

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Frank Winsor Burbank)	
and Barbara Gail Burbank,)	File No. EB-04-TC-F-001
)	
Complainant,)	
)	
v.)	
)	
OnStar Corporation,)	
)	
Defendant.)	

ORDER

Adopted: August 26, 2004

Released: August 27, 2004

By the Chief, Telecommunications Consumers Division, Enforcement Bureau:

I. INTRODUCTION

1. In this Order, we grant the Joint Motion to Dismiss with Prejudice (Joint Motion) filed on August 20, 2004, by Complainants, Frank Winsor Burbank and Barbara Gail Burbank (Burbanks), and Defendant, OnStar Corporation (OnStar).¹ The Joint Motion resolves the outstanding issues in the formal complaint filed, pursuant to Section 255 of the Communications Act of 1934, as amended (the Act),² by the Burbanks against OnStar. We find that granting the parties’ Joint Motion will serve the public interest by promoting the private resolution of disputes and by eliminating the need for further litigation and the expenditure of further time and resources of the parties and this Commission.

II. BACKGROUND

¹ See Joint Motion to Dismiss Formal Complaint with Prejudice, Frank Winsor Burbank and Barbara Gail Burbank & OnStar Corporation, File No. EB-04-TC-F-001, filed Aug. 20, 2004.

² See 47 U.S.C. § 255. Section 255 provides, in pertinent part, that manufacturers of telecommunications equipment or customer premises equipment, as well as providers of telecommunications services, must make their products and services “accessible” to and usable by individuals with disabilities, if “readily achievable.”

2. On February 2, 2004, pursuant to Section 255 and the Commission's implementing rules and orders,³ the Burbanks filed a formal complaint against OnStar alleging that the OnStar telecommunications system is not accessible to persons with hearing disabilities in violation of Section 255. The Burbanks assert that OnStar, among other things, failed to make accessible certain features of the wireless telephone functions and telecommunications services that are indispensable to the OnStar telecommunications system, even though accessibility for these functions and services is readily achievable. The Burbanks request that the Commission require OnStar to make adjustments to its telecommunications system to make it accessible to, and usable by, persons with hearing disabilities.⁴

3. On June 3, 2004, the Burbanks filed an Amended Complaint, at the direction of Commission staff.⁵ On June 14, 2004, OnStar filed an Answer to the complaint.⁶ On July 28, 2004, a status conference was held at Commission headquarters; the parties, their attorneys, and their respective engineers and technical experts attended the conference. Commission staff facilitated the discussion and encouraged participants to discuss potential settlement opportunities.

4. Subsequent to the status conference, the parties held settlement discussions to resolve the disputed issues in the formal complaint. As a result of these discussions, the parties executed a settlement agreement and filed the above-referenced Joint Motion for dismissal of the Burbanks' formal complaint against OnStar.

III. DISCUSSION AND ORDERING CLAUSES

5. The Commission has broad discretion to conduct complaint proceedings "in a manner that will best conduce to the proper dispatch of business and to the ends of justice."⁷ Although the Commission does not have a specific rule relating to the dismissal of formal complaints, we generally follow the well-established principle that dismissal should be allowed unless it will materially prejudice either party.⁸

6. Under the circumstances of this case, dismissing the complaint with prejudice is appropriate and does not materially prejudice either the Burbanks or OnStar. Dismissal is in the public interest because it ensures the efficient use of the Commission's formal complaint process and eliminates the need for further litigation and expenditure of additional time and resources of the parties and the Commission. Hence, we find that the parties have shown good cause for us to dismiss the Burbanks' formal complaint with prejudice.

³ Sections 6.1 – 7.23 of the Commission's rules, 47 C.F.R. §§ 6.1 – 7.23, implement Section 255. *See also In the Matter of Implementation of Sections 255 and 251(a)(2) of the Communications Act, Access (continued....) to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, Report and Order, 16 FCC Rcd 6417 (1999) ("Section 255 Order"). In the *Section 255 Order*, the Commission noted that "[p]rompt and efficient enforcement of Section 255 and the rules adopted in this Order is a crucial component of successful implementation of the accessibility requirements" *Section 255 Order*, 15 FCC Rcd at 6441.

⁴ *See* Burbanks' Formal Complaint, File No. EB-04-TC-F-001, filed Feb. 2, 2004.

⁵ *See* Burbanks' Amended Complaint, File No. EB-04-TC-F-001, filed June 3, 2004.

⁶ *See* OnStar, Answer to the Burbanks' Amended Complaint, File No EB-04-TC-F-001, filed June 14, 2004.

⁷ 47 U.S.C. § 4(i), *see also* 47 U.S.C. § 4(j).

⁸ *See* Wright & Miller, *Federal Practice & Procedure: Civil 2d* § 2364.

7. 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), 208, and section 1.727 of the Commission's rules, 47 C.F.R. § 1.727, 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 the Joint Motion to Dismiss Formal Complaint with Prejudice filed by the parties to this proceeding IS GRANTED.

8. IT IS FURTHER 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), 208, and section 1.727 of the Commission's rules, 47 C.F.R. § 1.727, 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 the Burbanks' formal complaint is hereby DISMISSED WITH PREJUDICE and that the above-captioned formal complaint proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Colleen K. Heitkamp
Chief, Telecommunications Consumers Division
Enforcement Bureau