

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

2023 NY Slip Op 30473(U)

February 15, 2023

Supreme Court, New York County

Docket Number: Index No. 100329/2014

Judge: Melissa A. 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 A. CRANE PART 60M

Justice

INDEX NO. 100329/2014
MOTION DATE 02/10/2023
MOTION SEQ. NO. 027

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

Plaintiff,

- v -

VERIZON NEW YORK, INC., et al.,

Defendants.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 027) 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442 were read on this motion to/for AMEND CAPTION/PLEADINGS.

Upon the foregoing documents, plaintiff's motion for leave to file a sixth amended complaint is granted.

Plaintiff seeks to amend the complaint to add nonparties MCI Communications Services LLC and MCImetro Access Transmission Services LLC (together, MCI entities) as new defendants. Discovery in this action has established that the MCI entities are subsidiaries or affiliates of Defendants Verizon New York Inc. and Verizon Communications, Inc. (together, Verizon). Verizon, XO New York, Inc., and XO Communications Servs., LLC (Verizon defendants) oppose the motion.

"Permission to amend pleadings should be 'freely given' " (Edenwald Contracting Co. v New York, 60 N.Y.2d 957, 959 [1983], quoting CPLR 3025 [b]). "Mere lateness is not a barrier to the amendment. It must be lateness coupled with significant prejudice to the other side" (id. [citation omitted]). Neither additional pre-note of issue discovery nor lengthier litigation warrant denial of a motion for leave to amend (see e.g. St. Nicholas W. 126 L.P., v Republic Invest. Co.,

LLC, 193 AD3d 488 [1st Dept 2021]). The opposing party bears the burden to overcome the heavy presumption in favor of granting leave to amend (*see e.g. McGee v Odell*, 946 NYS2d 134, 135 [1st Dept 2012]).

Here, the Verizon defendants have not established that they will be so prejudiced by the amendment that denial is warranted. The Verizon defendants point to only additional discovery that would delay this case to demonstrate the purported prejudice. The note of issue has not yet been filed and the parties, including Verizon, have repeatedly asked this court for discovery extensions. The Verizon defendants also have not established that the proposed amendment will have hindered them in the preparation of their case, or prevented them from supporting their positions (*see e.g. Tri-Tec Design, Inc. v Zatec Corp.*, 123 AD3d 420, 420 [1st Dept 2014]). The court declines to deny this motion because some further discovery and potential delays will result from the additional of the MCI entities as defendants.

The court also rejects Verizon's argument that the motion should be denied because plaintiff has no reasonable excuse for their delay in naming the MCI entities as defendants. Plaintiff has shown that the recent depositions of Verizon's corporate representatives elucidated the distinctions between the Verizon defendants and their subsidiaries and affiliates, including the MCI entities.

The court has considered the parties' remaining contentions and finds them unavailing.

Accordingly, it is

ORDERED that Motion 27 is granted; and it is further

ORDERED that the sixth amended complaint, in the form annexed to the motion papers (NYSCEF Doc 421), shall be deemed served upon service of a copy of this order with notice of entry upon all parties who have appeared in the action; and it is further

ORDERED that a supplemental summons and sixth amended complaint, in the form annexed to the motion papers, shall be served, in accordance with the Civil Practice Law and Rules, upon the additional parties in this action within 5 days of the date of this decision and order; 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 following amended caption:

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

Plaintiff,

Index No. 100329/2014

v.

VERIZON NEW YORK INC., VERIZON COMMUNICATIONS INC., XO NEW YORK, INC. d/b/a XO COMMUNICATIONS (NEW YORK), XO COMMUNICATIONS SERVICES, LLC, MCI COMMUNICATIONS SERVICES LLC, MCIMETRO ACCESS TRANSMISSION 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.

And it is further

ORDERED that, within 5 days of the date of this decision and order, movant’s counsel shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the General Clerk’s Office (Room 119), who are directed to mark the Court’s records to reflect the amendment; and it is further

ORDERED that 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); and it is further

ORDERED that all parties must appear for a status conference by Microsoft Teams on 3/21/23 at 10:00 a.m.

2/15/2023
DATE


MELISSA A. CRANE, J.S.C.

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