

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

In the Matter of
Notesan Pty. Ltd.,
Complainant,
v.
Neptune Communications, LLC,
Alaska Communications Systems, Inc.,
and WCI Cable, Inc.,
Defendants.
File No. EB-02-MDIC-0051

ORDER

Adopted: June 5, 2003

Released: June 9, 2003

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

1. On July 11, 2002, Notesan Pty. Ltd. ("Notesan") filed an informal complaint against WCI Cable, Inc. ("WCI"), Neptune Communications, LLC ("Neptune"), and Alaska Communications Systems, Inc. ("ACS") pursuant to section 208 of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 208, and sections 1.711-1.718 of the Commission's rules. 47 C.F.R. §§ 1.711-1.718. Notesan's informal complaint alleges, inter alia, that ACS has obtained de facto control of certain licensed facilities owned by Neptune, in violation of section 214 of the Act and section 1.767 of the Commission's rules. 47 U.S.C. § 214; 47 C.F.R. § 1.767. As of this date, Neptune and ACS have responded to the informal complaint pursuant to section 1.717 of the Commission's rules, 47 C.F.R. §§ 1.717, but WCI has not.

2. Pursuant to section 1.718 of the Commission's rules,¹ Notesan originally had to convert its informal complaint into a formal complaint within six months of the date of the defendant carriers' reports (in this case, Notesan filed on August 30, 2002, and ACS filed on September 4, 2002) to ensure that, for purposes of the statute of limitations, the filing date of the formal complaint would relate back to the filing date of the informal complaint. On January 13, 2003, Notesan filed a motion seeking a three month extension (i.e., to June 6, 2003) of this

¹ 47 C.F.R. § 1.718.

deadline, for the following reasons: (1) one of the defendants had not yet replied to the informal complaint, (2) there was some overlap between the issues raised by Notesan and those being reviewed by the Alaska Regulatory Commission of Alaska; and, (3) Notesan was trying to settle the matters raised in the informal complaint.² That motion was granted on February 3, 2003.³

3. On June 4, 2003, Notesan filed a second motion for an additional three month extension to convert its informal complaint into a formal complaint. It notes again that the investigation being conducted by the Regulatory Commission of Alaska remains ongoing and that the investigation has had several developments that complicate the issues raised in its Informal Complaint. Notesan adds that the parties remain in the process of attempting to settle the issues raised in the Informal Complaint.

4. We have reviewed Notesan's motion and find that it has merit. First, no defendant has opposed Notesan's motion.⁴ Moreover, granting Notesan's motion will serve the public interest by promoting the private resolution of disputes and by postponing the need for further litigation and expenditure of further time and resources of the parties and of this Commission until such time as may actually be necessary.

5. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 208, and sections 1.3 and 1.718 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.718, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that Notesan's Request for Waiver of Commission Rule 1.718(a) IS GRANTED.

6. IT IS FURTHER ORDERED that, unless otherwise extended by order, the deadline that would otherwise apply under section 1.718 of the Commission's rules, 47 C.F.R. § 1.718, is hereby waived. Notesan Pty Ltd.'s prior June 6, 2003 conversion date is further extended so that it must convert its informal complaint against Neptune Communications, LLC, ACS Affiliates, and WCI Cable into a formal complaint pursuant to section 1.718 of the Commission's rules, 47 C.F.R. § 1.718, by **Monday, September 6, 2003**.

FEDERAL COMMUNICATIONS COMMISSION

² See *Notesan Pty. Ltd. v. Neptune Communications, LLC, Alaska Communications Services, Inc., and WCI Cable, Inc.*, Letter from William K. Coulter, Attorney for Complainant to Marlene H. Dortch, Secretary, FCC, File No. EB-02-MDIC-0051 (January 13, 2003).

³ *Notesan Pty. Ltd. v. Neptune Communications, LLC, Alaska Communications Services, Inc., and WCI Cable, Inc.*, Order, DA 02-2511, (rel. Feb. 3, 2003).

⁴ See Email correspondence from William K. Coulter, Coudert Brothers LLP to Tracy Bridgham, EB/MDRD, Federal Communications Commission, June 5, 2003 (confirming consent of Neptune and WCI) attached hereto; Email correspondence from William K. Coulter, Coudert Brothers LLP to Tracy Bridgham, EB/MDRD, Federal Communications Commission, June 5, 2003 (confirming consent of ACS) attached hereto.

Alexander P. Starr, Chief
Market Disputes Resolution Division
Enforcement Bureau

Email Correspondence
See Footnote 4

First Email, dated June 5, 2003:

From: Coulter, William
To: Tracy Bridgham
Date: 6/5/03 12:02PM
Subject: URGENT: Notesan Request for Waiver

Tracy,

I received a voice call from Neptune (Neptune owns and controls WCI) Counsel just now saying "the parties will not oppose" the extension request." They did not oppose before either.

Counsel for ACS (who is in Alaska) said that we "did not oppose prior extensions and we do not anticipate opposing now", but Alaska is still asleep...he will confirm within the next 2 hours.

Bill

703-283-2728
202-736-1811

Second Email, Dated June 5, 2003

From: Coulter, William
To: Tracy Bridgham
Date: 6/5/03 3:32PM
Subject: RUSH: Notesan Request for Waiver

I spoke to Counsel for ACS...he said they are "inclined not to oppose."