

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of
Direct Dial Audio Corp.,
Complainant,
v.
Verizon Communications, Inc.
and SBC Communications, Inc.,
Defendants.
File No. EB-02-MD-037

MEMORANDUM OPINION AND ORDER

Adopted: December 12, 2002

Released: December 13, 2002

By the Deputy Chief, Market Disputes Resolution Division, Enforcement Bureau:

1. On or about October 9, 2002, Direct Dial Audio Corp. ("DDA") filed with the Commission documents complaining about alleged violations of the Communications Act of 1934, as amended ("Act"), by Verizon Communications, Inc. ("Verizon") and SBC Communications, Inc. ("SBC").

2. It is difficult to discern precisely what these documents purport to be under the Commission's rules. Construing these documents most liberally in favor of DDA, we will assume that they were intended to be either applications for review of a Commission staff decision to close an informal complaint proceeding initiated by DDA pursuant to sections 1.711-1.718 of the

1 For administrative convenience, these filings have been consolidated into one docket. See 47 U.S.C. § 154(j).

2 See, e.g., Direct Dial Audio Corp. v. SBC, et al., Case No. 1:02cv44 (W.D.Mich. Sept. 16, 2002) (Hillman, J.); Direct Dial Audio Corp. v. Verizon-GTE, et al., Case No. 1:02cv107 (W.D.Mich. Sept. 16, 2002) (Hillman, J.) (collectively, "Federal Court Opinions").

Commission's rules,³ or formal complaints pursuant to sections 1.720-1.736 of the Commission's rules.⁴ In either situation, for the reasons described below, DDA's filings are patently meritless, almost to the point of being frivolous.

3. In 2001, DDA filed with the Commission an informal complaint against Verizon and SBC concerning essentially the same circumstances as those described in the documents filed by DDA in this matter.⁵ Both SBC and Verizon responded to DDA's informal complaint on June 15, 2001.⁶ Commission staff closed that proceeding no later than March 21, 2002, when Commission staff notified DDA in writing that "the Consumer Information Bureau has closed the file on the above referenced informal complaint, in accordance with Section 1.717 of the Commission's Rules."⁷

4. Under the Commission's rules, if DDA was dissatisfied with either the defendants' responses or the Commission's closure of the informal complaint proceeding, DDA's remedy was to timely file a formal complaint, *not* to file an application for review.⁸ Moreover, even assuming, *arguendo*, that DDA could have properly filed an application for review, DDA failed to do so within the 30-day period prescribed by section 1.115(d) of the Commission's rules.⁹ Thus, if the instant filings are, indeed, applications for review, they must be dismissed.

5. If, on the other hand, the instant filings are formal complaints, they fail to conform to the Commission's rules in ways too numerous to mention.¹⁰ Thus, the instant filings must be dismissed for these failures, as well.

6. In conclusion, we note that the *Federal Court Opinions* found DDA's filings in those matters to be so frivolous as to warrant an award of attorney fees as a sanction for violation of Fed.R.Civ.P. 11. The instant filings in this matter approach a similar level of frivolousness, and the Commission, like federal courts, forbids such improper submissions.¹¹ Consequently, we urge DDA and its counsel to act in accordance with this prohibition in the future.

³ 47 C.F.R. §§ 1.711-1.718.

⁴ 47 C.F.R. §§ 1.720-1.736.

⁵ *Direct Dial Audio Corp. v. SBC and Verizon*, IC-01-N50387.

⁶ See Letter dated March 21, 2002 from Thomas D. Wyatt, Associate Chief, Consumer Information Bureau, FCC to David Walker, Direct Dial Audio Corp., *Direct Dial Audio Corp. v. SBC and Verizon*, IC-01-N50387.

⁷ *Id.*

⁸ See 47 C.F.R. §§ 1.717-1.718.

⁹ 47 C.F.R. § 1.115(d).

¹⁰ See 47 C.F.R. §§ 1.720-1.722.

¹¹ See, e.g., 47 C.F.R. § 1.52; Public Notice, 11 FCC Rcd 3030 (1996).

7. Accordingly, it is hereby ORDERED that, pursuant to sections 1, 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 208, and sections 1.52, 1.115(d), and 1.711-1.736 of the Commission's rules, 47 C.F.R. §§ 1.52, 1.115(d), 1.711-1.736, and authority delegated by sections 0.111, and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, the filings of DDA referenced herein ARE DISMISSED, and the proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Radhika V. Karmarkar
Deputy Chief, Market Disputes Resolution Division
Enforcement Bureau