

Decision 12-05-029 May 24, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pacific Bell Telephone Company d/b/a AT&T
California (U1001C),

Complainant,

vs.

Fones4All Corporation (U6338C),

Defendant.

Case 06-03-013
(Filed March 10, 2006)

DECISION DISMISSING COMPLAINT WITHOUT PREJUDICE

Summary

In this decision, we dismiss without prejudice the remaining issue of Pacific Bell Telephone Company d/b/a/ AT&T California (U1001C) in its complaint against Fones4All Corporation (U6338C).

Procedural Background

On March 10, 2006, Pacific Bell Telephone Company d/b/a/ AT&T California (AT&T) filed this complaint against Fones4All Corporation (Fones4All) to recover alleged overcharges AT&T paid to Fones4All. Following an evidentiary hearing, the Commission issued Decision (D.) 07-07-013, granting the relief AT&T requested. The decision awarded remuneration of approximately \$2.6 million, plus interest.

In March 2008, AT&T filed a motion stating that Fones4All had failed to pay the awarded amount. AT&T alleged that it had evidence that at least one Fones4All officer had been “siphoning off” Fones4All’s assets. AT&T proposed an expedited discovery schedule in an effort to gather evidence to pierce the corporate veil and collect the debt owed by Fones4All. Fones4All opposed the motion. On April 15, 2008, the Commission granted the motion, and set an evidentiary hearing to address the corporate veil piercing issue.

On July 11, 2008, Fones4All filed a motion to dismiss the April 15, 2008 ruling. In August 2008, Fones4All’s motion was denied. Evidentiary hearings were set to start on August 5, 2008, but Fones4All declared bankruptcy the same month. The proceeding was stayed and evidentiary hearings on the corporate veil piercing issue were never held. The bankruptcy proceeding is still pending.

AT&T has asserted the same veil piercing claim in the bankruptcy proceeding. (AT&T’s motion at 1.) AT&T asserts that as complainant it has a unilateral right to dismissal prior to evidentiary hearings and that administrative efficiency would be better served by dismissing the veil piercing claims in this proceeding, without prejudice, and allowing the claims to be adjudicated in the bankruptcy proceeding.

AT&T’s motion is unopposed.

Discussion

AT&T has moved to dismiss on the following grounds: (1) AT&T asserts it has a unilateral right to dismissal without prejudice because there has not yet been an evidentiary hearing on the veil piercing issue; and (2) a dismissal would promote administrative efficiency.

Parties do not have a unilateral right to dismissal prior to hearings. Prior to dismissing a case, the Commission must consider how the public interest is

implicated. Although the procedural status of a case may be a factor in evaluating the nature of the public interest, it is not determinative. (*See, e.g.,* D.01-02-017 (denying all-party motion to dismiss on the basis that despite the fact evidentiary hearings had not been held, the public interest required the proceeding to remain open).)

In the instant case, the public interest would not be served by keeping this proceeding open. In addition, the Commission agrees that in the interest of administrative efficiency, the issue should be dismissed and adjudicated in the bankruptcy court.

Waiver of Comment Period

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.(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and ALJ Dorothy Duda is the assigned ALJ in this proceeding.

Findings of Fact

1. The complaint was filed March 10, 2006 and a decision was issued in 2007.
2. The only remaining issue is whether AT&T can pierce the corporate veil to collect the remuneration awarded in D.07-07-013.
3. Evidentiary hearings on the corporate veil piercing issue were scheduled for August 5-6, 2008.
4. Fones4All filed for bankruptcy, staying this proceeding and postponing the evidentiary hearings.
5. AT&T filed this motion to dismiss without prejudice on January 6, 2012.

6. This motion is unopposed.

7. This Commission has authority to dismiss a complaint case without prejudice where there is no public interest served by keeping the proceeding open.

8. The public interest is not served by keeping this proceeding open.

9. Allowing the corporate veil piercing issue to be addressed in only one proceeding will promote administrative efficiency.

Conclusions of Law

1. This case should be dismissed without prejudice.

2. In the event AT&T wishes to revive this case after the Fones4All bankruptcy proceeding is concluded, AT&T may do so by filing a petition to reopen.

3. In the event the petition to reopen described in the preceding Conclusion of Law is granted, the corporate veil piercing issue shall continue to be deemed timely upon the reopening of the case.

4. This decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Case 06-03-013 is dismissed without prejudice.

2. Case 06-03-013 closed.

This order is effective today.

Dated May 24, 2012, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners