

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's Own Motion Into the Fitness of the Officers, Directors, Owners and Affiliates of Clear World Communications Corporation, U-6039, Including Individual Officers, Directors and Shareholders James, Michael, and Joseph Mancuso, and Into the Conduct of Other Utilities, Entities, or Individuals (including Christopher Mancuso) Who or That May Have Facilitated the Mancusos' Apparent Unlicensed Sale of Telecommunications Services.

Investigation 04-06-008
(Filed June 9, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING DENYING
MOTION TO COMPEL WITHOUT PREJUDICE TO REFILE**

1. Summary

The Consumer Protection and Safety Division (CPSD) moves for an order compelling Clear World Communications Corporation (Clear World), James Mancuso and Michael Mancuso to respond more fully to the data requests propounded by the Commission in Ordering Paragraph 8 and Appendix A of this Order Instituting Investigation (OII). Clear World responds that (1) CPSD has declined to meet and confer on the discovery requests, and (2) depositions of Clear World's accountants scheduled by CPSD for August 12, 2004, may provide much of the information that CPSD seeks. Ordering Paragraph 10.2 of the OII and Resolution ALJ-164 require a "meet and confer," and a motion to compel is

premature until that requirement is met. CPSD's motion to compel is denied, without prejudice to refile as described below.

2. Background

CPSD claims that Clear World's responses to the data and document requests set forth in Appendix A of the OII are incomplete and, as to the information supplied, lack proper verification. Among other things that are more generally stated, CPSD seeks an order requiring further response to the following:

- Telephone numbers of employees;
- Compensation paid to James, Michael, Joseph and Christopher Mancuso;
- Specified banking and financial information;
- Notes and switching information for 69 customers who alleged that they were slammed;
- Information on direct billed customers and revenue they produced;
- Information on the purchase of predecessor companies;
- Data on payment of public interest surcharges;
- Verification by appropriate custodians; and
- Verifications by James Mancuso and Michael Mancuso.

Clear World argues that it already has supplied thousands of documents to CPSD, that much of the additional information sought could have been resolved in a good faith "meet and confer," and that depositions scheduled by

CPSD for August 12, 2004, in Los Angeles with two executives of Clear World's accountancy firm, Stephens, Reidinger Beller LLP, are likely to provide much of the information sought in the motion to compel.

3. Analysis

CPSD states in its motion:

Clear World and the Mancusos have largely failed to comply with the OII, as set out below. In lieu of a "meet and confer," CPSD provided notice of this failure to Clear World and the Mancusos on July 14, 2004, and requested their prompt compliance with the OII." (CPSD Motion to Compel, at 2; footnote omitted.)

In a footnote explaining its reference to the "meet and confer," CPSD states: "Staff does not believe that it would be proper to negotiate compliance with a Commission Order."

As Clear World points out, Resolution ALJ-164 (establishing the Commission's law and motion procedure to hear discovery disputes) provides: "No discovery dispute shall be eligible for law and motion resolution unless the parties to the dispute have previously met and conferred in a good faith effort to informally resolve the dispute." Moreover, Ordering Paragraph 10.2 of the OII provides in pertinent part:

Meet and Confer: Staff and Respondents are directed to meet and confer with the several producing parties in order to establish which Attachments and Supporting Documents may be released as unrestricted, which Attachments and Supporting documents may only be produced to Respondents herein as "confidential," which Attachments and Supporting Documents may only be produced to Respondents as "attorneys-eyes-only" confidential, and whether some of the Attachments and Supporting Documents may be redacted or other accommodations reached in order to avoid a "confidential" or "attorneys-eyes-only" designation.

In view of these explicit requirements, it is difficult to understand CPSD's unilateral position that it will not meet and confer because it will not negotiate compliance with a Commission Order. The purpose of a meet and confer requirement is to *facilitate* compliance with discovery demands through, among other things, a discussion of what information is and is not available, where and in what form data can be supplied, what confidentiality considerations apply, and what data, specifically, should be addressed in a motion for a protective order or in a motion to compel. Without such a good faith effort to narrow any differences in the scope of discovery, a motion to compel is premature.

Moreover, if Clear World is correct in its assertions, the depositions of outside accountants by CPSD will provide at least some of the information that CPSD seeks. The depositions also provide an opportunity for the parties to arrange to meet and confer as to specific additional information that may or may not be required after the deposition testimony and documents have been evaluated.

Finally, I am troubled by CPSD's assertion that it will not engage in settlement discussions unless Clear World first supplies financial information in a manner satisfactory to CPSD. The Assigned Commissioner and I directed that settlement discussions be conducted, and we did not authorize a discovery condition that would have to be met prior to beginning these discussions. The parties have now been invited to select one of three available mediation/settlement judges, and I expect settlement discussions to take place as the settlement judge directs. CPSD's request for financial information can be made part of those discussions in the event the requests are not resolved by the "meet and confer" or depositions.

4. Conclusion

Because CPSD has not complied with the meet and confer requirements of our discovery rules and of the OII, its motion to compel is premature. The motion is denied, without prejudice to refile when CPSD can show that it has sought to comply with its meet and confer obligations and that settlement discussions have at least begun. If and when a motion to compel is filed again, it should state specifically (rather than generally) what data CPSD has received from Clear World in response to Appendix A of the OII and what specific data it regards as missing from Clear World's responses.

IT IS RULED that:

1. The Motion of Consumer Protection & Safety Division (CPSD) to Compel Compliance with the Disclosure Provisions of the Order Instituting Investigation 04-06-008 is denied without prejudice to refile.
2. CPSD may refile its motion to compel compliance when it can show that it has sought to comply with its meet and confer obligations and that settlement discussions have at least begun.

Dated August 13, 2004, at San Francisco, California.

/s/ GLEN WALKER

Glen Walker
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties who have provided an electronic mail address, this day served a true copy of the original attached Administrative Law Judge’s Ruling Denying Motion to Compel Without Prejudice to Refiling on all parties of record in this proceeding or their attorneys of record.

Dated August 13, 2004, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

N O T I C E

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