

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

APCC Services, Inc.,)	
)	
Complainant,)	
)	
v.)	File No. EB-08-MD-007
)	
Matrix Management, Inc.,)	
Network Management, Inc.,)	
USP Communications, Inc., and)	
ZCom Networks, Inc.,)	
)	
Defendants.)	

DISMISSAL ORDER

Adopted: October 8, 2009

Released: October 8, 2009

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

1. On August 13, 2008, the above-named complainant (“APCC”) filed a formal complaint¹ with this Commission against Matrix Management, Inc. (“Matrix”), ZCom Networks, Inc. (“ZCom”), Network Management, Inc. (“NMI”), and USP Communications, Inc. (“USP”) pursuant to section 208 of the Communications Act of 1934, as amended (“Act”).² The Complaint alleges that defendants failed to pay dial-around compensation to certain payphone service providers in violation of sections 201 and 276 of the Act and the Commission’s payphone compensation rules.³

2. USP and NMI’s answers were due on November 10, 2008.⁴ Neither NMI nor USP has filed an answer, entered an appearance, or contacted Commission staff with regard to this proceeding.

3. On July 1, 2009, APCC filed a Motion seeking to dismiss the Complaint with prejudice as to Matrix and ZCom.⁵ APCC stated that it had resolved its dispute with Matrix and ZCom, and that Matrix and ZCom consented to the dismissal.⁶ On July 8, 2009, the Commission granted the Motion

¹ Complaint, File No. EB-08-MD-007 (filed August 13, 2008) (“Complaint”).

² 47 U.S.C. § 208.

³ 47 U.S.C. § 201, 276; 47 C.F.R. §§ 64.1310, 1320.

⁴ See Commission rule 1.724(a), 47 C.F.R. § 1.724(a); Second Notice of Formal Complaint, File No. EB-08-MD-007 (dated October 8, 2008).

⁵ Withdrawal of Formal Complaint as to Matrix Management, Inc. and ZCom Networks, Inc., File No. EB-08-MD-007 (filed July 1, 2009) (“Motion”) at 1 (seeking “leave...to dismiss the [C]omplaint with prejudice” as to Matrix and ZCom). APCC did not seek to dismiss defendants USP or NMI, who therefore remained parties to the case.

⁶ Motion at 1.

and dismissed the Complaint with prejudice as to Matrix and ZCom.⁷ As APCC had not sought to dismiss the Complaint with respect to USP or NMI, those defendants remained parties to the case.⁸

4. On July 24, 2009, the Commission notified the remaining parties that, by September 22, 2009, APCC must either withdraw the Complaint as to NMI and USP or file a motion for default judgment against NMI and USP, and warned that “APCC’s failure to take one of these steps may result in dismissal of the Complaint for failure to prosecute.”⁹

5. The Commission will dismiss a complaint for failure to prosecute when “it is apparent that complainant has ceased to pursue its complaint.”¹⁰ APCC has allowed the September 22, 2009 deadline to pass without withdrawing the complaint, filing a motion for default judgment, or contacting the Commission. APCC’s failing to respond to the July Letter leads us to conclude that dismissal is warranted.¹¹ Termination of this matter will serve the public interest by eliminating the need for the expenditure of further time and resources by the Commission, and by affording the parties certainty about the status of this proceeding.

6. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 208, sections 1.720-1.736 of the Commission’s rules, 47 C.F.R. §§ 1.720-1.736, and the authority delegated in section 0.111 and 0.311 of the Commission’s rules, 47 C.F.R. §§ 0.111 and 0.311, that the above-captioned complaint IS DISMISSED WITH PREJUDICE as to defendants Network Management, Inc. and USP Communications, Inc., and that this proceeding IS TERMINATED in its entirety.

FEDERAL COMMUNICATIONS COMMISSION

Alexander P. Starr
Chief, Market Disputes Resolution Division
Enforcement Bureau

⁷ *APCC Services, Inc. v. Matrix Management, Inc., et al.*, Order of Partial Dismissal, File No. EB-08-MD-007, FCC 09-1508, 2009 WL 1953659 (Chief, Market Disputes Resolution Division, Enforce. Bur., rel. July 8, 2009).

⁸ *See id.* at n.4.

⁹ Letter from Lia B. Royle (FCC) to Jacob S. Farber (counsel to Complainant), Alex Parsinia (CEO of Matrix Management, Inc and Zcom Networks, Inc.), and to USP Communications, Inc. and Network Management, Inc., File No. EB-08-MD-007 (dated July 24, 2009) (“July Letter”).

¹⁰ *Voice Networks, Inc. v. US West Wireless, L.L.C.*, Order, 16 FCC Rcd 4904, 4906, ¶ 6 (Enf. Bur. 2001); *Nassau Communications Network, Inc. v. National Communications Network, Inc.*, Order, 12 FCC Rcd 15191, 15194, ¶ 6 (Com. Car. Bur. 1997); *Cellular Marketing Inc. v. Houston Cellular Telephone Co.*, Order, 10 FCC Rcd 8897, ¶ 7 (Wireless Bur. 1995).

¹¹ *Cf. NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008) (vacating as arbitrary and capricious the FCC’s decision to waive a complaint filing deadline).