

September 9, 2014

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

VIA ECFS

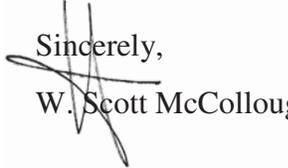
RE: ***Ex Parte Notice***; *Proceeding on Termination of Certain Proceedings as Dormant, CG*  
Docket No. 14-97; *In the Matter of ASAP Paging, Inc., Petition for Preemption of Public*  
*Utility Commission of Texas Concerning Retail Rating of Local Calls to CMRS Carriers,*  
WC Docket No. 04-6

Dear Ms. Dortch:

On September 3, 2014 the undersigned received an email inquiry from Victoria Goldberg, Deputy Division Chief Pricing Policy Division, Wireline Competition Bureau. The email also copied the following Commission personnel: Kirk Burgee, Kalpak Gude, Pamela Arluk, Peter Trachtenberg and John Hunter. The undersigned responded to Ms. Goldberg's inquiry on September 5, 2014, and copied all persons. That same day Ms. Goldberg requested that the communications be included in an *ex parte* notice and the undersigned agreed to do so.

The entire email communication chain is attached.

Sincerely,

  
W. Scott McCollough

cc: (by email)  
Victoria Goldberg  
Kirk Burgee  
Kalpak Gude  
Pamela Arluk  
Peter Trachtenberg  
John Hunter

**Subject:** RE: ASAP Paging, Inc. -- Opposition to Dismissal

**From:** "W Scott McCollough" <wsmc@dotlaw.biz>

**Date:** 9/5/2014 5:14 PM

**To:** "'Victoria Goldberg'" <Victoria.goldberg@fcc.gov>

**CC:** "'Kirk Burgee'" <Kirk.Burgee@fcc.gov>, "'Kalpak Gude'" <Kalpak.Gude@fcc.gov>, "'Pamela Arluk'" <Pamela.Arluk@fcc.gov>, "'Peter Trachtenberg'" <Peter.Trachtenberg@fcc.gov>, "'John Hunter'" <John.Hunter@fcc.gov>

I understand and will make an ex parte filing as you request.

Please be advised I will not be able to prepare the notice and get it uploaded until this coming Tuesday. But it will occur on that day.

Thank you.

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-----Original Message-----

From: Victoria Goldberg [<mailto:Victoria.goldberg@fcc.gov>]

Sent: Friday, September 05, 2014 4:48 PM

To: W. Scott McCollough

Cc: Kirk Burgee; Kalpak Gude; Pamela Arluk; Peter Trachtenberg; John Hunter

Subject: Re: ASAP Paging, Inc. -- Opposition to Dismissal

Mr. McCollough - Thank you for your prompt response. Because you present a number of arguments below, it would be appreciated if you would prepare an ex parte submission in the appropriate dockets with this information. Please let me know if you have any questions. - Victoria

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

Original Message

From: W. Scott McCollough

Sent: Friday, September 5, 2014 1:24 PM

To: Victoria Goldberg

Cc: Kirk Burgee; Kalpak Gude; Pamela Arluk; Peter Trachtenberg; John Hunter

Subject: Re: ASAP Paging, Inc. -- Opposition to Dismissal

On 9/3/2014 1:29 PM, Victoria Goldberg wrote:

Mr. McCollough - We are in receipt of your recent filing in CG Docket No. 14-97 regarding the pending petition in WC Docket No. 04-6. As counsel of record, please confirm for us whether ASAP Paging, Inc. remains operational, and is currently conducting business and serving customers. Recent attempts to confirm the company's operational status suggest that it is no longer in business. Thank you in advance for

this information.

Victoria Goldberg  
Deputy Division Chief  
Pricing Policy Division, Wireline Competition Bureau

Ms. Goldberg:

ASAP Paging, Inc. is no longer operational. As you have no doubt determined through the ULS its paging licenses have expired. The corporation was terminated and the company was dissolved on July 5, 2011.

Pursuant to Texas law all of its net assets were distributed to the shareowners or assigned prior to dissolution. The cause of action before the US District Court for the Western District of Texas that has been placed on the administrative docket but remains pending subject to the decision in this case - as required by the 5th Circuit - is among those assets. When the Commission renders its decision on the merits the district court case will be resumed by the asset holder.

If and to the extent the Bureau is contemplating that the company's demise renders Docket 04-6 moot, I offer the following:

-First, the Dormant Proceedings R&O does not include "mootness" as one of the bases for which a proceeding can be dismissed. See para. 33. Paragraph 34 says that "termination of a dormant proceeding also will be considered to include dismissal as moot of any pending petition, motion, or other request for relief in that proceeding \*\*that is procedural in nature or otherwise does not address the merits of the proceeding.\*\*" (emphasis added). This does not say that the Bureau can dismiss the proceeding and avoid ruling on the merits based on mootness; it merely states that if there is dismissal then non-merits related motions are rendered moot.

-Second, nowhere in the Dormant Proceedings R&O did the Commission state or imply that this shelf-cleaning process should or may be used as a convenient means for the Commission to avoid doing its job. I remind you that this matter was fully briefed, and the sole reason the Commission did not decide the merits - even though it promised to do so in several orders and in representations to the courts - is that it never got around to doing so. Bureaucratic lassitude leading to a failure to perform administrative duties cannot fairly be used as an excuse to dismiss a proceeding that has sat around for several years due to no fault of a plaintiff that went to great expense litigating the matter and reasonably anticipated and deserved a decision.

-Third, I urge you to contemplate the equities. ASAP was greatly harmed by the state decision and the ILECs who followed the state's unwarranted and illegal and void efforts to usurp the FCC's role and veto the FCC's express rules and rulings. ASAP's ability to provide service was severely compromised. The FCC's failure to promptly resolve this matter is a direct cause of ASAP's ultimate demise; it simply could not hang on any longer. I urge you to not establish a precedent holding that the FCC can destroy a company by withholding a ruling and then proceed to dismiss the entire thing as "dormant." While that kind of gaming would certainly help out the ILECs, the public and the public's interest would not be served in any manner.

-Finally, the **\*issue\*** is still live: ILECs continue to violate the rules

by imposing toll charges on local calls their customers make to CMRS providers that have been assigned local numbers. The **\*issue\*** is not moot. Further, as noted, the cause of action for damages for violation of the Act and FCC rules is also still "live"; it was merely stayed so the FCC could resolve the question. There is still a live issue in controversy and a live case, which will be reinstated by the asset holder when the Commission rules on the merits.

Thank you.

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