

433 Fed.Appx. 1, 2011 WL 1752197 (C.A.D.C.)

(Not Selected for publication in the Federal Reporter)

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This case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also District of Columbia Rules 32.1, 36. (Find CTADC Rule 32.1 and Find CTADC Rule 36)

United States Court of Appeals,
District of Columbia Circuit.
STATON HOLDINGS, INC., Doing Business as
Staton Wholesale, Petitioner
v.
FEDERAL COMMUNICATIONS COMMISSION
and United States of America, Respondents
Sprint Communications Company L.P. and Veri-
zon, Intervenor.

No. 10–1116.

March 22, 2011.

Rehearing En Banc Denied May 20, 2011.

Background: Former user of particular phone number petitioned for review of an order of the Federal Communications Commission (FCC), 25 F.C.C.R. 5094, which denied user's motion for reconsideration of FCC's prior finding of negligence against user's phone carrier in relation to mistaken disconnection and reassignment of number.

Holdings: The Court of Appeals held that:

- (1) FCC's finding of negligence against carrier precluded challenge under user's stipulation with bankruptcy court presiding over carrier's bankruptcy proceedings, and
- (2) FCC acted within its discretion in denying user's request to have third party surrender number to user.

Petition denied.

West Headnotes

[1] Bankruptcy 51 ↪3032.1

51 Bankruptcy

51IX Administration

51IX(A) In General

51k3032 Compromises, Releases, and Stipulations

51k3032.1 k. In general. [Most Cited](#)

Cases

Telecommunications 372 ↪913(1)

372 Telecommunications

372III Telephones

372III(F) Telephone Service

372k912 Civil Liabilities and Actions

372k913 Damages Resulting

372k913(1) k. In general. [Most](#)

Cited Cases

Federal Communications Commission's (FCC's) finding of negligence against phone carrier, as related to mistaken disconnection and reassignment of user's particular phone number, resolved user's claim for damages against carrier, and thus any appellate challenge to that finding fell squarely within stipulation between user and bankruptcy court that was presiding over carrier's bankruptcy proceedings, which stated that if FCC found carrier negligent, rather than willful, that damages would be liquidated to \$1,000 and user's damages claim would not be subject to further appeal by either party.

[2] Bankruptcy 51 ↪3032.1

51 Bankruptcy

51IX Administration

51IX(A) In General

51k3032 Compromises, Releases, and Stipulations

51k3032.1 k. In general. [Most Cited](#)

Cases

Telecommunications 372 ↪904

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372 Telecommunications

372III Telephones

372III(F) Telephone Service

372k899 Judicial Review or Intervention

372k904 k. Decisions reviewable.

Most Cited Cases

Stipulation between former user of particular phone number and bankruptcy court that was presiding over phone carrier's bankruptcy proceedings, which conditionally permitted user to seek redress before Federal Communications Commission (FCC) for carrier mistakenly disconnecting and reassigning user's number, barred Court of Appeals from considering any newly discovered evidence; in stipulation, parties agreed that user's claim for damages was "not subject to further appeal by either party," which was quite broad and precluded appeal of damages finding on any ground.

[3] Telecommunications 372 877

372 Telecommunications

372III Telephones

372III(F) Telephone Service

372k875 Directories and Listing

372k877 k. Right to numbers. **Most**

Cited Cases

Federal Communications Commission (FCC) acted within its discretion in balancing equities and thereafter denying request of former user of particular phone number seeking to have third party surrender phone number to user; even if third party was no longer using number, user waited 18 months before bringing proceedings against carrier for its mistaken disconnection and reassignment of number to third party, user was unable to quantify damages suffered by loss of number, and FCC was concerned that third party could be harmed if required to surrender number to user. 5 U.S.C.A. § 706(2)(A).

*2 On Petition for Review of an Order of the Federal Communications Commission. **Christopher Michael McCaffrey**, Law Offices of Christopher McCaffrey, Dallas, TX, for Petitioner.

Daniel McMullen Armstrong, III, Associate General Counsel, **Pamela Louise Smith**, **Richard Kiser Welch**, Deputy Associate General Counsel, Federal Communications Commission Office of General Counsel, **Kristen Ceara Limarzi**, **Catherine G. O'Sullivan**, U.S. Department of Justice, Washington, DC, for Respondents.

Michael Brent Fingerhut, Sprint Nextel Corporation, Washington, DC, **Michael E. Glover**, **Christopher Michael Miller**, **Karen Zacharia**, Verizon, Arlington, VA, for Intervenors.

Before: **GARLAND** and **BROWN**, Circuit Judges, and **RANDOLPH**, Senior Circuit Judge.

JUDGMENT

PER CURIAM.

**1 This appeal was considered on the record, the briefs, and the oral arguments of the parties. The court has accorded the issues full consideration and has determined they do not warrant a published opinion. See *FED. R. APP. P. 36*; *D.C. CIR. R. 36(d)*. For the reasons stated below, it is

ORDERED and **ADJUDGED** that the petition for review be denied.

From September 1998 through October 2000, Staton Holdings was the authorized user of the "All Eights Number," 888-888-8888. In October 2000, Staton's phone carrier, MCI WorldCom Communications, Inc. mistakenly disconnected Staton from the number and subsequently reassigned the number to another company. That company switched carriers, from MCI to Sprint Communications Company. More than two years after the disconnection, Staton finally sought relief from MCI (as the wrongful actor) and Sprint (as the current carrier) before the Federal Communications Commission (FCC). At that point, however, MCI was embroiled in bankruptcy proceedings, making Staton a potential creditor. Presumably desiring some finality to the bankruptcy process, the Bankruptcy Court only consented to Staton's pursuit of its claims before

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the agency in exchange for the parties' agreement that, if the agency concluded MCI's conduct was negligent as opposed to willful, damages would be liquidated at \$1000 and Staton's damages claims would "not [be] subject to further appeal by either party." J.A. 341.

[1] The FCC did indeed make a negligence finding, and after a failed motion for reconsideration, Staton now petitions this court. Staton presses three arguments for relief from the FCC's decision declining to reconsider Staton's position. First, as Staton's counsel reluctantly admitted at argument, Staton is unable to challenge the FCC's negligence finding. Or. Arg. 4:25–6:30. Because the finding of negligence resolved Staton's claim for damages, any challenge to that finding falls squarely within the stipulation's prohibition.

[2] Second, although counsel argued valiantly to the contrary, we find that the Bankruptcy Court stipulation also bars our consideration of any newly discovered evidence. The parties agreed Staton's claim for damages was "not subject to further appeal by either party." J.A. 341. This language is quite broad; it precludes appeal of the damages finding on any ground. An appeal asserting newly discovered evidence is still an appeal, and we cannot countenance review of this argument.

*3 [3] Finally, Staton seeks equitable relief, asking this court to vacate the FCC's reconsideration order denying Staton's request that the third party surrender to Staton the All Eights Number. Under the APA, our review of the FCC's decision denying that request is for abuse of discretion. *Cellco P'ship v. FCC*, 357 F.3d 88, 93–94 (D.C.Cir.2004) (quoting 5 U.S.C. § 706(2)(A)). Because Staton petitions for relief from the FCC's Order on Reconsideration, it is that decision we examine. Nonetheless, some background detailing the FCC's initial order is useful.

**2 In its initial order denying Staton's requested equitable relief, the FCC deemed significant both Staton's delay of nearly eighteen months be-

fore commencing proceedings and Staton's inability to quantify explicitly the amount of damages it suffered from loss of the All Eights Number. The FCC also expressed concern about causing harm to the third party currently using the All Eights Number if the FCC transferred that number back to Staton. Based on these considerations, the FCC concluded the equities weighed against Staton.

On its motion for reconsideration, Staton presented evidence that the third party was no longer using the number, and argued that the balance of the equities now tipped in its favor. The FCC again denied Staton relief, explaining that Staton's new evidence was pure speculation. That, coupled with Staton's failure yet again to quantify its harm or to explain its delay in seeking relief, counseled against granting Staton's equitable request. Reviewing this reconsideration order for abuse of discretion, we find no error in the FCC's conclusion. The FCC sufficiently explained its consideration of the equities, and its reasoning is therefore not subject to attack under the APA's "highly deferential" standard of review. *See Cellco*, 357 F.3d at 93–94.

The Clerk is directed to withhold issuance of the mandate herein until seven days after the disposition of any timely petition for rehearing. *See FED. R. APP. P. 41(b); D.C. CIR. R. 41(a)(1)*.

C.A.D.C.,2011.

Staton Holdings, Inc. v. F.C.C.

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