

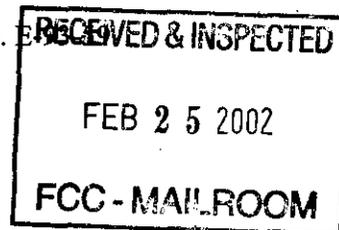
Before the
Federal Communications Commission
Washington, D.C. 20554

FCC 02M-14
00958

In the Matter of)
)
C. F. Communications Corp., et al.,)
)
Complainants,)
)
v.)
)
Century Telephone of Wisconsin, Inc., et al.,)
)
Defendants.)

EB Docket No. 01-99

File No. E-93-59



MEMORANDUM OPINION AND ORDER

Issued: February 19, 2002 ; Released: February 21, 2002

Under consideration are a Motion for Final Settlement Ruling, filed on February 7, 2002, by "the complainants [sic] in File No. E-93-59" ("Movant"), and an Opposition to Motion for Settlement Ruling, filed on February 13, 2002, by Verizon New York Inc. ("Verizon").

According to Movant, in February 1993, New York Pay Phone Systems, Inc. ("NY Pay Phone"), filed with the Commission a formal complaint against New York Telephone Company, now known as Verizon.¹ Movant states that, at the time, the sole shareholders of NY Pay Phone were David E. Singleton and Robert A. Howe, and that Singleton served as NY Pay Phone's president. Movant avers that, in December 1998, Singleton and Howe sold all of NY Pay Phone's common stock to Alpha Telecom, Inc. ("Alpha"), through a Stock Purchase Agreement.² Movant alleges that, under the terms of the agreement, NY Pay Phone assigned to Singleton and Howe its interest in any settlement proceeds resulting from File No. E-93-59. In support of these assertions, Movant has attached to its motion a copy of the agreement and one exhibit thereto.

In an affidavit appended to Movant's motion, Singleton states that, at the time he and Howe signed the agreement, he (Singleton) understood that they would be entitled to any settlement proceeds from File No. E-93-59. In addition, Singleton maintains that, because of his interest in the settlement proceeds, he was the sole representative of Movant to assist Movant's counsel with the prosecution of the formal complaint, and he assisted counsel with the preparation of interrogatories, responses to document requests, preparation for hearings, and settlement negotiations. Singleton also contends that no representative from Alpha assisted in any manner in the prosecution of File No. E-93-59.

Movant states that, in October 2001, Movant and Verizon reached an agreement in principle resolving all of the parties' disputes associated with File No. E-93-59. However, according to Movant, Verizon has refused to sign the settlement and release without the signature of

¹ This formal complaint will be referred to as "File No. E-93-59."

² Movant claims that NY Pay Phone and Alpha have filed for bankruptcy in the U. S. Bankruptcy Court, District of Oregon.

NY Pay Phone. Movant claims that it has attempted to obtain NY Pay Phone's signature but that attorneys for the Trustee for NY Pay Phone have refused to sign the documents.³

Movant argues that, in view of the above and the relevant New York state law, Singleton and Howe are entitled to receive the settlement proceeds from File No. E-93-59. Movant requests a ruling that "the settlement proceeds belong to Singleton and Howe, [and] that the settlement and release of [NY Pay Phone] is unnecessary to a final resolution of this claim." Motion at 5. Movant further requests that Verizon be ordered to execute the settlement and release.

Verizon opposes Movant's requests, alleging that Singleton's affidavit is "flatly inconsistent" with his sworn answers to Verizon's interrogatories in File No. E-93-59. Opposition at 3. Verizon also asserts that a release from NY Pay Phone "is even more important now, as it is clear that the named complainant [NY Pay Phone] disagrees with [Movant's] counsel's current opinion about who owns the claim." *Id.* In addition, Verizon maintains that neither the Commission nor the Presiding Judge has the authority to order Verizon to execute the settlement agreement and release.

Movant's motion will be denied. The *Hearing Designation Order* in this proceeding, 16 FCC Rcd 8801 (2001) ("*HDO*"), specified issues inquiring into the relevant time period of each complaint (Issue 1),⁴ how many "public" payphones each complainant owned during this period (Issue 2), the amount of End User Common Line charges paid for those "public" payphones during this period (Issue 3), and the amount of damages and interest, if any, that each complainant should be awarded (Issues 4 and 5). *Id.* at 8809-10. These issues, on their face, do not contemplate or incorporate any inquiry into the ownership of any damages and interest awarded as a result of a resolution of File No. E-93-59. Nor does the *HDO* even mention that matter. On the contrary, the *HDO* specifically states that "[t]he scope of the hearing is limited to determining the proper amount of damages to which Complainants are entitled." *Id.* at 8809 (footnote omitted). Consequently, the question of whether anyone other than the complainant that originally filed File No. E-93-59 should receive any damages and interest which might be awarded as a result of that complaint is beyond the scope of the existing issues in this proceeding.

Moreover, the question of whether NY Pay Phone, on the one hand, or Singleton and Howe, on the other, is legally entitled to receive the proceeds from an award of damages and interest in this proceeding is clearly a private dispute. The Commission has consistently held that it is not the proper forum for the resolution of such disputes and that any redress should be sought in a local court of competent jurisdiction. *John F. Runner, Receiver*, 36 RR 2d 773, 778 (1976). Indeed, the Commission long ago stated that it "has neither the authority nor the machinery to adjudicate alleged claims arising out of private contractual agreements [Rather,] the local civil court is the appropriate forum for such matters." *Transcontinent Television Corp.*, 21 RR 945, 956 (1961). See, e.g., *Metromedia Company*, 3 FCC Rcd 595 (1988); *John R. Kingsbery*, 71 FCC 2d 1173, 7174 (1979); *Listeners' Guild, Inc. v. FCC*, 813 F. 2d 465, 469 (D.C.Cir. 1987). Under these circumstances, a grant of the relief requested by Movant is not warranted.

³ In this connection, the Presiding Judge notes that it is the position of the attorneys for the Trustee that any settlement proceeds resulting from File No. E-93-59 "would belong to the NY Pay Phone bankruptcy estate." Letter to Kenneth B. Trotter and John M. Goodman from Kathryn D. Horning, dated February 6, 2002, at 2. See also Letter to Albert H. Kramer, Katherine J. Henry, and John M. Goodman from Kathryn D. Horning, dated February 11, 2002.

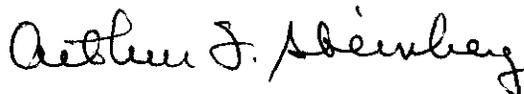
⁴ At the time of designation for hearing, this proceeding included 35 formal complaints. Thirty-four of those complaints have been dismissed pursuant to settlement agreements. The sole complaint that remains outstanding is File No. E-93-59.

Accordingly, IT IS ORDERED that the Motion for Final Settlement Ruling, filed by Movant on February 7, 2001, IS DENIED.

IT IS FURTHER ORDERED that the following revised procedural schedule IS ESTABLISHED:⁵

March 15, 2002	Exchange of written direct case exhibits, stipulations, and a list of witnesses, if any, to be called for oral testimony.
March 20, 2002	Notification of witnesses desired for cross-examination. ⁶
March 25, 2002	Commencement of the hearing at 9:00 a.m. in the Commission's Washington, D.C., offices.

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg
Administrative Law Judge

⁵ Footnotes 2, 3 and 4 in *Order*, FCC 01M-13, released May 30, 2001, remain applicable to the revised dates.

⁶ Such notification may be made by telephone or facsimile. If oral notification is given it must be confirmed in writing.