

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

QWEST COMMUNICATIONS CORPORATION )  
 )  
\_\_\_\_\_) CASE NO. 99-326  
 ) CASE NO. 2000-229  
ALLEGED VIOLATION(S) OF KRS 278.535 )

O R D E R

This is a combined settlement agreement for two cases in which several consumers allege that Qwest Communications Corporation (“Qwest”) switched their long-distance providers without authorization. The Commission entered Orders on August 12, 1999 and June 23, 2000 directing Qwest to show cause why it should not be found in violation of KRS 278.535 and KRS 278.990.

Qwest responded to the first Commission Order and participated in an informal conference on November 1, 1999. Qwest and Commission Staff then proceeded to engage in settlement negotiations. No settlement, however, was reached prior to the issuance of the second Commission Order.

Qwest responded to the second Commission Order and requested an informal conference. At the informal conference, Qwest presented evidence of changes in its corporate structure.

As a result of the informal conference and ongoing negotiations, a settlement agreement, attached hereto, was reached. Part of the Commission’s willingness to

accept the settlement agreement is based upon Qwest's changes in its business structure to deter slamming from occurring, as well as Qwest's cooperation and candor during the formal process.

Based upon the foregoing, and the Commission being otherwise sufficiently advised, IT IS HEREBY ORDERED that:

1. The attached settlement agreement is accepted and adopted by the Commission.

2. Within 30 days of the date of this Order, Qwest shall tender the agreed-upon payment of \$2,000.00. The check shall be made payable to the Kentucky State Treasurer and shall be sent to the Office of General Counsel, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602.

3. Upon receipt of the agreed-upon payment, this case shall be dismissed and removed from the Commission's docket.

Done at Frankfort, Kentucky, this 14<sup>th</sup> day of March, 2001.

By the Commission

ATTEST:

  
Executive Director

APPENDIX TO AN ORDER OF THE  
KENTUCKY PUBLIC SERVICE COMMISSION

IN CASE NOS. 99-326 AND 2000-229

DATED MARCH 14, 2001

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

QWEST COMMUNICATIONS CORPORATION	)	
_____	)	
ALLEGED VIOLATION(S) OF KRS 278.535	)	Case No. 99-326
SWITCHING OF TELECOMMUNICATIONS	)	Case No. 2000-229
PROVIDER	)	

STIPULATION AND SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into on this 7 day of March, 2001, between QWEST COMMUNICATIONS CORPORATION ("Qwest") and the STAFF OF THE PUBLIC SERVICE COMMISSION ("Commission Staff"). This Settlement Agreement is intended to resolve pending Cases Nos. 99-326 and 2000-229.

WITNESSETH:

Case No. 99-326

WHEREAS, on or about February 7, 1999, the Commission Staff received by telephone a consumer complaint from the owners and operators of Lookout Marine Sales ("Complainants"), which is located at 6590 Highway 127 South, Somerset, Kentucky, alleging that the primary inter-exchange carrier ("PIC") for the long-distance telephone service at their business had been switched from AT&T Communications of the South Central States, Inc. ("AT&T") to Qwest without their authority; and

WHEREAS, the Commission Staff notified Qwest of the consumer complaint, but Qwest was unable to provide any written or tape recorded authorization from the Complainants that properly authorized the PIC change; and

WHEREAS, on August 12, 1999, the Public Service Commission ("Commission") issued a show cause Order in Case No. 99-326 against Qwest in which it found sufficient evidence to believe that Qwest failed to comply with the provisions of KRS 278.535; and

WHEREAS, Qwest responded to the Commission's show cause Order, participated in an informal conference with Commission Staff held November 1, 1999, and provided to the Commission a copy of its "Slamming Compliance Plan" submitted to the Federal Communications Commission ("FCC") for FCC File No. ENF-99-11; and

WHEREAS, the parties hereto desire to enter into this Settlement Agreement to resolve the issues raised by the Commission's show cause Order in Case No. 99-326, the parties therefore enter into the stipulations set out below.

**Case No. 2000-229**

WHEREAS, on or about August 4, 1999, the Commission Staff received by telephone a consumer complaint from Cuong Hoang ("Complainant"), who resides at 385 Southpoint Drive, Lexington, Kentucky, alleging that the PIC for the long-distance telephone service at his residence had been switched from Sprint Communications Company ("Sprint") to Qwest without his authority; and

WHEREAS, the Commission Staff notified Qwest of the consumer complaint, but Qwest was unable to provide any written or tape recorded authorization from the Complainant that properly authorized the PIC change; and

WHEREAS, on June 23, 2000, the Commission issued a show cause Order in Case No. 2000-229 against Qwest in which it found sufficient evidence to believe that Qwest failed to comply with the provisions of KRS 278.535; and

WHEREAS, Qwest responded to the Commission's show cause Order, participated in an informal conference with Commission Staff held September 7, 2000, and provided information to the Commission regarding implementation of its "Slamming Compliance Plan," including FCC approval of the Plan in August, 2000, and

WHEREAS, the Commission Staff's review of Counts I-IV, VI, VIII, and IX of the June 23, 2000 show cause Order prior to the informal conference determined that no violation of KRS 278.535 had occurred; and

WHEREAS, information provided to the Commission Staff by Qwest at the informal conference indicated that the PIC changes identified in Counts V and X of the June 23, 2000 show cause order did not violate KRS 278.535; and

WHEREAS, the parties hereto desire to enter into this Settlement Agreement to resolve the issues raised by the sole remaining count of the Commission's show cause Order in Case No. 2000-229, the parties therefore enter into the stipulations set out below.

#### Stipulations

NOW, THEREFORE, the parties mutually stipulate as follows:

1. Qwest is a "telecommunications provider" as defined by KRS 278.535, is authorized to do business in Kentucky, and is subject to the provisions and penalties of KRS 278.535 which are enforced by the Commission.

2. With respect to the PIC changes:

a. On or about August 14, 1998, the PIC long-distance service of Lookout Marine Sales was switched to Qwest, and subsequent to the customer's

complaint to the Commission, the PIC service was switched back to AT&T on February 9, 1999;

b. On or about May 1, 1999, the PIC long-distance service of Cuong Hoang was switched to Qwest, and subsequent to the customer's complaint to the Commission, the PIC service was switched back to Sprint on September 9, 1999.

3. In each instance, Qwest did not comply with KRS 278.535, which required it to maintain for one (1) year a letter of agency or electronically recorded tape authorizing the PIC switch by the customer.

4. Qwest acknowledges the fact that each PIC switch occurred. At the time of the PIC switches, Qwest used the services of third-party marketing and sales distributors of its telecommunications services to secure and provide the necessary customer authorization. In neither Case No. 99-326 nor Case No. 2000-229 could the marketing and sales distributor provide proof of authorization by the Complainants or Complainant. Qwest maintains that it has not willfully or repeatedly violated KRS 278.535 in either case.

5. These stipulations are proposed by the Commission Staff and Qwest for purposes of reaching settlement in Case No. 99-326 and Case No. 2000-229. In the event settlement is not reached, these proposed stipulations will be withdrawn.

6. Nothing contained herein shall be construed as an admission of a violation of KRS 278.535 by Qwest, nor shall the Commission's acceptance of this Settlement Agreement be construed as a finding of a violation of KRS 278.535 by Qwest, and the facts contained herein shall not be cited as precedent in any other proceeding, except to enforce this Settlement Agreement.

### Agreement

NOW, THEREFORE, Qwest and the Commission agree that:

1. Not later than ten (10) days after entry of an Order approving this Settlement Agreement, Qwest agrees to make a voluntary contribution of Two Thousand Dollars (\$2,000.00) for investigative costs to the Kentucky State Treasurer in full settlement of both Case No. 99-326 and Case No. 2000-229.
2. Payment of the voluntary contribution shall be in the form of a cashier's check made payable to "Treasurer, Commonwealth of Kentucky," and shall be mailed or delivered to: Office of General Counsel, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602.
3. This Agreement is specifically subject to the acceptance of and approval by the Commission.
4. Nothing contained in this Settlement Agreement shall be construed as a violation of KRS 278.535 by Qwest, nor shall the Commission's acceptance of this Agreement be construed as a finding that Qwest violated the statute. Neither Qwest's agreement to the payment of a voluntary contribution nor any other agreement contained herein shall be construed as an admission of a violation, nor shall it be construed as an admission by Qwest of liability in any legal proceeding or lawsuit arising out of the facts set forth herein. This Settlement Agreement and the stipulations contained herein may not be cited in any other proceeding or matter, except that they may be used in a proceeding between the Commission and Qwest to enforce this Settlement Agreement. Case No. 99-326 and Case No. 2000-229 shall be terminated upon the entry of a Commission Order accepting the Settlement Agreement in



satisfaction of the show cause Orders dated August 12, 1999 and June 23, 2000, respectively.

5. If the Commission fails to accept and approve this Settlement Agreement in its entirety then these proceedings shall go forward and each of the terms of the Settlement Agreement, any matters raised during settlement negotiations, and the contents of the Agreement itself shall not be binding upon any of the signatories.

6. If the Commission accepts and adopts this Settlement Agreement in its entirety and enters an Order in these proceedings to that effect, Qwest shall not apply for a rehearing of this matter or bring any legal action for judicial review of such Order.

**AGREED TO BY:**

QWEST COMMUNICATIONS CORPORATION

By Carol T. Kilson Date 1/29/01  
Title Director, Tariffs & Compliance

By David A. Uss Date 1/30/2001  
Counsel for Qwest Communications Corporation

PUBLIC SERVICE COMMISSION OF KENTUCKY

By A. G. F. Date 3/7/2001  
Counsel for Public Service Commission