

Decision 09-09-035 September 24, 2009

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Cox California Telcom, L.L.C. (U-5684-C),

Complainant,

v.

Pacific Centrex Services, Inc. (U-6097-C),

Defendant.

Case 08-11-002  
(Filed November 4, 2008)

**DECISION CLOSING CASE ON COMMISSION'S OWN MOTION**

On November 13, 2008, Cox California Telcom, L.L.C. (Cox) personally served Defendant Pacific Centrex Services, Inc. (Pacific) with a copy of the above-captioned complaint together with Instructions to Answer, as required by Commission Rule 4.3. The Instructions to Answer directed Pacific to file a written answer to the complaint pursuant to Commission Rule 4.4 within 30 days of service, i.e., on or before December 15, 2008. On December 15, 2008, Pacific requested an extension to answer until December 17, 2008 and on the same day the assigned Administrative Law Judge (ALJ) granted the request. On December 17, 2008, counsel for Pacific withdrew from representing Pacific and requested a further extension of time within which Pacific could find substitute counsel and file an answer. In response, the assigned ALJ granted Pacific a further extension to December 30, 2008.

No answer was forthcoming on December 30, 2008. On January 9, 2009, Cox filed a motion for entry of default order against Pacific. Pacific then notified the ALJ that its failure to timely file an answer was the result of difficulty in finding replacement counsel and requested a further extension of time to answer until February 23, 2009. This request was granted and was followed by a further extension to March 3, 2009. On March 4, 2009, M. Devin Semler, chief executive officer of Pacific, sent an email to the ALJ stating that during settlement negotiations between the parties, evidence had come to light indicating that Cox was overbilling Pacific and accusing Cox of engaging in fraud. On the same day, Pacific, through its new counsel, filed an opposition to the motion for entry of default, together with an answer to the Cox complaint and a motion asking the Commission to accept the late-filed answer. Also on March 4, 2009, Cox, in an email from its counsel to the ALJ, objected to Semler's disclosure of terms of the parties' confidential settlement discussions and his characterizations of Cox's conduct, and opposed Pacific's motion to accept late-filed answer.

Notwithstanding the history of repeated extensions, after reading the various emails, the ALJ granted Pacific's motion to accept the late-filed answer. On May 27, 2009, the ALJ scheduled a prehearing conference (PHC) for June 11, 2009. The parties were notified of the date, time and place of the PHC by a timely notice sent out by the Commission's calendar clerk. No representative of Pacific attended the PHC nor did Pacific notify either the Commission or the complainant that it would not attend the PHC. At the PHC, Cox renewed its motion for entry of a default judgment.

On June 24, 2009, the ALJ released his proposed decision ordering payment of termination charges and imposing sanctions for violation of Rule 1 of the Commission's Rules of Practice and Procedure. Shortly thereafter, Pacific

filed a voluntary petition in bankruptcy under Chapter 11 of the United States Bankruptcy Code and removed this dispute to the bankruptcy court.

The legal effects of the bankruptcy filing and the removal action are to stay this action and deprive this Commission of jurisdiction over this dispute. Accordingly, the Commission, on its own motion, will remove the matter from the calendar and close the docket.

### **Comments on Proposed Decision**

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were received.

### **Assignment of Proceeding**

Rachelle Chong is the assigned Commissioner and Karl Bemederfer is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. Defendant Pacific has filed a voluntary petition in bankruptcy.
2. Defendant Pacific has removed this matter to the bankruptcy court.

### **Conclusions of Law**

1. The filing of Pacific's Chapter 11 petition automatically stayed this action.
2. The removal of this action to the bankruptcy court deprives the Commission of jurisdiction.
3. This case should be removed from the calendar and closed.

**O R D E R**

**IT IS ORDERED** that:

1. Case (C.) 08-11-002 is removed from the calendar.
2. C.08-11-002 is closed.

This order is effective today.

Dated September 24, 2009, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners