

CIVIL CASE INFORMATION STATEMENT
CIVIL CASES

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CATHY S. GATSON, CLERK
KANAWHA CO. CIRCUIT COURT

In the Circuit Court, Kanawha County, West Virginia

I. CASE STYLE:

Case # 13-C-2357

Judge: Zakayb

STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY,
Attorney General,

Plaintiff/Petitioner,

vs.

Days to
Answer

Type of Service

CLEAR RATE COMMUNICATIONS, INC.
a Michigan corporation,

30

Secretary of State

Defendants/Respondents.

Original and 4 copies of complaint furnished herewith.

(Continued On Next Page)

PLAINTIFF: STATE OF WEST VIRGINIA ex rel. PATRICK MORRISEY, Attorney General DEFENDANT: CLEAR RATE COMMUNICATIONS, INC., a Michigan corporation.	CASE NUMBER:
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II. TYPE OF CASE:

TORTS	OTHER	CIVIL

Asbestos	Adoption	Appeal from Magistrate Court
Professional Malpractice	Contract	Petition for Modification of Magistrate Sentence
Personal Injury	Real Property	Miscellaneous Civil
Product Liability	Mental Health	x Other
Other Tort	Appeal of Administrative Agency	

III. JURY DEMAND: Yes No X

CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): _____ / _____

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE?

YES NO X
IF YES, PLEASE SPECIFY:

Wheelchair accessible hearing room and other facilities
Interpreter or other auxiliary aid for the hearing impaired
Reader or other auxiliary aid for the visually impaired
Spokesperson or other auxiliary aid for the speech impaired
Other:

Attorney Name: **Melissa Starcher, Assistant Attorney General**
Firm: **State of West Virginia, Attorney General's Office**

Address: **Post Office Box 1789, Charleston, WV 25326-1789**

Telephone: **(304)558-8986**

Signature Melissa Starcher
Pro Se _____

Representing:
X Plaintiff
Defendant
Cross-Complainant
Cross-Defendant

Dated: 12/20/13

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FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA, ex rel.
PATRICK MORRISEY, Attorney General,

2013 DEC 20 PM 4:38

CATHY S. GATSON, CLERK
KANAWHA CO. CIRCUIT COURT

Plaintiff/Petitioner,

v.

CIVIL ACTION NO. 13-C. 2357
JUDGE Zakab

CLEAR RATE COMMUNICATIONS, INC.,
a Michigan corporation,

Defendant/Respondent.

**COMPLAINT AND PETITION
FOR TEMPORARY INJUNCTION**

This action is brought pursuant to the West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-1-101 *et seq.* (hereinafter "WVCCPA"). Plaintiff/Petitioner, the State of West Virginia by Patrick Morrissey Attorney General (hereinafter "the State"), has reason to believe that Defendants/Respondents Clear Rate Communications, Inc., a Michigan corporation, (hereinafter "Clear Rate") has violated the WVCCPA. The State brings this action to enjoin and restrain Clear Rate from engaging in unfair or deceptive acts or practices in connection with the sale of telecommunication services. The State seeks preliminary and permanent injunctive relief and other equitable relief including, but not limited to, investigative costs, consumer restitution, court costs, and attorney's fees.

THE PARTIES

1. The Plaintiff, the State of West Virginia, brings this action by and through Patrick Morrissey, Attorney General for the State of West Virginia. The Attorney General

is authorized to bring this action pursuant to W. Va. Code § § 46A-7-108, -110, and -111.

2. Defendant/Respondent Clear Rate Communications is a Michigan corporation with its principal place of business situate at 555 S. Old Woodward Avenue, Suite 600, Birmingham, Michigan, 48009.

JURISDICTION AND VENUE

3. This Court has jurisdiction to hear this matter pursuant to Article VIII, Section 6 of the West Virginia Constitution and W. Va. Code § 51-2-2.

4. Venue is proper in this Court pursuant to W. Va. Code § § 46A-7-114 and 56-1-1.

RELEVANT PERIOD OF TIME

5. The relevant period of time for the events alleged in this complaint begins January 1, 2013 and continues through the present and into the future.

FACTS

6. Clear Rate is a telecommunications carrier.

7. Clear Rate sells telecommunications services to West Virginia consumers.

8. Clear Rate began selling telecommunications services to West Virginia consumers sometime in January 2013.

9. The Attorney General's Consumer Protection Division received its first consumer complaint against Clear Rate on March 14, 2013.

10. Clear Rate solicits West Virginia consumers by outbound telemarketing calls.

11. Clear Rate has sold its telecommunication services to at least 4,231 West

Virginia consumers.

12. Clear Rate purchases its telecommunications services exclusively from Frontier West Virginia, Citizens Telecommunications Company of West Virginia d/b/a Frontier Communications of West Virginia (hereinafter "Frontier").

13. Clear Rate is not an affiliate of or connected with Frontier.

14. Clear Rate is not associated with Frontier.

15. When soliciting West Virginia consumers to purchase its services, Clear Rate represented that it was Frontier.

16. When soliciting West Virginia consumers to purchase its services, Clear Rate represented that it was affiliated with Frontier.

17. When soliciting West Virginia consumers to purchase its services, Clear Rate's telemarketers' telephone numbers appeared as "Frontier" on consumers' Caller IDs.

18. West Virginia consumers did not realize they had purchased services from Clear Rate, not Frontier, until they received their first month's invoice.

19. West Virginia consumers attempted to cancel their Clear Rate service after realizing their service had been switched from Frontier.

20. When consumers attempted to cancel their Clear Rate service, Clear Rate informed them they would have to pay an early termination fee ("ETF") if they cancelled.

21. Clear Rate charged consumers who cancelled a \$99.00 ETF.

COUNT I

(Passing off goods or services as those of another)

22. The State repeats, realleges and reasserts the facts and allegations set

forth in paragraphs numbered 1 through 21 as if each were set forth herein in its entirety.

23. Clear Rate misrepresented to consumers that it was Frontier, both directly and indirectly through identifying information it caused to appear on consumers' Caller IDs.

24. Unfair methods of competition and unfair or deceptive acts or practices are defined to include "passing off goods or services as those of another." W. Va. Code § 46A-6-102(7)(A).

25. "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce" are unlawful. W. Va. Code § 46A-6-104.

26. Clear Rate's misrepresentations to consumers that it was Frontier constitutes an unfair or deceptive acts or practices as defined by W. Va. Code § 46A-6-102(7)(A) and violates W. Va. Code § 46A-6-104.

COUNT II
(Causing likelihood of confusion or misunderstanding
as to the source of goods or services)

27. The State repeats, realleges and reasserts the facts and allegations set forth in paragraphs numbered 1 through 26 as if each were set forth herein in its entirety.

28. Clear Rate misrepresented to consumers that it was Frontier, both directly and indirectly through identifying information it caused to appear on consumers' Caller IDs.

29. Clear Rate's conduct created confusion or misunderstanding as to the source of the services it was selling to consumers.

30. Unfair methods of competition and unfair or deceptive acts or practices are

defined to include “causing likelihood of confusion or of misunderstanding as to the source, approval or certification of goods or services.” W. Va. Code § 46A-6-102(7)(B).

31. “Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce” are unlawful. W. Va. Code § 46A-6-104.

32. Clear Rate’s misrepresentations to consumers that it was Frontier constitutes an unfair or deceptive acts or practices as defined by W. Va. Code § 46A-6-102(7)(B) and violates W. Va. Code § 46A-6-104.

COUNT III
(Causing likelihood of confusion or misunderstanding
as to affiliation, connection or association with another)

33. The State repeats, realleges and reasserts the facts and allegations set forth in paragraphs numbered 1 through 32 as if each were set forth herein in its entirety.

34. Clear Rate misrepresented to consumers that it was Frontier, both directly and indirectly through identifying information it caused to appear on consumers’ Caller IDs.

35. Clear Rate’s conduct created circumstances whereby consumers were likely to be confused or to misunderstand that it was, in fact, Frontier and not a competitor of Frontier’s that contacted the consumers.

36. Unfair methods of competition and unfair or deceptive acts or practices are defined to include “causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by another.” W. Va. Code § 46A-6-102(7)(C).

37. “Unfair methods of competition and unfair or deceptive acts or practices in

the conduct of any trade or commerce" are unlawful. W. Va. Code § 46A-6-104.

38. Clear Rate's misrepresentations to consumers that Clear Rate was Frontier or was affiliated with Frontier, constitutes an unfair or deceptive acts or practices as defined by W. Va. Code § 46A-6-102(7)(C) and violates W. Va. Code § 46A-6-104.

COUNT IV
(Representing that a person has affiliation
or connection that he does not have)

39. The State repeats, realleges and reasserts the facts and allegations set forth in paragraphs numbered 1 through 38 as if each were set forth herein in its entirety.

40. Clear Rate misrepresented to consumers that it was Frontier, both directly and indirectly through identifying information it caused to appear on consumers' Caller IDs.

41. Clear Rate represented that it was Frontier and/or that Clear Rate had an affiliation with Frontier, when it had no affiliation or connection with Frontier and was, in fact, a competitor of Frontier.

42. Unfair methods of competition and unfair or deceptive acts or practices are defined to include "representing that . . . a person has sponsorship, approval, status, affiliation or connection that he does not have." W. Va. Code § 46A-6-102(7)(D).

43. "Person" is defined to mean "a natural person or an individual, and an organization." W. Va. Code § 46A-1-102(31).

44. "Organization" is defined to mean "a corporation" W. Va. Code § 46A-1-102(29).

45. "Unfair methods of competition and unfair or deceptive acts or practices in

the conduct of any trade or commerce” are unlawful. W. Va. Code § 46A-6-104.

46. Unfair methods of competition and unfair or deceptive acts or practices are defined to include “representing that . . . a person has sponsorship, approval, status, affiliation or connection that he does not have.” W. Va. Code § 46A-6-102(7)(D).

47. “Person” is defined to mean “a natural person or an individual, and an organization.” W. Va. Code § 46A-1-102(31).

48. “Organization” is defined to mean “a corporation” W. Va. Code § 46A-1-102(29).

COUNT V
(Representing that a person has affiliation
or connection that he does not have)

49. The State repeats, realleges and reasserts the facts and allegations set forth in paragraphs numbered 1 through 46 as if each were set forth herein in its entirety.

50. Clear Rate misrepresented to consumers that it was Frontier, both directly and indirectly through identifying information it caused to appear on consumers’ Caller IDs.

51. Clear Rate did not inform consumers that it was not affiliated with Frontier.

52. Unfair methods of competition and unfair or deceptive acts or practices are defined to include:

The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby.

W. Va. Code § 46A-6-102(7)(M).

53. “Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce” are unlawful. W. Va. Code § 46A-6-104.

54. Clear Rate misrepresented to consumers that it was Frontier and concealed and/or omitted to inform consumers that it was not Frontier which misrepresentations, concealment and/or omissions constitute an unfair or deceptive acts or practices as defined by W. Va. Code § 46A-6-102(7)(M) and violates W. Va. Code § 46A-6-104.

COUNT VI
(Misrepresentation, concealment or omission of a material fact)

55. The State repeats, realleges and reasserts the facts and allegations set forth in paragraphs 1 through 52 above as if each were set forth herein in its entirety.

56. Clear Rate charges consumers a \$3.21 carrier access charge.

57. This carrier access charge appears on consumers’ Clear Rate telephone bills under the heading “Regulatory Taxes and Surcharge.”

58. This carrier access charge is not explicitly authorized by the Federal Communications Commission (“FCC”).

59. This carrier access charge is not contained in the tariff Clear Rate submitted to the West Virginia Public Service Commission.

60. The carrier access charge is not a “regulatory tax and surcharge.”

61. The carrier access charge is a fee charged at Clear Rate’s discretion.

62. Placing this unauthorized carrier access charge under the heading “Regulatory Taxes and Surcharges” is a misrepresentation of material fact and violates W. Va. Code § 46A-6-104 as defined by W. Va. Code § 46A-6-102(7)(M).

PRAYER
Temporary Relief

(a) That the Court enter an order enjoining Clear Rate from selling telecommunications services within the State of West Virginia until such time as a final order has been entered in this matter;

(b) That the Court enter an order requiring Clear Rate to provide the State a list, in electronic format (Microsoft Access or Excel), identifying the names and addresses of each consumer who purchased its services from January 1, 2013 to the present;

(c) That the Court enter an order requiring Clear Rate to provide the State with all third party verification ("TPV") calls with wrong answers and/or difficult to understand responses that were previously given to the West Virginia Public Service Commission;

(d) That the Court enter an order requiring Clear Rate to cease all collection of the unapproved tariff/other services charge of \$3.21, or, in the alternative, requiring Clear Rate to place all funds collected for this charge in escrow pending the outcome of this litigation;

(e) That the Court enter an order requiring Clear Rate to cease all collection activity on accounts alleged to be owed by consumers who terminated their contracts with Clear Rate during the relevant period of time or, in the alternative, that any such funds collected be placed in escrow pending the outcome of this litigation.

Permanent Relief

(a) That the Court enter a final order finding that Clear Rate violated the WVCCPA as alleged herein and permanently enjoining Clear Rate from violating the WVCCPA and other applicable consumer protection laws;

(b) That the Court enter a final order finding that all consumers who are aggrieved as a result of Clear Rate's actions are entitled to restitution, consisting of a full refund of all payments made;

(c) That the Court enter a final order requiring that Clear Rate close any and all of its West Virginia collection accounts with a zero balance and send a notice to the three major consumer reporting agencies, stating that the accounts have been paid in full and directing that all references to the accounts be deleted from the consumers' credit records;

(d) That the Court enter a final order finding that Clear Rate has engaged in a course of repeated and willful violations of the WVCCPA as alleged in the causes of action set forth herein above and requiring Clear Rate to pay a civil penalty of up to \$5,000.00 to the State for each such violation as authorized by W. Va. Code § 46A-7-111(2);

(e) That the Court enter a final order requiring Clear Rate to amend its telemarketing script to reflect who is calling;

(f) That the Court enter a final order requiring Clear Rate to remove the \$3.21 charge from its invoices until such time as the charge is approved by the West Virginia Public Service Commission;

(g) That the Court enter a final order requiring Clear Rate to alter its TPV to account for wrong numbers;

(h) That the Court enter a final order permanently prohibiting Clear Rate from "slamming" West Virginia consumers;

(i) That the Court enter a final order as authorized by W. Va. Code § 46A-7-108 requiring that Clear Rate reimburse the State for all its attorney's fees and costs expended in connection with the investigation and litigation of this matter; and

(j) That the Court enter an order awarding the State such other and further equitable relief as is proper and just arising from this matter.

STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY,
ATTORNEY GENERAL, Plaintiff/Petitioner

By Counsel



MELISSA LEIGH STARCHER (WV State Bar #9989)

Assistant Attorney General

MARYCLAIRE AKERS (WV State Bar #8085)

Assistant Attorney General

Consumer Protection/Antitrust Division

Post Office Box 1789

Charleston, WV 25326-1789

Telephone: 304-558-8986

VERIFICATION

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, TO-WIT:

I, MELISSA STARCHER, ASSISTANT ATTORNEY GENERAL, being duly sworn, depose and say that I am the counsel of record for Petitioner in the foregoing styled civil action; that I am familiar with the contents of the foregoing **COMPLAINT AND PETITION FOR PRELIMINARY AND PERMANENT INJUNCTION**; and that the facts and allegations contained therein are true, except such as are therein stated upon information and belief, and that as to such allegations I believe them to be true.



MELISSA STARCHER (WV State Bar # 9989)
ASSISTANT ATTORNEY GENERAL

Taken, subscribed, and sworn to before me in the County and State aforesaid this 20th day of December, 2013.

My commission expires April 13, 2016.



NOTARY PUBLIC

