

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

In the Matter of )  
 )  
Petition of Solvable Frustrations, Inc. ) RM-11675  
To Amend Part 1 of the Commission’s Rules to )  
Specify Procedures for Class Action Complaints )

MEMORANDUM OPINION AND ORDER

Adopted: April 11, 2014

Released: April 14, 2014

By the Commission:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we deny a petition for rulemaking (Petition) filed by Solvable Frustrations, Inc. (SFI) requesting that the Commission amend its rules to allow class actions to be brought before the Commission against common carriers for alleged violations of Commission rules or the Communications Act of 1934, as amended (Act).<sup>1</sup> As discussed below, class actions alleging violations of the Act or Commission rules may be brought in federal court, and SFI has identified no persuasive basis for believing that revising the Commission’s rules to include a redundant class action procedure would serve the public interest. To the contrary, we find that allowing class actions to be brought before the Commission would needlessly divert limited resources from the Commission’s existing duties without benefiting the public.

II. BACKGROUND

2. SFI states that it has established an “online social network [that] aggregates customer complaints,” and that it “will use legal and media resources to convince or require wayward corporations or other entities to fix the damage they caused.”<sup>2</sup> As SFI correctly notes, the Commission’s rules governing complaints filed against common carriers do not provide for class actions.<sup>3</sup> SFI argues that the Commission should supplement its rules to allow class actions because such actions “provide a number of benefits that reinforce the goals of the Commission,”<sup>4</sup> including allowing class members to share litigation costs, making it possible for wronged individuals to seek relief for minor injuries, and

<sup>1</sup> Petition for Rulemaking, RM–11675 (filed July 24, 2012) (Petition).

<sup>2</sup> Petition at 1.

<sup>3</sup> See Petition at 1, 4–7; Reply to Oppositions to Petition for Rulemaking, RM–11675 (filed Oct. 24, 2012) (Reply) at 1, 8 (discussing the Commission’s existing complaint procedures); 47 C.F.R. §1.711–1.736 (procedures governing formal and informal complaints filed before the Commission under Section 208 of the Act). The Commission’s complaint rules implement Sections 206 to 209 of the Act. See 47 U.S.C. § 206 (liability of common carriers for damages), § 207 (parties claiming to be damaged by a common carrier may file a complaint before the Commission or the federal court), § 208 (complaints to the Commission) and § 209 (orders for the payment of money).

<sup>4</sup> Petition at 2.

conserving administrative resources.<sup>5</sup> SFI maintains that class actions are consistent with the Act, and notes that the Commission has broad rule-making and procedural discretion.<sup>6</sup>

3. Public notice of the Petition was given on September 6, 2012.<sup>7</sup> No one filed comments in favor of the Petition, and four entities filed comments opposing it.<sup>8</sup>

### III. DISCUSSION

4. We deny the Petition. There is no need for the Commission to entertain class actions, because such suits may be brought in federal court. Section 207 of the Act provides that a party aggrieved by a common carrier's alleged violation of the Act may choose either to "make complaint to the Commission" or "bring suit for the recovery of damages . . . in any district court of the United States of competent jurisdiction."<sup>9</sup> The federal courts have decades of experience handling class actions, and have developed a substantial body of case law interpreting and applying Federal Rule of Civil Procedure 23, which governs such litigation.<sup>10</sup> Further, if a court adjudicating a class action believes that it would be aided by the Commission's expertise or guidance with respect to a particular issue, it may refer that issue to the Commission under the doctrine of primary jurisdiction.<sup>11</sup> Accordingly, SFI's enumeration of the benefits of class actions is unpersuasive. SFI does not argue that the existing procedures of the federal courts are insufficient, and we see no basis for concluding that the public would benefit from an additional, redundant process before the Commission.

5. Moreover, granting the Petition would divert considerable resources from the Commission's existing responsibilities. Class actions are fact-intensive, complex, and time-consuming. For example, class actions typically require extensive discovery and briefing merely to resolve preliminary procedural issues such as whether the named parties are sufficiently representative, whether the class may be certified, and whether class counsel will fairly and adequately represent the class.<sup>12</sup>

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<sup>5</sup> See Petition at 2–4; Reply at 1, 5–7.

<sup>6</sup> See Petition at 4–8 (citing 47 U.S.C. §154(i) ("The Commission may . . . make such rules and regulations . . . not inconsistent with this Act, as may be necessary in the execution of its functions") and § 154(j) ("The Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.")); Reply at 7–9.

<sup>7</sup> Public Notice, RM–11675 (rel. Sept. 6, 2012).

<sup>8</sup> Opposition of AT&T Inc., RM No. 11675; Comments of the United States Telecom Association, RM No. 11675; Comments of CTIA–The Wireless Association, RM No. 11675; Comments of Verizon and Verizon Wireless, RM No. 11675 (all filed Oct. 9, 2012).

<sup>9</sup> 47 U.S.C. § 207.

<sup>10</sup> See Fed. R. Civ. P. 23 Advisory Committee Notes and cases cited therein.

<sup>11</sup> The Commission routinely resolves individual complaints filed after a federal district court, in adjudicating a class action, makes a primary jurisdiction referral to the Commission. See, e.g., *Gilmore v. Southwestern Bell Mobile Systems, L.L.C.*, Memorandum Opinion and Order, 20 FCC Rcd 15079, 15081–82, para. 8 (2005); *Orloff v. Vodafone Airtouch Licenses, LLC*, Memorandum Opinion and Order, 17 FCC Rcd 8987, 8992, para. 11 (2002), review denied, *Orloff v. FCC*, 352 F.3d 415, cert. denied, 542 U.S. 937 (2004); *Keifer v. Paging Network, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 19129, 19129–30, paras. 1–2 (2001); *High-Tech Furnace Systems, Inc. v. Sprint Communications Co., L.P.*, Memorandum Opinion and Order, 14 FCC Rcd 8040, 8040–41, para. 1 (1999). SFI argues that it would be more efficient for the Commission to hear class actions at the outset rather than on primary jurisdiction referral from the federal courts. Reply at 4. Yet, as discussed *infra*, any delays or inefficiencies occasioned by a primary jurisdictional referral pale in comparison to the inefficiencies that would be occasioned by the Commission undertaking to adjudicate class actions.

<sup>12</sup> See Fed. R. Civ. P. 23(a) ("One or more members of a class may sue as . . . representative parties . . . only if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class."); 23(b) (a class action

(continued...)

Certain claims brought before the Commission, however, must be acted upon within strict statutory time-limits, some of which are as short as ninety days.<sup>13</sup> Further, the Commission has no experience adjudicating class actions, and the complaint procedures with which it does have experience are starkly different from class actions. The Commission's complaint rules emphasize streamlined and expeditious dispute resolution, with formal complaints regularly resolved on the basis of the pleadings alone, and discovery and briefing kept to a minimum.<sup>14</sup> And an informal complaint need only contain the name of the parties, a statement of the facts tending to show a violation of the Act, and the relief requested.<sup>15</sup>

6. SFI understatedly admits that “class complaint procedures are likely to require more Commission (and party) resources than an individual formal or informal complaint.”<sup>16</sup> Nevertheless, SFI argues that the Commission's complaint procedures have “drawbacks”<sup>17</sup> and are not as effective as class actions at ensuring compliance with the Act.<sup>18</sup> As explained above, class actions also have drawbacks.<sup>19</sup> Moreover, the Commission's complaint procedures differ from federal court class actions, and therefore complement and supplement those actions in enforcing compliance with the Act. We therefore do not believe that diverting resources from existing Commission procedures to enable the Commission to entertain class actions would increase compliance with the Act.

7. Finally, we reject SFI's assertion that allowing class actions “would require significantly fewer resources than would be needed to resolve [the] hundreds or thousands (or more) individual complaints [that are filed with the Commission].”<sup>20</sup> SFI assumes that, if the Commission granted the Petition, the thousands of individual complaints currently filed with the Commission each year would

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may be maintained if Rule 23(a) is satisfied and if one of three additional criteria are met); 23(g) (“In appointing class counsel, the court . . . must consider . . . (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class.”).

<sup>13</sup> See 47 U.S.C. § 271(d)(6) (Commission must act within 90 days on complaints alleging failures of the Bell Operating Companies (BOCs) to meet the conditions for providing interLATA service); 47 U.S.C. §§ 260(b), 275(c) (Commission must issue a cease and desist order within 60 days after receipt of a complaint establishing that a BOC subsidized or discriminated in favor of its alarm monitoring or telemessaging service, and must make a final determination on a complaint alleging such a violation 120 days after receipt of the complaint); 47 U.S.C. § 208(b)(1) (“The Commission shall, with respect to any investigation under this section of the lawfulness of a charge, classification, regulation, or practice, issue an order concluding such investigation within 5 months after the date on which the complaint was filed . . .”).

<sup>14</sup> See 47 C.F.R. § 1.720 (“Formal complaint proceedings are generally resolved on a written record consisting of a complaint, answer, and joint statement of stipulated facts, disputed facts and key legal issues, along with all associated affidavits, exhibits and other attachments [to the complaint and answer].”); *Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to be Followed when Formal Complaints are Filed against Common Carriers*, Report and Order, 12 FCC Rcd 22497, 22501, para.22 (1997) (“the complaint, answer, and any necessary reply . . . serve as the principal basis upon which the Commission will make a decision on the merits of the complaint”), 22501–02, para. 23 (Commission's rules “streamline the formal complaint process by eliminating or limiting procedural devices . . . that have contributed to undue delays”).

<sup>15</sup> See 47 C.F.R. § 1.716 (setting forth the contents of an informal complaint).

<sup>16</sup> Reply at 4–5.

<sup>17</sup> Reply at 2.

<sup>18</sup> See Reply at 2–4.

<sup>19</sup> See *AT&T Mobility v. Concepcion*, 131 S. Ct. 1740, 1750–1751 (2011) (one of the disadvantages of class actions is that they require considerable time and procedural formality because, among other things, absent class members must be adequately represented).

<sup>20</sup> Reply at 4-5.

instead be consolidated and filed as a small, manageable number of class actions. This argument is speculative. For example, there is no evidence that the parties who file complaints with the Commission would prefer to have their disputes resolved through the markedly different procedures pertaining to class actions. Nor is there evidence that the complaints filed here raise common questions of law or fact such that they could be aggregated into a limited number of class actions.<sup>21</sup> In short, if the Petition were granted, it is possible that the Commission would still be required to entertain as many, or nearly as many, individual complaints, and also would be required to adjudicate class actions.

8. In conclusion, we deny SFI's Petition. We find that adopting class action procedures is not at this time warranted under Sections 4(i) and 4(j) of the Act. It would be contrary to public policy to divert limited Commission resources to the adjudication of class actions when aggrieved parties may bring such actions before the federal courts.

#### **IV. ORDERING CLAUSE**

9. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 4(j), 206, 207, 208 and 209 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 206, 207, 208 and 209, and Sections 1.70 –1.736 of the Commission rules, 47 C.F.R. §§ 1.701–1.736, that the Petition for Rulemaking is DENIED, and that RM-11675 IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>21</sup> See Fed. R. Civ. P. 23(a)(2) (a prerequisite for certifying a putative class action is, among other things, that “there are questions of law or fact common to the class”). See also *supra* n.12 (listing some of the class action prerequisites set forth in Fed. R. Civ. P. 23(a) and (b)).