

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AMERICA'S TELE-NETWORK CORPORATION )  
 )  
\_\_\_\_\_ ) CASE NO. 2000-217  
 )  
ALLEGED VIOLATION OF KRS 278.535 )

O R D E R

Over the course of the past year, the Consumer Services Division of the Public Service Commission has received over 350 complaints from citizens of the Commonwealth of Kentucky alleging that America's Tele-Network Corporation ("ATN") changed their long-distance carrier from their pre-subscribed long-distance carriers to ATN without their authority or permission. To date, the Commission has issued numerous Orders directing ATN to show cause why it should not be subject to sanctions pursuant to KRS 278.990 and KRS 278.535(6) for 73 alleged violations of KRS 278.535(2).

By Order entered on June 14, 2000, the Commission directed ATN to show cause why it should not be subject to penalties pursuant to KRS 278.990 and KRS 278.535(6) for 40 alleged violations of KRS 278.535. The Commission's Order directed ATN to respond within 30 days of receipt of the Order and scheduled a hearing for September 5, 2000 at 10:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky. On July 11, 2000, ATN filed a motion and letter requesting an extension of time in which to file an

answer to the Commission's June 14, 2000 Order. The Commission granted the motion.

The Commission received ATN's answer denying liability on August 28, 2000 and stating that it had satisfied the consumers whose telephone service was switched to ATN allegedly without their permission.<sup>1</sup> In its answer, ATN claimed that it had proper authorization for all of the counts. For counts I, VI, X, XIII, XIV, XVI, XVIII, XIX, XXIV, XXIX, and XXXVII, ATN provided the Consumer Services Division with third-party verification ("TPV") tapes, which are incorporated into the record herein. ATN claims that these tapes contain proper authorization for the primary interexchange carrier ("PIC") switch but, upon reviewing the tapes, Commission Staff concluded that the tapes did not meet the standards for proper authorization set forth in KRS 278.535 and 807 KAR 5:062, Section 2. ATN also claims to have provided the Consumer Services Division with TPV tapes for counts III, V, and XXXIV, but the Consumer Services Division has not received such TPV tapes.

ATN claims to have TPV tapes containing proper authorization for a PIC switch for counts II, VIII, IX, XVII, XX, XXI, XXIII, XXVI, XXXV, XXXVIII, and XL, but has not provided the alleged tapes to the Commission. For the remaining counts not mentioned above, ATN claims to have proper authorization of the consumer for the PIC switch but does not claim to possess a TPV or other properly recognized method of authorization proving that the PIC switches were properly authorized.

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<sup>1</sup> The Commission notes here that an enforcement proceeding of the Commission is not precluded by settlement between a utility and a consumer. KRS 278.535 is not limited by KRS 278.260 and accompanying regulations.

As stated in the Commission's Order, on September 5, 2000 at 10:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's Offices located at 211 Sower Boulevard, Frankfort, Kentucky, the full Commission appeared to hear this case. ATN failed to appear at the hearing despite having notice of the hearing and having answered the Order.

KRS 278.535(2) provides that in the event of a disputed carrier change, the burden of proof is on the provider to prove that the customer knowingly authorized the change. Here, ATN is the provider referred to in KRS 278.535 and, therefore, bears the burden of proving that it properly obtained the consumers' authorization to implement a PIC change. Prior to hearing, ATN had not provided the Commission with sufficient evidence to prove that it had obtained the proper authorization from the customers to effectuate a PIC change.

As it is incumbent upon ATN to bear the burden of proof to prove that a disputed switch was in fact authorized, ATN must provide proof of the authorization pursuant to KRS 278.535 and 807 KAR 5:062, Section 2. ATN has not provided, nor has it attempted to provide, proof to the Commission that it had proper authorization to effectuate a PIC change in any of the 40 counts contained in the Commission's June 14, 2000 Order. ATN's absence from the September 5, 2000 hearing ensured that it failed to meet the burden of proof under KRS 278.535(2) for all 40 counts charged in the Order. Accordingly, the Commission finds that ATN has violated KRS 278.535 and 807 KAR 5:062 and is subject to penalties under KRS 278.535 and KRS 278.990. Furthermore, ATN is subject to a penalty under KRS 278.990 for violation of a

Commission Order, said violation being its absence from the hearing scheduled by the Commission's June 14, 2000 Order to show cause.

Based upon the record before it, the Commission therefore makes the following findings:

1. After investigation and a formal hearing, the Commission finds that it has not received any evidence proving that the PIC switches were properly authorized.

2. ATN has not met the burden of proof to show that the disputed PIC switches, which ATN claims were all properly authorized, were in fact properly authorized.

3. ATN has committed 40 violations of KRS 278.535 and is subject to penalties for each count under KRS 278.535(6).

4. By failing to appear at hearing, ATN has violated a Commission Order and is subject to penalties under KRS 278.990.

The Commission takes the matter of "slamming" seriously and will not allow Kentucky's telecommunications customers to become victims of unfair business practices. ATN has acted with reckless disregard of the laws and the rights of the citizens of Kentucky, and by this Order we demonstrate that such behavior will not be tolerated.

Having considered the evidence on record and being otherwise sufficiently advised, the Commission HEREBY ORDERS that:

1. ATN is assessed the maximum fine, pursuant to KRS 278.535(6), of \$10,000 for each count contained in this action for a total fine under KRS 278.535 of \$400,000.

2. ATN is assessed an additional fine of \$2,500 under KRS 278.990(1) for violation of the Commission's Order requiring it to appear at the hearing of September 5, 2000.

3. ATN shall refund to all consumers referenced in this action all the amounts due to the consumers by law.

4. ATN shall cease and desist all telemarketing and marketing of its services in Kentucky until further Order of the Public Service Commission.

5. Within 30 days of the date of this Order, ATN shall pay as civil penalty the sum of Four Hundred Two Thousand Five Hundred Dollars (\$402,500) in the form of a cashier's check or money order made payable to the Kentucky State Treasurer and mailed or delivered to the Office of General Counsel, Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

Done at Frankfort, Kentucky, this 7<sup>th</sup> day of September, 2000.

By the Commission

ATTEST:

  
Executive Director