

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

In the Matter of
APCC Services, Inc.,
Complainant,
v.
Pulsar Communications, Inc.,
Defendant.
File No. EB-08-MD-011

ORDER OF DISMISSAL

Adopted: September 14, 2009

Released: September 14, 2009

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

- 1. In this Order we dismiss, with prejudice, a formal complaint in the captioned proceeding.

The Complaint

2. On December 10, 2008, APCC Services, Inc. ("APCC") filed a formal complaint against Pulsar Communications, Inc. ("Pulsar") under section 208 of the Communications Act of 1934, as amended ("Act").

Pulsar's Failure to Answer

3. Under the Commission's formal complaint rules, Pulsar's answer to APCC's complaint was due by January 9, 2009. Pulsar did not submit an answer by that date. Commission staff accordingly sent an e-mail to the parties on January 14, 2009 attempting to schedule a conference call to discuss next steps in the case.

1 47 U.S.C. § 208.

2 47 U.S.C. §§ 201(b), 276. See APCC Services, Inc. v. Pulsar Communications, Inc., File No. EB-08-MD-011 (filed Dec. 10, 2008).

3 Notice of Formal Complaint, File No. EB-08-MD-011 (Dec. 18, 2008) at 2 ("Notice of Formal Complaint").

4 E-mail, with attachment, to Jacqueline Spindler, FCC, from Kathy Baker and Keith Liljestrand, representatives of Pulsar, File No. EB-08-MD-011 (Jan. 15, 2009) ("Pulsar Memorandum").

5 Letter to Albert H. Kramer and Jacob S. Farber, counsel for APCC, and Keith Liljestrand and Kathy Baker, representatives of Pulsar, from Jacqueline Spindler, FCC, File No. EB-08-MD-011 (Jan. 22, 2009) ("January 22 Letter"). See 47 C.F.R. §§ 1.720, 1.724, 1.728.

attempted again to schedule a conference call with the parties.<sup>6</sup> Pulsar failed to respond to the January 22 Letter as well.

4. On January 27, 2009, Commission staff sent another letter detailing the numerous ways in which the Pulsar Memorandum did not satisfy the Commission's rules.<sup>7</sup> The January 27 Letter further stated that Pulsar had "one final opportunity . . . to submit an answer that complies fully with Commission rules," and that, if Pulsar did not do so by February 23, 2009, APCC could pursue a default judgment.<sup>8</sup> Pulsar did not respond to the January 27 Letter.

#### **APCC's Failure to Pursue a Default Judgment or Seek Dismissal**

5. On March 4, 2009, Commission staff held a telephone conference in which both parties were asked to participate, but only counsel for APCC participated. During that call, staff advised APCC that it had the option of pursuing a default judgment against Pulsar. Staff instructed APCC that it must, on or before April 20, 2009, either (1) file a motion for default judgment, or (2) withdraw the complaint. Commission staff further stated that, if APCC failed to take either of those steps, it risked dismissal of the complaint for failure to prosecute. Staff memorialized those rulings in a letter dated March 5, 2009.<sup>9</sup>

6. On April 10, 2009, APCC filed a Motion for Extension of Time and Request for Expedited Decision, requesting an additional 90 days (until July 19, 2009) to file a motion for a default judgment against Pulsar.<sup>10</sup> APCC sought an extension of the April 20, 2009 filing deadline in order to pursue settlement discussions with another carrier (Teleconnection, Inc.) about "many of the same calls that are at issue in the . . . [Pulsar] formal complaint."<sup>11</sup> In the Motion for Extension, APCC also sought an expedited ruling from staff, arguing that Pulsar should be granted no more than three business days to respond or oppose the motion.<sup>12</sup> In support of its request for an expedited decision, APCC noted that its default judgment motion filing deadline was imminent and that Pulsar repeatedly had been unresponsive in this proceeding.<sup>13</sup>

7. On April 13, 2009, staff directed Pulsar to respond to APCC's Motion for Extension by April 15, 2009.<sup>14</sup> Pulsar did not respond. Staff then granted the requested extension, ordering APCC either to file a motion for default judgment or withdraw its formal complaint against Pulsar by July 19, 2009. The ruling again warned APCC that a failure to take either of these steps could result in a dismissal for failure to prosecute.<sup>15</sup>

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<sup>6</sup> January 22 Letter at 2.

<sup>7</sup> Letter to Albert H. Kramer and Jacob S. Farber, counsel for APCC, and Keith Liljestrand and Kathy Baker, representatives of Pulsar, from Jacqueline Spindler, FCC, File No. EB-08-MD-011 (Jan. 27, 2009) ("January 27 Letter").

<sup>8</sup> January 27 Letter at 3.

<sup>9</sup> Letter to Albert H. Kramer and Jacob S. Farber, counsel for APCC, and Keith Liljestrand and Kathy Baker, representatives of Pulsar, from Jacqueline Spindler, FCC, File No. EB-08-MD-011 (Mar. 5, 2009) ("March 5 Letter").

<sup>10</sup> APCC Motion for Extension of Time and Request for Expedited Decision, File No. EB-08-MD-011 (filed Apr. 10, 2009) at 1 ("Motion for Extension").

<sup>11</sup> *Id.* at 2 & n.3 (appending a copy of the informal complaint filed against Teleconnection).

<sup>12</sup> Motion for Extension at 2. Under the Commission's rules, oppositions to motions filed in formal complaint proceedings must be filed within five business days of the motion's filing. 47 C.F.R. § 1.727(e).

<sup>13</sup> *Id.* at 1.

<sup>14</sup> Letter to Albert H. Kramer and Jacob S. Farber, counsel for APCC, and Keith Liljestrand and Kathy Baker, representatives of Pulsar, from Jacqueline Spindler, FCC, File No. EB-08-MD-011 (Apr. 13, 2009).

<sup>15</sup> Letter to Albert H. Kramer and Jacob S. Farber, counsel for APCC, and Keith Liljestrand and Kathy Baker, representatives of Pulsar, from Jacqueline Spindler, FCC, File No. EB-08-MD-011 (Apr. 16, 2009).

### Analysis

8. The Commission will dismiss a complaint for failure to prosecute when “it is apparent that complainant has ceased to pursue its complaint.”<sup>16</sup> The facts here demonstrate that APCC has abandoned its complaint against Pulsar.

9. As explained above, APCC participated in a discussion with Commission staff regarding the necessity of APCC either withdrawing the complaint or filing a motion for default judgment by a date certain. Commission staff memorialized that ruling in an order, which established an April 20, 2009 deadline. When APCC was concerned that it would be unable to meet the Commission’s April deadline, it filed the Motion for Extension, arguing that an expedited decision was necessary in light of the looming due date. We agreed with APCC, and granted an extension to July 19, 2009.

10. Nonetheless, APCC allowed the July 19, 2009 deadline to come and go without seeking a further extension. And nearly two more months have since passed without word from APCC about pursuing a default judgment against Pulsar. APCC’s failure to timely withdraw the complaint, or file a motion for default judgment, leads us to conclude that dismissal is warranted.<sup>17</sup> Termination of this matter will serve the public interest by eliminating the need for the expenditure of further time and resources by the Commission, and by affording Pulsar certainty about the status of the claims against it.

### Ordering Clause

11. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), 208 and 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 208, and 276, and sections 1.720-1.736 of the Commission’s rules, 47 C.F.R. §§ 1.720-1.736, and the authority delegated by sections 0.111 and 0.311 of the Commission’s rules, 47 C.F.R. §§ 0.111, 0.311, that the above-captioned complaint IS DISMISSED WITH PREJUDICE and that this proceeding IS TERMINATED in its entirety.<sup>18</sup>

FEDERAL COMMUNICATIONS COMMISSION

Lisa B. Griffin  
Deputy Chief, Market Disputes Resolution Division  
Enforcement Bureau

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<sup>16</sup> *Voice Networks, Inc. v. U S West Wireless, L.L.C.*, Order, 16 FCC Rcd 4904, 4906, ¶ 6 (Enf. Bur. 2001); *Nassau Communications Network, Inc. v. National Communications Network, Inc.*, Order, 12 FCC Rcd 15191, 15194, ¶ 6 (Com. Car. Bur. 1997); *Cellular Marketing Inc. v. Houston Cellular Telephone Co.*, Order, 10 FCC Rcd 8897, 8897, ¶ 7 (Wireless Bur. 1995).

<sup>17</sup> *Cf. NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008) (vacating as arbitrary and capricious the FCC’s decision to waive a complaint filing deadline).

<sup>18</sup> *See APCC Services, Inc. v. Advance Business Tel.*, Order, 17 FCC Rcd 13479, 13481, ¶ 5 (Enf. Bur. 2002) (dismissing, without prejudice, a complaint APCC failed to prosecute against a defendant that did not file an answer and warning APCC that “future instances of failing to adhere to our rules [regarding the necessity of either pursuing a default judgment or withdrawing complaints] **will result in dismissal with prejudice**”) (emphasis added).