATIONS HOLDING COMPANY D/B/A METTEL, LEVEL 3 COMMUNICATIONS, LLC, CENTURYLINK COMMUNICATIONS, LLC, BANDWIDTH.COM CLEC, LLC, ALTICE USA, INC., TC SYSTEMS, INC., YMAX COMMUNICATIONS CORP., AT&T CORP., AT&T COMMUNICATIONS OF NEW YORK, INC., KPMG, LLP, CITIZENS TELECOMMUNICATIONS COMPANY OF NEW YORK, INC., FRONTIER COMMUNICATIONS OF AUSABLE VALLEY, INC., FRONTIER COMMUNICATIONS OF NEW YORK, INC., FRONTIER COMMUNICATIONS OF ROCHESTER, INC., FRONTIER COMMUNICATIONS OF SENECAGORHAM, INC., FRONTIER COMMUNICATIONS OF SYLVAN LAKE, INC., FRONTIER TELEPHONE OF ROCHESTER, INC., OGDEN TELEPHONE COMPANY,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 021) 289, 290, 291, 292, 293, 294, 295, 298, 299

were read on this motion to/for AMEND CAPTION/PLEADINGS

Plaintiff State of New York ex rel. Phone Administrative Services, Inc. ("Plaintiff") has moved pursuant to CPLR 3025(b) to amend its fourth amended complaint to add new defendants, Bandwidth Inc., Cablevision Lightpath, LLC, NY OV, LLC, and CSC Holdings, LLC. Defendants do not oppose the motion.

BACKGROUND

Plaintiff brought this qui tam action on behalf of the State of New York against a number of telecommunications entities which Plaintiff alleges engaged in a pattern of failing to assess surcharge fees on 911 emergency calls which the State of New York uses to fund the 911 emergency telephone service. The fourth amended complaint alleges that Defendants used “arbitrary” counting methods to reduce the fee amounts in order to give themselves a competitive advantage and submitted false reports to New York municipalities in violation of the False Claims Act (NYSCEF Doc. No. 177, ¶¶ 3-4).

Plaintiff has moved to amend the fourth amended complaint after purportedly learning during meet and confer sessions on June 2, 2022 with counsel for defendants Bandwidth.com CLEC, LLC (“Bandwidth CLEC”) and Altice USA, Inc. (“Altice USA”) that subsidiaries/affiliates of those entities are the parties that are actually responsible for collecting and remitting 911 surcharges in New York (NYSCEF Doc. No. 290, ¶ 2).

### DISCUSSION

Under CPLR 3025(b), leave to amend a pleading “shall be freely given” absent “prejudice or surprise,” as long as the amendment is not “palpably insufficient or clearly devoid of merit” (*Thompson v Cooper*, 24 AD3d 203, 205 [1st Dept 2005]; *Board of Managers of Porter House Condominium v Delshah 60 Ninth LLC*, 206 AD3d 423, at \*1 [1st Dept 2022]).

The court grants plaintiff’s motion for leave to amend in the absence of opposition. The proposed amendments are neither palpably insufficient nor devoid of merit, and there is no claim of undue prejudice.

Accordingly, it is

**ORDERED** that Plaintiff’s motion for leave to amend the complaint is granted; and the fifth amended complaint in the proposed form annexed to the moving papers (NYSCEF Doc. No.

291) shall be deemed served upon the existing parties upon service of a copy of this order with notice of entry; and it is further

**ORDERED** that plaintiff must serve a copy of the fifth amended complaint along with a supplemental summons on all new parties within 7 days of the court's e-filing of this decision and order; and it is further

**ORDERED** that defendants shall serve an answer to the fifth amended complaint or otherwise respond within 20 days from the date of service; and it is further

**ORDERED** that the caption be amended to reflect the amendment, and that all future papers filed with the Court shall bear the amended caption; and it is further

**ORDERED** that the action shall bear the following caption:

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THE STATE OF NEW YORK, EX REL. PHONE ADMINISTRATIVE SERVICES, INC.,

Plaintiff,

Index No.: 100329/2014

-against-

VERIZON NEW YORK INC., VERIZON COMMUNICATIONS INC., XO NEW YORK, INC. d/b/a XO COMMUNICATIONS (NEW YORK), XO COMMUNICATIONS SERVICES, LLC, METROPOLITAN TELECOMMUNICATIONS HOLDING COMPANY d/b/a METTEL, LEVEL 3 COMMUNICATIONS, LLC, CENTURYLINK COMMUNICATIONS, LLC, BANDWIDTH.COM CLEC, LLC, BANDWIDTH INC., CABLEVISION LIGHTPATH, LLC, NY OV, LLC, CSC HOLDINGS, LLC, ALTICE USA, INC., TC SYSTEMS, INC., YMAX COMMUNICATIONS CORP., AT&T CORP., AT&T COMMUNICATIONS OF NEW YORK, INC., CITIZENS TELECOMMUNICATIONS COMPANY OF NEW YORK, INC., FRONTIER COMMUNICATIONS OF AUSABLE VALLEY, INC., FRONTIER COMMUNICATIONS OF NEW YORK, INC., FRONTIER COMMUNICATIONS OF ROCHESTER, INC., FRONTIER

COMMUNICATIONS OF SENECAGORHAM, INC., FRONTIER COMMUNICATIONS OF SYLVAN LAKE, INC., FRONTIER TELEPHONE OF ROCHESTER, INC., OGDEN TELEPHONE COMPANY and KPMG, LLP,

Defendants.


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And it is further

ORDERED that within 5 days of the court's entry of this order, counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk and the Clerk of the General Clerk's Office, who are directed to mark the Court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the County Clerk and Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-filing" page on the court's website - www.nycourts.gov/supctmanh).

8/31/2022  
DATE

  
MELISSA ANNE CRANE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE