

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

USA TELE CORP)	
_____)	CASE NO. 2001-060
ALLEGED VIOLATION(S) OF KRS 278.535)	

O R D E R

By Order entered on March 13, 2001, the Commission directed USA Tele Corp to show cause why it should not be subject to penalties pursuant to KRS 278.990 and KRS 278.535(6) for three alleged violations of KRS 278.535. The Commission's Order directed USA Tele Corp to respond within 45 days of receipt of the Order and scheduled a hearing for June 20, 2001 at 9:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky. USA Tele Corp did not respond to the Commission's Order dated March 13, 2001.

As stated in the Commission's Order, on June 20, 2001 at 9:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's Offices located at 211 Sower Boulevard, Frankfort, Kentucky, the Commission's Hearing Examiner appeared to hear this case. USA Tele Corp failed to appear at the hearing despite having notice of the hearing.

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, USA Tele Corp is the provider to which KRS 278.535 refers and, therefore, bears the burden of proving that it properly obtained the consumers'

authorization to implement a PIC change. Prior to hearing, USA Tele Corp 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 USA Tele Corp to bear the burden of proof to prove that a disputed switch was in fact authorized, USA Tele Corp must provide proof of the authorization pursuant to KRS 278.535 and 807 KAR 5:062, Section 2. USA Tele Corp 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 three counts contained in the Commission's March 13, 2001 Order. USA Tele Corp's absence from the June 20, 2001 hearing ensured that it failed to meet the burden of proof under KRS 278.535(2) for all 3 counts charged in the Order.

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

1. The Commission has jurisdiction over USA Tele Corp pursuant to KRS 278.040.
2. USA Tele Corp was properly noticed of the June 20, 2001 hearing. Said notice was received by USA Tele Corp on June 16, 2001 via certified mail, return receipt requested.
3. USA Tele Corp responded to Commission Staff's informal queries regarding Counts I and III, but did not provide proof of proper authorization for the disputed PIC switches in its responses.
4. After investigation and a formal hearing, the Commission finds that it has not received any evidence proving that the PIC switches were properly authorized.

5. By responding to Commission Staff's informal queries regarding Counts I and III, by failing to respond to informal queries regarding Count II and by failing to appear at the June 20, 2001 hearing, USA Tele Corp has willfully violated KRS 278.535 and KRS 278.990.

6. USA Tele Corp has not met its burden of proof to show that the disputed PIC switches, two of which USA Tele Corp claims were properly authorized, were in fact properly authorized.

7. USA Tele Corp has committed three violations of KRS 278.535 and is subject to penalties for each count under KRS 278.535(6).

8. By failing to appear at hearing, USA Tele Corp has violated a Commission Order and is subject to penalties under KRS 278.990.

9. It is in the public's best interest that USA Tele Corp be assessed the maximum fine and have its authority to operate in the Commonwealth revoked.

The Commission takes the matter of "slamming" seriously and will not allow Kentucky's telecommunications customers to become victims of unfair business practices. USA Tele Corp 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 of record and having been otherwise sufficiently advised, the Commission HEREBY ORDERS that:

1. USA Tele Corp 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 \$30,000.00.

2. USA Tele Corp 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 June 20, 2001.

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

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


5. USA Tele Corp's authority to operate in this state is revoked, its tariff is removed from the Commission files, and its name is stricken from the Commission's list of active utilities.

6. Within 30 days of the date of this Order, USA Tele Corp shall pay as civil penalty the sum of Thirty-Two Thousand Five Hundred Dollars (\$32,500) 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 5th day of July 2001.

By the Commission

ATTEST:



Executive Director