

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION INTO ALLEGED UNAUTHORIZED
ACTIVITY OF NCN COMMUNICATIONS, INC.,
NATIONAL COMMUNICATIONS NETWORK, AND ATS
COMMUNICATIONS, INC.

CASE NO.
90-176

ALLEGED VIOLATIONS OF KRS CHAPTER 278

O R D E R

On June 28, 1990, NCN Communications, Inc. ("NCN") was directed to appear at a hearing to show cause why it should not be penalized pursuant to KRS 278.990 for its alleged violations of KRS Chapter 278 and be required to refund all unauthorized rates and charges collected.

Following the commencement of this proceeding, NCN and Commission Staff entered into negotiations to resolve all disputed issues. On September 18, 1991, they executed a Settlement Agreement which is attached hereto.

In reviewing this Settlement Agreement, the Commission has considered, inter alia, the circumstances surrounding NCN's failure to comply with KRS 278.160 and NCN's offer to refund all monies collected from its customers for Kentucky intrastate service.

After reviewing the Settlement Agreement and being otherwise sufficiently advised, the Commission finds that the Settlement

Agreement is in accordance with the law, does not violate any regulatory principle, results in a reasonable resolution of this case, and is in the public interest.

IT IS THEREFORE ORDERED that:

1. The Settlement Agreement, appended hereto, is incorporated into this Order as if fully set forth herein.

2. The terms and conditions set forth in the Settlement Agreement are adopted and approved.

3. NCN shall refund to all Kentucky customers actual charges collected by NCN for intrastate service from the date it commenced in Kentucky through the date of the Settlement Agreement.

4. NCN shall pay the agreed penalty of \$500 within 10 days of the date of this Order by certified check or money order made payable to Treasurer, Commonwealth of Kentucky. Said check or money order shall be mailed or delivered to the Office of General Counsel, Public Service Commission, 730 Schenkel Lane, P. O. Box 615, Frankfort, Kentucky 40602.

Done at Frankfort, Kentucky, this 9th day of October, 1991.

PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman

ATTEST:


Executive Director

Commissioner

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 90-176 DATED 10/09/91

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SETTLEMENT AGREEMENT

This Agreement entered this 18th day of September, 1991 by and
between NCN Communications, Inc. ("NCN") and Commission Staff.

WHEREAS, the Commission initiated an investigation on June
28, 1990 into the provision of unauthorized rates and service by
NCN.

WHEREAS, on November 21, 1990 the Commission ordered NCN to
appear at a hearing and show cause why it should not be penalized
pursuant to KRS 278.990 for failure to comply with KRS 278.160 or
required to refund all monies collected for the provision of
intrastate service or both. In the alternative to appearing, NCN
was ordered to file a plan for refunding all monies collected from
its customers for Kentucky intrastate service.

WHEREAS, the Commission, by Order dated February 1, 1991,
cancelled the hearing because NCN agreed to refund Kentucky
customers for charges collected by NCN for intrastate service.

NCN also filed with the Commission a proposed refund procedure and moved the Commission to enter a refund plan.

WHEREAS, NCN and Commission Staff desire to settle on the issues raised by this proceeding, specifically the determination of a refund procedure and a penalty pursuant to KRS 278.990.

NOW, THEREFORE, NCN and Commission Staff agree that:

1. NCN shall refund to all Kentucky customers actual charges collected by NCN for intrastate service from the date it commenced in Kentucky through the date of this agreement, as follows:

(a) No later than October 1, 1991, NCN shall examine its records and shall provide to the Commission a list of all Kentucky customers, including the name and address, who received intrastate service from the time it commenced business in Kentucky through the date of this agreement, and the amount billed by NCN in respect of such service for such period. Within thirty days after it provides such list to the Commission, NCN shall issue checks in the names of the account customers for such amounts and transmit such checks by United States Mail to the last known address of such customer.

(b) On November 1, 1991, NCN shall provide a report to the Commission of the names of the customers receiving refunds and the amounts of the refunds paid.

(c) NCN shall hold all funds which it is ordered to refund, but is unable to do so, for a period of seven years from the date of an Order providing for the refund, after which time

the amount remaining unclaimed shall be presumed abandoned and subject to escheat in accordance with KRS Chapter 393.

(d) During the seven-year period, if NCN has any lawful claim for refund, it shall, in compliance with this agreement, provide said refund and report the same to the Commission within twenty days of making the refund.

2. NCN agrees to pay a penalty in the amount of five hundred dollars (\$500) within 10 days of the date of an Order accepting this agreement, by certified check or money order made payable to Treasurer, Commonwealth of Kentucky. Said check or money order shall be mailed or delivered to the Office of General Counsel, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

3. This Agreement constitutes full satisfaction of any penalties arising out of this proceeding against NCN. Commission Staff shall recommend to the Commission that this Agreement be approved and that this proceeding be closed and removed from the Commission's docket.

4. This Agreement is subject to the acceptance and approval of the Commission.

5. If the Commission fails to accept and approve the Agreement in its entirety, this proceeding shall go forward and the terms of this Agreement shall not be binding on any signatory.

6. If the Commission accepts and approves this Agreement in its entirety and enters an Order in this proceeding to that effect, NCN shall not apply for rehearing in this proceeding nor bring an action for review of that Order.

IN WITNESS WHEREOF, NCN and Commission Staff have executed
this Agreement through their duly authorized attorneys.

AGREED TO BY:


RICHARD "SMITTY" TAYLOR
Counsel for NCN


AMY E DOUGHERTY
Counsel for Public Service Commission
of Kentucky Staff