

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of
VOICE NETWORKS, INC.,
Complainant,
v.
U S WEST WIRELESS, L.L.C.,
Defendant.
File No. WB/ENF-F-99-007

ORDER

Adopted: March 1, 2001

Released: March 2, 2001

By the Deputy Chief, Market Disputes Resolution Division, Enforcement Bureau:

1. In this Order, the Deputy Chief, Market Disputes Resolution Division, Enforcement Division, pursuant to delegated authority, grants the unopposed motion of the defendant, filed on January 19, 2001, to dismiss for failure to prosecute the above-captioned formal complaint filed by Voice Networks, Inc. ("Voice Networks") against U S West Wireless, L.L.C. ("U S West Wireless").

2. In its complaint, filed on July 29, 1999, Voice Networks, a competitive local exchange carrier ("CLEC"), alleged that U S West Wireless, a personal communications service ("PCS") provider, had unreasonably restricted the resale of its service by terminating Voice Network's use of the call-forwarding feature of U S West Wireless' PCS. Such termination of service, Voice Networks contended, violated sections 201(a), 201(b), and 202(a) of the Communications Act of 1934, as amended ("Communications Act" or "Act") and section 20.12 of the Commission's rules. Voice Networks requested the Commission to enter an order declaring that U S West Wireless' conduct was unlawful and directing U S West Wireless to restore Voice Networks' use of the call-forwarding feature of U S West Wireless' PCS. Voice Networks acknowledged that, prior to the filing of its complaint with the Commission, it had filed

1 After the initiation of this proceeding, the parent of U S West Wireless was merged with and into Qwest Communications, International, and U S West Wireless, L.L.C. was renamed Qwest Wireless, L.L.C. on July 10, 2000. For purposes of administrative convenience, however, we will continue to identify U S West Wireless, L.L.C., as the defendant herein.

2 47 U.S.C. §§ 201(a), 201(b), and 202(a).

3 47 C.F.R. § 20.12.

a complaint in Colorado State court seeking essentially the same relief on state law grounds.⁴ Further, U S West Wireless had filed a counter-claim in the action and the court therein had ordered the parties to submit the dispute to arbitration.⁵ In its Answer, U S West Wireless denied that it had violated the Communications Act or the Commission's rules. It also contended that the complaint should be dismissed because, among other reasons, the dispute alleged therein was subject to mandatory arbitration that had been ordered by the Colorado court.⁶

3 On November 28, 2000, Commission staff directed Voice Networks, in accordance with section 1.720(g) of the Commission's rules,⁷ to update the record in this proceeding by submitting a description of the current status of the related court litigation between the parties.⁸ Commission staff directed Voice Networks to submit this update by December 18, 2000. When the anticipated submission by Voice Networks was not received on this date, Commission staff contacted Voice Networks' attorney of record by telephone. The attorney stated that Voice Networks had terminated his services, but that he had forward the staff's letter of December 18 to his former client.⁹

4. By motion filed on January 19, 2001, US West Wireless argues that, in light of these circumstances, the Commission should dismiss Voice Networks complaint for failure to prosecute.¹⁰ Under section 1.727(e) of our rules, Voice Networks had five business days in which to respond to U S West Wireless' motion to dismiss.¹¹ To date, Voice Networks has not filed an opposition or any other response to U S West Wireless' motion.

5. We agree with U S West Wireless that it is apparent that Voice Networks has abandoned the prosecution of its complaint. It failed to update the record on a timely basis with the current status of its related court litigation, as required by section 1.720(g) of the Rules.¹² It

⁴ *Voice Networks, Inc. v. U S West Wireless, LLC*, Case No. 99CV2685, District Court, City and County of Denver, State of Colorado.

⁵ Voice Networks, Inc. Complaint, File No. WB/ENF-F-99-007, ¶ 8 (filed July 29, 1999).

⁶ U S West Wireless Inc. Answer, File No. WB/ENF-F-99-007, ¶¶ 20-24, 35-36 (filed Aug. 18, 1999).

⁷ 47 C.F.R. § 1.720(g) (Information submitted by the parties in formal complaint proceedings "must be current and updated as necessary in a timely manner.").

⁸ Letter from Roderick A. Mette, Attorney, Market Disputes Resolution Division, Enforcement Bureau to Michael H. Glaser, Attorney for Voice Networks, Inc., and L. Andrew Tollin and Jeffry A. Brueggeman, Attorneys for U S West Wireless 1, File No. WB/ENF-F-99-007 (Dec. 18, 2000).

⁹ Voice Networks, however, has never filed a written notice of the withdrawal of its initial counsel. This attorney, accordingly, continues to be the attorney of record for Voice Networks in this proceeding, and service of papers in this proceeding on this attorney continues to constitute service on Voice Networks. See 47 C.F.R. § 1.735(f).

¹⁰ U S West Wireless Motion To Dismiss for Failure to Prosecute, File No. WB/ENF-F-99-007 (filed January 19, 2001).

¹¹ 47 C.F.R. § 1.727(e).

¹² U S West Wireless has provided copies of orders by the arbitrator and the court with its motion to dismiss. It appears that the arbitrator on August 21, 2000, ruled that Voice Networks used the call-forwarding feature of US West Wireless' PCS for an unlawful purpose and that U S West Wireless terminated service to Voice Networks lawfully and in accordance with the terms of the applicable service contract. Also, by order issued October 18, 2000, the Denver District Court denied Voice Networks' motion to vacate the arbitration award and entered a judgment confirming the award.

then failed to respond to the Commission staff's specific directive to do so by December 18, 2000. It apparently terminated the services of its attorney of record without notice to the Commission or U S West Wireless and without notifying the Commission or U S West Wireless that another attorney had been appointed for the prosecution of its complaint. Finally, it did not file an opposition or any other response to the defendant's instant motion to dismiss for failure to prosecute.¹³

6. It is settled that the Commission will dismiss a complaint for failure to prosecute when it is apparent that complainant has ceased to pursue its complaint.¹⁴ We conclude that the orderly dispatch of the Commission's business and fairness to the defendant require the dismissal of Voice Network's complaint under the circumstances.

7. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), and 208 of the Communications Act of 1934 as amended, 47 U.S.C §§ 151, 154(i), 154(j), 208, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the defendant's Motion to Dismiss for Failure to Prosecute is GRANTED.

8. IT IS FURTHER ORDERED that the above-captioned formal complaint IS DISMISSED WITH PREJUDICE and that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Frank G. Lamancusa
Deputy Chief, Market Disputes Resolution Division
Enforcement Bureau

¹³ See 47 C.F.R. § 1.727(e) ("Failure to oppose any motion may constitute grounds for granting of the motion.").

¹⁴ *Nausea Communications Network, Inc. v. National Communications Network, Inc.*, 12 FCC Rcd 15191, 15194 (Com. Car. Bur. 1997). See also, *IBEX Ltd. v. New Valley Corporation*, (Com. Car. Bur. 1996); *Cellular Marketing Inc. v. Houston Cellular Telephone Company*, 10 FCC Rcd 8897 (Wireless Bur. 1995); *Chateau Rouge Corporation v. American Telephone and Telegraph Company*, 2 FCC Rcd 4463 (Com. Car. Bur. 1987).