

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

August 20, 2021

IN RE:

**PETITION SEEKING REVOCATION OF
CERTIFICATE OF FRANCHISE AUTHORITY HELD
BY SPIRIT BROADBAND, LLC**

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**DOCKET NO.
20-00006**

**DEFAULT JUDGMENT REVOKING ABANDONED
CERTIFICATE OF FRANCHISE AUTHORITY**

This matter came before Chairman Kenneth C. Hill, Vice Chairman Herbert H. Hilliard, Commissioner Robin L. Morrison, Commissioner John Hie, and Commissioner David F. Jones of the Tennessee Public Utility Commission (“TPUC” or the “Commission”), the voting panel assigned to this docket, at a regularly scheduled Commission Conference held on July 13, 2021, for consideration of the *Petition Seeking Revocation of Certificate of Franchise Authority Held By Spirit Broadband, LLC* (“*Petition*”) filed by Cumberland County, Tennessee (“Cumberland Co.” or “Petitioner”) on January 8, 2020. The *Petition* sought the termination and/or revocation of the Certificate of Franchise Authority issued to Spirit in TPUC Docket No. 17-00110.

The Respondent, Spirit Broadband, LLC (“Spirit”) and Vincent King, individually, and d/b/a, Spirit Broadband, LLC (“Mr. King”) (collectively “Respondent”) did not file a response to the *Petition* and other filings and did not otherwise enter an appearance. In summary, the Commission granted a default judgment to the extent the evidentiary record indicated the Respondent had abandoned the Certificate of Franchise Authority issued to Spirit in TPUC Docket No. 17-00110.

BACKGROUND AND PETITION

Spirit Broadband, LLC (“Spirit”) was a limited liability company organized under the laws of the State of Tennessee with a principal place of business located at 8279 Horton Highway, College Grove, Tennessee 37046. Spirit maintained a local office in Cumberland County, Tennessee, located at 302 Woodlawn Road, Crossville, Tennessee 38555. Spirit was administratively dissolved in December 2018.¹ The Principal Executive Officer and Registered Agent for the dissolved LLC is Mr. Vincent King.²

The Petitioner, Cumberland County, is a governmental entity, a political subdivision of the State of Tennessee. Cumberland Co.’s Chief Executive Officer is County Mayor Allen Foster. The Petitioner’s principal address is 2 North Main Street, Suite 203, Crossville, Tennessee 38555.³

On September 26, 2017, Spirit filed an application for a state-issued Certificate of Franchise Authority in accordance with the Competitive Cable and Video Services Act (“Act”), Tenn. Code Ann. § 7-59-301.⁴ Following proper notices, the Commission issued a Certificate of Franchise Authority on October 12, 2017.⁵

The *Petition* in this matter was filed on January 8, 2020. In its *Petition*, Cumberland Co. makes a number of allegations and requests the Commission to revoke Spirit’s Certificate of Franchise Authority. It is alleged that Spirit failed to pay franchise fees to the Petitioner, an allegation supported by the filing of sworn testimony by the county’s director of finance, Mr. Nathan Brock.⁶ The dispute regarding the payment of franchise fees goes back several years and resulted in civil litigation. To resolve the litigation, the Petitioner and Spirit mutually agreed to a

¹ *Petition*, p. 1 (January 8, 2020).

² *Id.* at 1-2.

³ *Id.* at 1.

⁴ *In re: Application of Spirit Broadband, LLC, for a State-Issued Certificate of Franchise Authority*, TPUC Docket No. 17-00110, *Petition* (September 26, 2017).

⁵ *In re: Application of Spirit Broadband, LLC, for a State-Issued Certificate of Franchise Authority*, TPUC Docket No. 17-00110, *Certificate of Franchise Authority* (October 12, 2017).

⁶ *Id.* at Ex. 7.

final judgment of \$100,000.00 for the unpaid franchise fees.⁷ Nevertheless, according to the *Petition* and Mr. Brock's sworn testimony, no franchise fees have been paid since October of 2017.⁸ It has been further alleged that Spirit is subject to a federal tax lien, a copy of which is provided with the *Petition*.⁹

The *Petition* also alleges that Spirit's application for a state-issued Certificate of Franchise Authority "was filed under false and misleading pretenses...."¹⁰ Among the false information alleged were Spirit's assertion that it was an incumbent cable service provider and that Spirit failed to disclose unpaid franchise fees, failed to disclose a federal tax lien, failed to disclose a period of administrative dissolution of the limited liability company during which Spirit continued to provide services, and failed to disclose a pending Notice of Determination issued to Spirit by the Secretary of State during the pendency of the application.¹¹

Cumberland Co. also asserts that Spirit's failure to conduct its business operations in a lawful manner, in contravention to the statutory requirements of Tenn. Code Ann. § 7-59-305, and its current standing as a dissolved legal entity, give the Commission authority to revoke and/or terminate the Certificate of Franchise Authority previously issued to Spirit.¹²

Spirit did not file a response to the *Petition*. Cumberland Co. filed its *Petition*, certifying service to Daniel H. Rader, IV, an attorney that previously represented Spirit, and upon Spirit and Mr. King, at the principal office address, the Cumberland County local office address, and a company mailing address provided to the Secretary of State.¹³ Upon receiving notice from Mr. Rader that he no longer represents Spirit, Cumberland Co. filed an *Amended Certificate of Service*

⁷ *Petition*, p. 2; Ex. 4 (January 8, 2020).

⁸ *Id.* at Ex. 4, p. 2.

⁹ *Id.* at Ex. 5.

¹⁰ *Id.* at 3.

¹¹ *Id.* at 4-6.

¹² *Id.* at 5-7.

¹³ *Id.* at 8.

including the principal office, Cumberland County local office, and the Secretary of State listed mailing addresses for the Respondent.¹⁴

The Respondent has at no time filed any response to the *Petition*. On March 16, 2021, the Hearing Officer filed correspondence to the Petitioner. The Hearing Officer requested the filing of proof of completed service of process on or before April 30, 2021 in order to move the docket forward.¹⁵ Following expiration of the deadline for completed service of process, the Hearing Officer entered an order finding that Cumberland Co. had accomplished sufficient service of process upon Spirit under the Tennessee Uniform Administrative Procedures Act and Commission Rules and setting a status conference.¹⁶ Spirit failed to attend the status conference.¹⁷

STANDARD FOR DEFAULT JUDGMENT IN CONTESTED CASES BEFORE THE COMMISSION

When there has been no response to a petition filed with the Commission, a party may be entitled to a default judgment pursuant to Tenn. Code Ann. § 4-5-309 under the Uniform Administrative Procedures Act. Nevertheless, a default judgment is not a certainty when a party has not responded. Under the rules of the Tennessee Public Utility Commission, the petitioner seeking a default judgment still carries the burden of proof.

Where the case is unopposed, the petitioner has the burden of making out a prima facie case, which may be done on the basis of written filings. In order to carry out statutory policies, however, the Commission or Hearing Officer may require further proof.

Tennessee Comp. R. & Regs. 1220-01-02-.17(3).

¹⁴ *Amended Certificate of Service* (February 4, 2020).

¹⁵ *Letter to Philip D. Burnett, Esq. from Aaron Conklin, Hearing Officer Re: Proof of Completed Service of Process* (March 16, 2021).

¹⁶ *Order on Notice of Service of Process and Notice of Status Conference* (May 4, 2021).

¹⁷ Transcript of Status Conference, p. 4 (May 18, 2021).

THE HEARING

The hearing on the *Petition* was noticed by the Commission on July 2, 2021 and held during the regularly scheduled Commission Conference on July 13, 2021. Appearances were made by the following:

Cumberland County, Tennessee – Philip D. Burnett, Esq., Burnett Law, 300 Thurman Ave. Crossville, Tennessee 38555.

Mr. Burnett, counsel for the Petitioner, participated by telephone.¹⁸ No appearance was made on behalf of the Respondent. The *Petition* was presented to the Hearing Panel. Members of the public were given an opportunity to offer comments, but no one sought recognition to do so.

FINDINGS AND CONCLUSIONS

Cumberland County is entitled to a default judgment based upon a prima facie showing that Spirit has abandoned its Certificate of Franchise Authority.¹⁹ Spirit Broadband, LLC has been administratively dissolved for a period of years and has not responded to the *Petition* despite the repeated efforts of the Petitioner. Based on the sworn testimony in the record, Spirit has not paid any franchise fees to the Petitioner since October 12, 2017 and has not complied with a settlement agreement approved by the Circuit Court of Cumberland County in 2018. Spirit is subject to a Federal Tax Lien. Based on the evidentiary record, the Commission can only conclude Spirit has abandoned its state issued certificate. The Hearing Panel voted unanimously to revoke the Certificate of Franchise Authority granted to Spirit in Docket No. 17-00110.

IT IS THEREFORE ORDERED THAT:

1. The *Petition Seeking Revocation of Certificate of Franchise Authority Held By Spirit Broadband, LLC* filed by Cumberland County, Tennessee, is granted by default judgment based on a finding that Spirit Broadband, LLC has abandoned its Certificate of Franchise Authority

¹⁸ *Order Granting Motion to Appear and Participate Telephonically at the Hearing* (July 6, 2021).

¹⁹ The Commission's finding that Spirit's Certificate of Franchise Authority has been abandoned renders the other claims made in the *Petition* moot.

granted by Commission Docket No. 17-00110.

2. The Certificate of Franchise Authority granted in Commission Docket No. 17-00110 is hereby revoked.

3. Any party aggrieved by the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within fifteen days from the date of this Order.

4. Any party aggrieved by the Commission's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty days from the date of this Order.

FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:

**Chairman Kenneth C. Hill
Vice Chairman Herbert H. Hilliard
Commissioner Robin L. Morrison,
Commissioner John Hie and
Commissioner David F. Jones
concurring.**

None dissenting.

ATTEST:



Earl R. Taylor, Executive Director