

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

On June 14, 2000, the Commission directed America's Tele-Network Corporation ("ATN") to show cause why it should not be subject to penalties under KRS 278.990 and KRS 278.535 for forty alleged violations of KRS 278.535. The Commission's Order directed ATN to respond within 30 days of the date 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.

On September 5, 2000 at 10:00 a.m. the Commission convened for the hearing as scheduled in the June 14, 2000 Order. When the hearing was called to order, ATN did not appear. The Commission recessed for 30 minutes to allow ATN an opportunity to appear. After 30 minutes, the Commission again called the hearing to order and Commission Staff proceeded with the case.

Pursuant to KRS 278.535, when a carrier change is disputed, the burden of proof is on the provider to produce evidence that the change was properly authorized. Despite having notice of the hearing, ATN failed to appear. ATN's failure to appear resulted in its failure to carry the burden of proof that the carrier changes were properly authorized.

On September 7, 2000, the Commission, after considering the evidence on record and being otherwise sufficiently advised, issued an Order levying a fine of \$402,500 against ATN for forty violations of KRS 278.535 and one violation of a Commission Order.

On September 6, 2000, prior to the entry of the Order, ATN petitioned the Commission via facsimile for rehearing. ATN followed the fax with a mailed copy of the petition that the Commission received on September 7, 2000.

KRS 278.400 provides that any party to a proceeding may petition for rehearing after the Commission has "made a determination" in that proceeding. KRS 278.400 also provides that, upon rehearing, a party may offer additional evidence that could not "with reasonable diligence have been offered on the former hearing."

ATN petitions the Commission to schedule another hearing date to allow ATN an additional opportunity to be heard on all forty counts of alleged violations of KRS 278.535 and to allow the Commission to decide the case "on its merits." ATN does not claim to be able to offer any new evidence that would have been unavailable at the original hearing. Clearly ATN does not demonstrate that is entitled to another hearing. It does not even demonstrate that its petition for rehearing is legally cognizable as such. The motion also fails if viewed simply as a motion for continuance. The filing

was received via facsimile after the scheduled hearing, and it fails to state legitimate cause for ATN's failure to appear.

ATN was on notice of the hearing scheduled for September 5, 2000. The language setting the hearing was contained in the June 14, 2000 Order. ATN claims that it did not appear for the September 5, 2000 hearing because it "believed" that the Commission would grant a motion to consolidate and decide to hear all the cases on one date. The Commission is not required by statute or regulation to rule on a motion to consolidate prior to a hearing. ATN had no substantiated reason to believe that the Commission would choose to grant the motion to consolidate at any time, much less prior to or at the hearing. Finally, an Order of the Commission continues in full force and effect until it is vacated or suspended by the Commission or by a court of competent jurisdiction. KRS 278.390. The Order setting the September 5, 2000 hearing in this case was not vacated or suspended.

The Commission, after reviewing the evidence on record and being otherwise sufficiently advised, HEREBY ORDERS that ATN's petition for a rehearing is denied.

Done at Frankfort, Kentucky, this 25th day of September, 2000.

By the Commission

ATTEST:


Executive Director