

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

May 4, 2021

CUMBERLAND COUNTY, TENNESSEE,
A POLITICAL SUBDIVISION OF THE STATE OF
TENNESSEE

PETITIONER,

v.

SPIRIT BROADBAND, LLC and VINCENT KING,
individually, and d/b/a, SPIRIT BROADBAND, LLC

RESPONDENT.

DOCKET NO.

20-00006

ORDER ON NOTICE OF SERVICE OF PROCESS
AND NOTICE OF STATUS CONFERENCE

This matter is before the Hearing Officer of the Tennessee Public Utility Commission (“Commission” or “TPUC”), for consideration of the sufficiency of the service of process of the *Petition Seeking Revocation of Certificate of Franchise Authority Held By Spirit Broadband, LLC* (“*Petition*”) upon the Respondent, Spirit Broadband, LLC (“Spirit”) and Vincent King, individually, and d/b/a, Spirit Broadband, LLC (“Mr. King”) (collectively “Respondent”). Cumberland County, Tennessee (“Cumberland Co.” or “Petitioner”) filed the *Petition* on January 8, 2020, seeking the termination and/or revocation of the Certificate of Franchise Authority issued to Spirit in TPUC Docket No. 17-00110.

BACKGROUND AND PETITION

Spirit is a limited liability company formed under the laws of the State of Tennessee, Superior is 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 Office and Registered Agent for the dissolved LLC is Mr. King.²

The Petitioner 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

Spirit filed an application for a state-issued Certificate of Franchise Authority in accordance with the Competitive Cable and Video Services Act, Tenn. Code Ann. § 7-59-301, *et seq.* on September 26, 2017.⁴ Following proper notices, the Commission issued a Certificate of Franchise Authority on October 12, 2017.⁵

In its *Petition*, Cumberland Co. alleges that Spirit failed to pay franchise fees to the Petitioner, and as a result of litigation, the parties mutually agreed to a final judgment of \$100,000 for the unpaid franchise fees.⁶ The *Petition* also states that Spirit's application for a state-issued Certificate of Franchise Authority "was filed under false and misleading pretenses...."⁷ Among the false information alleged were Spirit's assertion that it was an incumbent cable service, failure to disclose unpaid franchise fees, failure to disclose a Federal Tax Lien, failure to disclose a period of administrative dissolution of the limited liability company during which Spirit continued to provide services, and failure to disclose a pending Notice of Determination issued to Spirit by the Secretary of State during the pendency of the application.⁸ Cumberland Co. asserts that Spirit's failure to conduct its business operations in a lawful manner, in contravention to the statutory

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 *Petition*, p. 2 (January 8, 2020).

⁷ *Id.* at 3.

⁸ *Id.* at 4-6.

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.⁹

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.¹⁰ Upon receiving notice from Mr. Rader that he no longer represents Spirit, Cumberland Co. filed an *Amended Certificate of Service* including the principal office, Cumberland County local office, and the Secretary of State listed mailing addresses for the Respondent.¹¹

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.¹²

STANDARD FOR SERVICE IN CONTESTED CASES BEFORE THE COMMISSION

Tenn. Code Ann. § 4-5-308, in relevant part, requires the hearing officer in contested cases under the Uniform Administrative Procedures Act (“UAPA”) to “give all parties full opportunity to file pleadings...” and requires that copies of such pleadings filed be served upon all parties, by mail or any other means prescribed by agency rule.”¹³ Commission Rules provide guidance on service of process in Rule 1220-01-01-.10, as follows:

- (1) Unless these rules otherwise provide, or the Commission or a Hearing Officer otherwise orders, all filings made in any formal

⁹ *Id.* at 5-7.

¹⁰ *Id.* at 8.

¹¹ *Amended Certificate of Service* (February 4, 2020).

¹² *Letter to Philip D. Burnett, Esq. from Aaron Conklin, Hearing Officer Re: Proof of Completed Service of Process* (March 16, 2021).

¹³ Tenn. Code Ann. § 4-5-308(a),(c) (West 2021).

proceeding, including all notices and orders, shall be served on each of the parties to that proceeding.

(2) Whenever under these rules, service is required or permitted to be made upon a party represented by counsel, service shall be made upon such counsel, unless service upon the party is ordered by the Commission. Service upon counsel or upon a party shall be made by delivering to the office of such person a copy of the document to be served, or by mailing it to such person's address as shown on a mailing or service list furnished by the Chair of the Commission. Service upon all parties of record shall be made in the same manner. Service by first class mail is complete upon mailing.¹⁴

FINDINGS AND CONCLUSIONS

In its *Petition*, Cumberland Co. certified that it mailed a copy of the *Petition* to the Respondent at 302 Woodlawn Road, Crossville, Tennessee 38555.¹⁵ This address is identified as the local business office for the Company. The Hearing Officer takes official notice, in accordance with the authority granted in Tenn. Code Ann. § 4-5-313(6), that the Woodlawn Road address is the address that the Commission has for Spirit on its utility mailing and service list. The Petitioner also has included the Woodlawn Road address in its *Amended Certificate of Service*.¹⁶ Therefore, the Hearing Officer concludes and recognizes that service of process upon Spirit in this docket was accomplished upon Cumberland Co.'s mailing of the *Petition* to the Woodlawn Road address on January 8, 2020, as certified by the Petitioner's attorney of record.

NOTICE OF STATUS CONFERENCE

The Hearing Officer hereby gives notice that a **Status Conference** has been scheduled for 10:00 a.m. on Tuesday, May 18, 2021. This Status Conference will be held electronically via WebEx. This Status Conference is being held to discuss the issues in this docket related to procedural scheduling and the process of the adjudication of the *Petition*.

¹⁴ Tenn. Comp. R. & Regs. 1220-01-01-10.

¹⁵ *Petition*, p. 8 (January 8, 2020).

¹⁶ *Amended Certificate of Service* (February 4, 2020).

Participants with disabilities who require special accommodations or alternate communications formats should contact the Tennessee Public Utility Commission ADA-EEO/AA Coordinator/Officer at 502 Deaderick Street, 4th Floor, Nashville, Tennessee 37243, 1-800-342-8359 or TDD 888-276-0677, so that reasonable accommodations can be made.

IT IS THEREFORE ORDERED THAT:

1. The *Petition Seeking Revocation of Certificate of Franchise Authority Held By Spirit Broadband, LLC* was properly served upon Spirit Broadband, LLC by the mailing of said *Petition* by first class mail on January 8, 2020 to at 302 Woodlawn Road, Crossville, Tennessee 38555.

2. A Status Conference is scheduled for May 18, 2021 at 10:00 a.m.

FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:



Aaron J. Conklin
Hearing Officer

Original in Docket File 20-00006

cc: Interested Parties of Record