

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pac-West Telecomm, Inc. (U5266C),

Complainant,

vs.

Comcast Phone of California, LLC (U5698C),

Defendant.

Case 07-09-010
(Filed September 20, 2007)

DECISION DISMISSING ACTION

Summary

This action is dismissed for delay in prosecution.

Background

Commission records indicate that the last activity in this docket was on March 11, 2013 and consisted of Pac-West Telecomm, Inc.'s (Pac-West) response to Comcast Phone of California, LLC's (Comcast) Motion for a Commission Order. On March 28, 2013 Pac-West filed for relief under Chapter 11 of the United States Bankruptcy Code, Western District of Texas, Case No. 13-10573-hcm and this action was automatically stayed pursuant to Section 362 of the Bankruptcy Code pending further action of the bankruptcy court. The Commission has not received notice of any further action by the bankruptcy court since Pac-West's chapter 11 filing. On December 22, 2014, the assigned Administrative Law Judge (ALJ) issued a ruling indicating his intention to

dismiss the complaint unless Pac-West advised the Commission in writing, no later than January 9, 2015, that it was ready and able to press its claims against Comcast. The December 22nd ruling was sent to Pac-West at its last known address and to James M. Tobin, Pac-West's counsel of record. On December 29, 2014, Mr. Tobin responded to the ruling with a request that he be removed from the case, as well as from all other cases involving Pac-West, stating:

"Please remove me as counsel for Pac-West Telecomm, Inc. from the service list in the above-referenced matter and consolidated cases (Case (C.) 10-01-019, C.10-01-020, and C.10-01-021). This former client has filed for bankruptcy, sold its assets in the bankruptcy proceeding, and is no longer an operating entity to my knowledge."

The Commission received no other response to the ALJ's ruling.

In addition to issuing the December 22nd ruling, the ALJ requested that Commission staff determine, if possible, whether Pac-West was still a viable operating entity. Staff made diligent inquiry through the office of the Secretary of State and through federal bankruptcy records and was unable to locate current corporate offices or officers of Pac-West.

Discussion

The Commission provides a forum for regulated public utilities to conduct disputes among themselves. Although no provision of the Public Utilities Code speaks directly to the steps that the Commission may take in the event that a litigant fails to press its claims, the Commission has broad general powers to take actions that facilitate the accomplishment of its statutory obligations.

Particularly with respect to procedural matters that are not the subject of specific rules under the Public Utilities Code, the Commission has historically looked to the Civil Code and/or the Code of Civil Procedure for guidance. C.C.P.

Section 583.410(a) authorizes involuntary dismissal of a civil action by reason of delay in prosecution, provided complainant has received notice and an opportunity to respond. Involuntary dismissal is particularly appropriate in the circumstances of this case as it appears that Complainant is no longer in existence.

Waiver of Comments on Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Karl J. Bemesderfer is the assigned ALJ in this proceeding.

Findings of Fact

1. Pac-West has taken no steps to press its claims against Comcast since March of 2013.
2. On March 28, 2013 Pac-West filed for relief under Chapter 11 of the United States Bankruptcy Code.
3. On December 22, 2014, the ALJ issued a ruling stating his intention to involuntarily dismiss this case. The ruling was mailed to Pac-West at its last known address and to its counsel of record. The ruling gave Pac-West 18 days in which to respond.
4. Pac-West has not responded to the ruling.
5. Diligent inquiry has failed to located either current corporate offices or officers of Pac-West.

6. Pac-West's counsel of record has asked to be removed from the case and stated that he believes Pac-West is no longer a functioning entity.

Conclusions of Law

1. The Commission has inherent authority to involuntarily dismiss this case.
2. This case should be dismissed.

O R D E R

IT IS ORDERED that:

1. Case 07-09-010 is dismissed without prejudice.
2. Case 07-09-010 is closed.

This order is effective today.

Dated _____, at San Francisco, California.