

Decision 15-02-010 February 12, 2015

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pac-West Telecomm, Inc. (U5266C),
Complainant,

Complaint 09-12-014
(Filed December 9, 2009)

vs.

Sprint Spectrum, L.P., Wireless Co. L.P.,
Sprint Telephony PCS, L.P., Nextel of
California, Inc. and jointly d/b/a Sprint PCS
(U3062C, U3064C, and U3066C),
Defendants

And Related Matters.

Complaint 10-01-019
Complaint 10-01-020
Complaint 10-01-021

DECISION DISMISSING ACTIONS

SUMMARY

These consolidated actions are dismissed for delay in prosecution.

1. BACKGROUND

On March 28, 2013 Pac-West Telecom, Inc. (Pac-West) filed for relief under Chapter 11 of the United States Bankruptcy Code, Western District of Texas, Case No. 13-10573-hcm and these actions were 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 cases 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 the Defendants. The December 22d 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 (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 22d 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.

2. 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 these cases as it appears that Complainant is no longer in existence.

FINDINGS OF FACT

1. Pac-West has taken no steps to press its claims against any of the named Defendants since March 28, 2013.
2. On March 28, 2013 Pac-West filed for relief under Chapter 11 of the United States Bankruptcy Code.
3. On December 22d the ALJ issued a ruling stating his intention to involuntarily dismiss these cases. The ruling was mailed to Pac-West at its last known address and to its counsel of record. The ruling gave Pac-Wet 18 days in which to respond.
4. Pac-West has not responded to the ruling.
5. Diligent inquiry has failed to locate either current corporate offices or officers of Pac-West.
6. Pac-West's counsel of record has asked to be removed from these cases 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 these cases.
2. These cases should be dismissed.

ORDER

1 Case (C.) 09-12-014, C.10-01-019, C.10-01-020, and C.10-01-021 are dismissed with prejudice.

2. Case (C.) 09-12-014, C.10-01-019, C.10-01-020, and C.10-01-021 are closed.

Dated February 12, 2015, at San Francisco, California

MICHAEL PICKER

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

CARLA J. PETERMAN

LIANE M. RANDOLPH

Commissioners