

Decision 12-01-007 January 12, 2012

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

XO Communications Services, Inc. (U5553C),

Complainant,

vs.

Fones4All Corporation (U6338C),

Defendant.

Case 08-06-018  
(Filed June 16, 2008)

**DECISION DISMISSING COMPLAINT**

This matter was initiated a number of years ago by XO Communications Services, Inc. (XO) for the recovery of unpaid amounts alleged to be due to XO by Fones4All Corp. (Fones4All) for XO's provision of certain wholesale services to Fones4All. While the complaint and answer were filed, this matter has been held in abeyance due to Fones4All filing a voluntary petition for protection under Chapter 7 of the United States Bankruptcy Code shortly thereafter (August 4, 2008). Periodic orders extending the statutory time for completion of this matter have been issued, each noting the bankruptcy status.

Recently the assigned Administrative Law Judge (ALJ) issued a ruling in this matter inquiring of the parties whether there was any reason that this matter needed to remain as an open and active Commission docket, or could it move forward or be dismissed, either as moot or without prejudice to a future refiling if appropriate.

While no response was received from Fones4All, XO filed a response stating the following:

XO has had no communication with Fones4All; however, based on review of the bankruptcy court docket, XO believes that Fones4All's bankruptcy case is still pending. Although this matter is not moot, XO does not object to dismissal of its complaint without prejudice to a future refiling once Fones4All emerges from bankruptcy.

Based on this response, it is appropriate to dismiss this matter without prejudice to a future refiling if and when the resolution of the bankruptcy proceeding would allow this matter to go forward and if XO believes a valid claim remains and resolution by this Commission is appropriate.

### **Comments on Proposed Decision**

The proposed decision of ALJ Jacqueline A. Reed in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were filed.

### **Assignment of Proceeding**

Timothy Alan Simon is the assigned Commissioner and Jacqueline A. Reed is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. This matter has been pending for many years but has been unable to proceed due to Fones4All having filed a voluntary petition for protection under Chapter 7 of the United States Bankruptcy Code.
2. Complainant XO does not object to dismissal of this matter without prejudice to a future refiling subsequent to the resolution of Fones4All's bankruptcy petition.

**Conclusion of Law**

It is reasonable to dismiss this matter without prejudice to a future refiling if and when the resolution of Fones4All's bankruptcy proceeding would allow this matter to go forward and if XO believes a valid claim remains and resolution by this Commission is appropriate.

Therefore **IT IS ORDERED** that Case 08-06-018 is dismissed.

This order is effective today.

Dated January 12, 2012, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
TIMOTHY ALAN SIMON  
MICHEL PETER FLORIO  
CATHERINE J.K. SANDOVAL  
MARK J. FERRON  
Commissioners