

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

QWEST COMMUNICATIONS CORPORATION)	
)	
_____)	CASE NO.
)	99-326
ALLEGED VIOLATION(S) OF KRS 278.535)	
SWITCHING OF TELECOMMUNICATIONS)	
PROVIDER)	

O R D E R

On August 12, 1999, the Commission issued an Order requiring Qwest Communications Corporation ("Qwest") to show cause, if any, why it should not be subject to the penalties prescribed in KRS 278.535(6) for an allegedly unauthorized presubscribed exchange carrier ("PIC") change of Lookout Marine Sales, a Kentucky consumer. Commission Staff and Qwest representatives subsequently met at an informal conference to discuss the allegations and, on November 22, 1999, an informal conference memorandum was filed of record by the Commission's Staff Attorney. That memorandum states that the allegations of the August 12, 1999 Order are not disputed by Qwest and that Qwest acknowledges that its marketing agent, Campus Promotion Network ("CPN"), failed to provide either a letter of authorization or an electronic recording demonstrating that the customer authorized the PIC change.

Subsequently, Qwest filed into the record its comments on the informal conference memorandum, stating, inter alia, that it has taken numerous actions to prevent future unauthorized PIC changes. It also described ways in which a Qwest customer might be placed on casual billing status. On September 7, 2000, Qwest

submitted its Slamming Compliance Plan as submitted to the Federal Communications Commission on November 18, 1999.

Qwest and Commission Staff were, for a time, engaged in settlement negotiations concerning this matter. Staff's proffered settlement agreement was sent to Qwest in May 2000 and is included in the formal record in this case. Qwest did not, however, execute the document.

We are left with Qwest's defenses to the August 12, 1999 Order outlined in its initial response, filed in September 1999, which consist largely of reiterations that it was not Qwest itself, but its marketing agent, CPN, which caused Lookout Marine Sales' primary exchange carrier to be switched. Qwest claims it reasonably relied on CPN and thus has not willfully violated KRS 278.535.

This Commission has never accepted the argument that a utility cannot be held to have committed a "willful" act simply because an independent contractor, acting on the utility's behalf, committed the act in question. Many carriers employ independent telemarketers. If the Commission accepted the argument that a utility is not answerable for the actions of its telemarketers, its ability to enforce the law would be severely compromised, if not effectively ended.

Based on the foregoing, IT IS HEREBY ORDERED that:

1. Within 10 days of the date of this Order, Qwest shall file any additional written comments it believes pertinent to the allegations and circumstances that are the subject of this case.
2. If Qwest wishes to request a hearing, it may file such request within 10 days of the date of this Order.

3. If no request for hearing is filed within 10 days of the date of this Order, this matter shall be submitted for decision on the existing record.

Done at Frankfort, Kentucky, this 26th day of October, 2000.

By the Commission

ATTEST:

Deputy W. H. Fowler
Executive Director