

Decision PROPOSED DECISION OF ALJ WONG (Mailed 3/5/2013)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The Welk Group, Inc.,

Complainant,

vs.

AT&T Communications of California, Inc.
(U5002C) and General Telephone of
California, Inc. (U1002C),

Defendant.

Case 93-06-016
(Filed June 4, 1993)

DECISION REGARDING MONIES ON DEPOSIT

1. Summary

Today's decision orders that the monies deposited by The Welk Group, Inc. in the above-captioned complaint proceeding, be returned to The Welk Group, Inc.

2. Background

On June 4, 1993, The Welk Group, Inc. (Welk Group) filed a complaint against AT&T Communications of California, Inc. (AT&T), and General Telephone of California, Inc. (GTEC) (collectively, the defendants) for a disagreement over long distance charges that were billed to the telephone

account of Heartland Music, and the threatened disconnection of the Welk Group's telephone service.¹ At the time the complaint was filed, the Welk Group alleged that Heartland Music was a separate and distinct entity from the Welk Group, that the Welk Group was merely a partner of Heartland Music, and that the Welk Group was not liable for Heartland Music's account. The Welk Group also alleged that the long distance charges billed to Heartland Music were the result of toll fraud, and that AT&T failed to do anything to rectify the toll fraud problem.

When the complaint was filed, the Welk Group deposited with the Commission the amount of \$24,221.50.

Action on the Welk Group's complaint before this Commission was deferred based on the Welk Group's intention to file a related complaint before the Federal Communications Commission (FCC) regarding the interstate telephone calls that the Welk Group alleges resulted from toll fraud. Over the course of three years, the Administrative Law Judges (ALJ) assigned to this proceeding issued three rulings to inquire about the status of the FCC complaint. In the December 2, 1997 ALJ ruling, the Welk Group was directed to file a pleading with this Commission by December 30, 1997 regarding the status of its FCC complaint, or face the consequence that its complaint before this Commission be dismissed for lack of prosecution.

The Welk Group did not submit any information to the Commission by December 30, 1997. As a result, the Commission issued Decision (D.) 98-03-026 on March 12, 1998, dismissing the Welk Group's complaint for lack of prosecution. A copy of D.98-03-026 is attached to this decision as Appendix A.

¹ GTEC was subsequently merged into Verizon California, Inc.

D.98-03-026 did not address the disposition of the monies that the Welk Group had deposited with the Commission.

3. Discussion

This complaint proceeding is being reopened on the Commission's own motion to address the monies on deposit with the Commission.

The assigned ALJ has verified with the Commission's Fiscal Office that it is holding the monies that the Welk Group deposited with the Commission when the above-entitled complaint was filed with the Commission. The amount deposited with the Commission in 1993 was \$24,221.50. As of May 17, 2012, the balance, with interest, was \$28,839.92.

Neither the Welk Group, AT&T, nor GTEC, have requested the Commission to send the monies deposited by the Welk Group to them.

Since D.98-03-026 did not decide the merits of the complaint, it is appropriate under the circumstances to order the Commission's Fiscal Office to return the monies deposited by the Welk Group, back to the Welk Group. The Fiscal Office should be ordered to return the balance amount of \$28,839.92, plus any additional interest earned, to the Welk Group. The Fiscal Office should be ordered to prepare a check made payable to The Welk Group, Inc., and to send the check to the following address:

The Welk Group, Inc.
11400 W. Olympic Blvd., #1450
Los Angeles, CA 90064-1649

Due to the passage of time, the Commission's Process Office should be ordered to send a copy of this decision to the representative of the Welk Group who filed the original complaint, to its agent for service of process as listed with the California Secretary of State's office, and to the Welk Group's Director of Business Affairs, Patricia Maduke. Those names and addresses are as follows:

Marc L. Luzzotto
The Welk Group, Inc.
2700 Pennsylvania Avenue
Santa Monica, CA 90404

Stephen Sokol
The Welk Group, Inc.
1299 Ocean Avenue, Suite 800
Santa Monica, CA 90401

Patricia Maduke
The Welk Group, Inc.
11400 W. Olympic Blvd., #1450
Los Angeles, CA 90064-1649

Due to the passage of time, and the change in corporate entities, the Commission's Process Office should be ordered to send a copy of this decision to AT&T Communications of California, Inc., and to Verizon California, Inc. at the addresses on file with the Commission.

4. Comments on Proposed Decision

The proposed decision of ALJ John S. Wong in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code, and comments were allowed pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were filed. However, the Welk Group's Director of Business Affairs did submit a change of address to this commission's Process Office. The Welk Group requests that any monies or notices be sent to 11400 W. Olympic Blvd., #1450, Los Angeles.

5. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and John S. Wong is the assigned ALJ in this proceeding.

Findings of Fact

1. When the Welk Group filed its complaint with the Commission on June 4, 1993, the Welk Group deposited the amount of \$24,221.50 with the Commission.
2. In D.98-03-026, the Commission dismissed the Welk Group's complaint for lack of prosecution.
3. D.98-03-026 did not address the disposition of the monies that the Welk Group had deposited with the Commission.
4. The assigned ALJ in this matter has verified with the Commission's Fiscal Office that it is holding the monies that the Welk Group deposited with the Commission.
5. As of May 17, 2012, the balance on deposit with the Commission, with interest, was \$28,839.92.
6. Neither the Welk Group nor the defendants have requested the Commission to send the monies deposited by the Welk Group to them.

Conclusions of Law

1. This complaint proceeding is being reopened on the Commission's own motion to address the monies on deposit with the Commission.
2. Since D.98-03-026 did not decide the merits of the complaint, it is appropriate under the circumstances to order the Commission's Fiscal Office to return the May 17, 2012 balance in the amount of \$28,839.92, plus any additional interest earned, back to the Welk Group.
3. The Process Office should be ordered to send a copy of this decision to the Welk Group and to the defendants at the addresses specified in this decision.

O R D E R

IT IS ORDERED that:

1. Within ten days from the effective date of this decision, the Commission's Fiscal Office is directed to return the monies that The Welk Group, Inc. deposited with the Commission in Case 93-06-016 on June 4, 1993, to The Welk Group, Inc.:

- a) The Fiscal Office shall prepare a check made payable to "The Welk Group, Inc." in the amount of \$28,839.92, plus any additional interest earned after May 17, 2012; and
- b) The Fiscal Office shall send that check to The Welk Group, Inc. at the following address:

The Welk Group, Inc.
11400 W. Olympic Blvd., #1450
Los Angeles, CA 90064-1649

2. The Commission's Process Office shall mail a copy of this decision to the following representatives of The Welk Group, Inc. at these addresses:

Marc L. Luzzotto
The Welk Group, Inc.
2700 Pennsylvania Avenue
Santa Monica, CA 90404

Stephen Sokol
The Welk Group, Inc.
1299 Ocean Avenue, Suite 800
Santa Monica, CA 90401

Patricia Maduke
The Welk Group, Inc.
11400 W. Olympic Blvd., #1450
Los Angeles, CA 90064-1649

3. The Commission's Process Office shall mail a copy of this decision to AT&T Communications of California, Inc., and to Verizon California, Inc., at the addresses on file with the Commission.

4. Case 93-06-016 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

MAR 12 1998

Decision 98-03-026 March 12, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The Welk Group, Inc.,
Complainant,

vs.

AT&T Communications of California, Inc. (U 5002 C)
and General Telephone of California, Inc. (U 1002 C),
Defendants.

FORMAL FILE COPY

Case 93-06-016
(Filed June 4, 1993)

O P I N I O N

Summary

This decision dismisses this complaint filed by The Welk Group Incorporated (Welk) against AT&T Communications of California, Inc. (AT&T) and General Telephone of California, Inc. (GTEC) for lack of prosecution.

Discussion

Welk filed this complaint against AT&T and GTEC on June 4, 1993. Since its filing, the Commission deferred procedural action on disputed matters with the understanding that Welk was pursuing a related complaint before the Federal Communications Commission (FCC). On February 25, 1994, the FCC sent a letter to Welk stating that Welk had 60 days to file a formal complaint before the FCC or face a potential bar to the filing of such a formal complaint. Welk did not file a formal complaint with the FCC before the end of the 60-day period. The assigned administrative law judges (ALJ) to this complaint issued three rulings over the course of three years to inquire about the status of the complaint. The third such ruling, dated December 2, 1997, directed the complainant to file with the Commission information about Welk's intentions with regard to prosecuting this complaint. It advised Welk that

if it did not file such information by December 30, 1997, the assigned ALJ would recommend dismissal of the complaint for lack of prosecution. Welk did not submit any information to the Commission by December 30, 1997.

The Commission has no evidence to suggest that Welk has pursued its remedies either here or before the FCC since early 1994. Accordingly, this complaint is dismissed for lack of prosecution.

Findings of Fact

1. Welk has not adequately prosecuted this complaint or a related complaint before the FCC.
2. Welk did not respond to the ALJ's ruling dated December 2, 1997 soliciting information about the prosecution of this complaint.

Conclusion of Law

The Commission should dismiss this complaint for lack of prosecution.

O R D E R

IT IS ORDERED that:

1. This complaint is dismissed without prejudice for lack of prosecution.
2. Case 93-06-016 is closed.

This order is effective today.

Dated March 12, 1998, at San Francisco, California.

RICHARD A. BILAS
 President
 P. GREGORY CONLON
 JESSIE J. KNIGHT, JR.
 HENRY M. DUQUE
 JOSIAH L. NEEPER
 Commissioners

Richard A. Bilas
 Richard A. Bilas
 President
 FCC
 3/12/98