COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ACCXX COMMUNICATIONS, LLC	)	
	)	CASE NO. 2007-00400
	)	
ALLEGED VIOLATIONS OF KRS 278.535	)	

<u>O R D E R</u>

ACCXX Communications, LLC ("ACCXX") is a telecommunications provider, as defined under KRS 278.535(1)(a), authorized to provide utility service in Kentucky. The Commission has jurisdiction over ACCXX, pursuant to KRS 278.040. ACCXX has been registered with the Commission to provide telecommunications utility service in Kentucky since 2002.

KRS 278.535 outlines the statutory procedures that a provider must follow to properly change a Kentucky customer's telecommunications provider.[1] From July 30, 2007 to September 18, 2007, the Commission's Consumer Services Division received 16 calls or letters from Kentucky telephone customers who complained that their long-distance telecommunications providers had been changed without their request or authorization. In each case, the customer was switched from his chosen provider to ACCXX for the provision of long-distance service.

The common term for such unauthorized provider switching is "slamming." Slamming occurs when a new provider submits an unauthorized order to a customer's

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[1] This applies to both local and long-distance services.

existing provider, wherein the new company falsely states that the customer wants to change carriers. KRS 278.535(2) sets forth the procedures for the proper changing of any Kentucky customer's telecommunications provider for either local or long-distance service. Telecommunications carriers are prohibited from ordering a change to a customer's provider without the customer's explicit consent in the form of a written or an electronically recorded authorization.

On September 27, 2007, the Commission issued an Order ("September 27 Order") requiring ACCXX to respond in writing to the allegations that it had willfully and repeatedly violated KRS 278.535 by unlawfully switching the long-distance providers of 16 Kentucky customers and to show cause as to why it should not be penalized for such violations. Most of the 16 customers complained to the Commission after receiving a bill from ACCXX for the long-distance charges.[2] All of the 16 customers alleged that they never provided any authorization for ACCXX to become their long-distance telephone provider.[3]

In the September 27 Order, the Commission ordered ACCXX to appear at a formal hearing on February 5, 2008 ("February 5 Hearing") at the Commission's offices to address the slamming allegations and required the company to submit written

[2] Some of the customers complained to the Federal Communications Commission ("FCC") and to the Attorney General, who then forwarded the complaints to the Commission. Most of the customers stated that they were not aware of the change until receiving a bill from ACCXX. Those bills vary in amount and range from less than $5.00 to over $45.00

[3] Many customers stated that they attempted to contact ACCXX at the telephone number provided on the bill, but were unable to speak with a company representative or leave a message. Several contacted their preferred long-distance carriers in order to be switched back to their companies of choice. Customers were instructed that they are not required to pay any bills sent by ACCXX if the customers did not authorize a change of long-distance providers.

responses to the slamming allegations. The Commission also ordered ACCXX to have an attorney enter an appearance on the company's behalf. ACCXX was given 30 days from the date of the September 27 Order to comply with the Commission's instructions. At the expiration of the 30-day window, or at any time thereafter, no correspondence, case filing, or contact had been made by ACCXX with the Commission.

In its Order of November 30, 2007 ("November 30 Order"), the Commission stated that the February 5 Hearing would proceed as scheduled, although ACCXX had failed to respond to the September 27 Order.[4] ACCXX did not appear for the February 5 Hearing to answer the allegations. At the hearing, Commission Staff presented the factual background of this case and outlined the applicable law and potential penalties against ACCXX.

During the hearing, Commission Staff also stated that ACCXX is a foreign limited liability company and was authorized by the Office of the Secretary of State of the Commonwealth of Kentucky to do business as of February 20, 2002. However, on November 1, 2007, Kentucky's Secretary of State revoked ACCXX's certificate of authority to transact business in the state. The Secretary of State stated that ACCXX failed to file its 2007 annual report.[5]

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[4] See Attachment 1(B) to this Order. The November 30 Order was sent by certified mail to ACCXX's business addresses in Lexington, Kentucky and Atlanta, Georgia. The Commission received return receipts for the November 30 Order, indicating that the mailing was accepted at both addresses on December 3, 2007. Although the Commission has evidence indicating ACCXX was informed by mail that the show cause hearing would proceed as scheduled, ACCXX failed to contact the Commission or respond to either Order.

[5] See Attachment 1(A) of this Order.

By Order dated April 1, 2008 ("April 1 Order"), the Commission supplemented the record in this matter by adding the affidavit of Virginia L. Smith ("Smith Affidavit"), which outlined the initial informal slamming complaints made by 16 telephone customers against ACCXX.[6] Ms. Smith is the director of the Commission's Consumer Services Division, which receives and addresses complaints by utility customers. In support of her affidavit, Ms. Smith provided exhibits which outlined the date upon which each of the 16 customers made complaints about ACCXX with the Commission. The exhibits include bills sent by ACCXX to those customers, as well as correspondence from the Attorney General and the FCC regarding specific customer complaints about unauthorized carrier changes by ACCXX. Pursuant to the April 1 Order, both the Smith Affidavit and the accompanying exhibits were made part of the record. The Commission served copies of the Order, the Smith Affidavit, and the exhibits upon ACCXX by certified mail with return receipt requested. The Commission allowed ACCXX 20 days within which to respond to the affidavit and exhibits. At the expiration of the 20-day window, or at any time thereafter, no response had been made by ACCXX regarding the April 1 Order.

Pursuant to KRS 278.535(2), ACCXX has the burden to show that the customers knowingly authorized the provider changes. This statute states that a customer may be switched to another provider only if the customer has given a written letter of agency or electronically recorded authorization indicating the customer's assent to the details of

[6] See Attachment 1(C) of this Order. The April 1 Order was sent by certified mail to ACCXX's business addresses in Lexington, Kentucky and Atlanta, Georgia. The Commission received return receipts for the April 1 Order, indicating that the mailing was accepted at each address on April 2, 2008 and April 3, 2008, respectively.

the switch. The Commission finds that ACCXX has failed to meet its burden of proof. As to each of the 16 allegations, ACCXX failed to present a written or electronically recorded statement from each customer demonstrating authorization of a change in the customer's long-distance provider. The Commission finds each of the 16 allegations is accepted as true. The Commission finds that in ordering the switch of the long-distance service of those Kentucky customers and in failing to show that each customer gave explicit consent to that switch, ACCXX has willfully and repeatedly violated KRS 278.535.

FCC INVESTIGATION OF ACCXX

The Commission also notes that the FCC has received a number of recent complaints by telephone customers against ACCXX, wherein the customers allege their long-distance telephone providers were changed to ACCXX without their consent. From October 29, 2007 to March 25, 2008, the FCC issued 12 orders noting complaints against ACCXX and finding that the company violated FCC rules regarding proper procedures for changing each complaining customer's telephone provider.[7] The filing and resolution of those complaints before the FCC are independent from any decision this Commission renders in this proceeding However, the Commission cites the FCC orders to note that the same slamming activities complained of by customers in Kentucky have likely been committed by ACCXX in a number of other states during the time period referenced in this matter. The Commission notes the actions before the

[7] See 22 FCC Rcd 18990 (October 2007); 22 FCC Rcd 18977 (October 2007); 22 FCC Rcd 19109 (October 2007); 22 FCC Rcd 19099 (October 2007); 22 FCC Rcd 20841 (November 2007); 22 FCC Rcd 20829 (November 2007); 22 FCC Rcd 20732 (November 2007); 22 FCC Rcd 20682 (November 2007); 22 FCC Rcd 20668 (November 2007); 22 FCC Rcd 20612 (November 2007); 23 FCC Rcd 1094 (January 2008); and 23 FCC Rcd 4828 (March 2008).

FCC only for the purpose of showing that ACCXX's violations in Kentucky were not simply isolated incidents, but rather demonstrate a pattern of behavior and harm to a variety of telephone customers in various states.

PENALTIES

The Commission finds that ACCXX has willfully and repeatedly committed 16 violations of the provisions of KRS 278.535. Under KRS 278.535(6), the Commission may impose a penalty against a utility that violates the slamming statute. The maximum civil penalty is $10,000 per each violation. The Commission finds that ACCXX must pay a penalty of $10,000 for each of the 16 complaints, which equals $160,000.[8] The Commission also finds that, by failing to appear at the February 5 Hearing, ACCXX disobeyed an Order of the Commission and is subject to the civil penalties outlined in KRS 278.990. The Commission finds that ACCXX must pay a civil penalty of $2,500 for this offense, as provided in KRS 278.990(1).

Additionally, by this Order, the Commission will revoke the registration of ACCXX as a telecommunications provider and revoke its privilege of providing telephone utility service in Kentucky. Under KRS 278.535(6), the Commission has the authority to rescind such licenses. Consistent with the Commission's duty of protecting the public interest in the provision of reasonable and reliable utility service, the Commission finds that ACCXX's privilege of serving as a telephone utility and providing utility service in Kentucky should be revoked until the penalties of $162,500 have been paid. ACCXX is

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[8] The Commission has previously ordered the maximum civil penalty of $10,000 per violation against a provider, as allowed under KRS 278.535(6). See Case No. 2000-00217, America's Tele-Network Corporation, Alleged Violation of KRS 278.535 (Order dated September 7, 2000). See Case No. 2001-00060, USA Tele Corp., Alleged Violation(s) of KRS 278.535 (Order dated July 5, 2001).

required to pay the total penalty of $162,500 before the Commission will allow it to register as a utility or provide telephone service again. Only after the payment of that penalty will the Commission find, by separate Order, that this privilege may be reinstated.

IT IS THEREFORE ORDERED that:

1. Pursuant to KRS 278.535(6) and KRS 278.990(1), ACCXX is assessed total penalties of $162,500.

2. Payment of $162,500 shall be made within 30 days of the date of this Order. Payment shall be in the form of a cashier's check or money order made payable to the Kentucky State Treasurer. The check or money order shall be mailed or delivered to the Office of General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602. The case number for this action shall be notated on the check or money order.

3. ACCXX's registration as a telecommunications utility in Kentucky is revoked. ACCXX shall not be allowed to provide telecommunications utility service to customers within Kentucky until such time as the penalty has been paid. The privilege to provide service in Kentucky shall be reinstated only upon separate Order by the Commission.

4. ACCXX's tariff is removed from Commission files and its name is removed from the Commission's list of active utilities.

5. The customers named and outlined in the September 27 Order shall not be responsible for any long-distance calling charges assessed by ACCXX against them.

6. The Commission's Executive Director shall serve a copy of this Order upon ACCXX by certified mail.

7. The Commission's Executive Director shall serve a copy of this Order upon the Attorney General through his Office of Rate Intervention.

Done at Frankfort, Kentucky, this 30th day of June, 2008.

By the Commission

ATTEST:

Stephanie Stumbo

Executive Director

0531473

Commonwealth of Kentucky
Trey Grayson
Secretary of State

Certificate of Revocation

ACCXX COMMUNICATIONS, LLC
4035 TAMPA RD.
STE 6000
OLDSMAR, FL 34677

I, Trey Grayson, Secretary of State of the Commonwealth of Kentucky, do hereby certify that according to the records in the Office of the Secretary of State,

ACCXX COMMUNICATIONS, LLC

did not file its 2007 annual report within sixty days after it was due. Accordingly, the Secretary of State revoked the limited liability company's authority to transact business in Kentucky on November 1st, 2007.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my official seal this 1st day of November, 2007.

Trey Grayson
Secretary of State

Attachment 1A

Is your RETURN ADDRESS completed on the reverse side?

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
Michael A. Conway
ACCXX Communications, LLC
c/o TCS
3100 Cumberland Blvd., SE
Suite 900
Atlanta, GA 30339-5930

4a. Article Number
7001 0360 0002 0621 2129

4b. Service Type
☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery
CUMBERLAND CARRIER ANNEX DEC -3 2007 USPS ATLANTA GA 303

5. Signature (Addressee)
[signature]

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)

PS Form 3811, December 1991 ★U.S. GPO: 1992—323-402 DOMESTIC RETURN RECEIPT

TW 2007-00400

Thank you for using Return Receipt Service.

Is your RETURN ADDRESS completed on the reverse side?

SENDER:
- Complete items 1 and/or 2 for additional services
- Complete items 3, and 4a & b
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
TCS Corporate Services, Inc
828 Lane Allen Road
Suite 219
Lexington, Ky 40504

4a. Article Number
7001 0360 0002 0621 2112

4b. Service Type
☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery
12/3/07

5. Signature (Addressee)
Patricia L. Mann

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)
Patricia L. Mann

PS Form 3811, December 1991 ★U.S. GPO: 1992—323-402 DOMESTIC RETURN RECEIPT

TW 2007-00400

Thank you for using Return Receipt Service.

Attachment 1B

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

TCS Corporate Service, Inc.

COMPLETE THIS SECTION ON DELIVERY

A. Signature X L. Horton ☒ Agent ☐ Addressee

B. Received by (Printed Name) L. House C. Date of Delivery 4-3-0

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7001 0360 0002 0621 4116

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-

TW 2007-400

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Michael A. Conway

LEXINGTON KY 405 APR 2 2008 USPS

COMPLETE THIS SECTION ON DELIVERY

A. Signature X Patricia L. Mann ☒ Agent ☐ Addressee

B. Received by (Printed Name) Patricia L. Mann C. Date of Delivery 4/2/08

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7001 0360 0002 0621 4109

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

7001 0360 0002 0621 4109

TW 2007-400

FRANKFORT KY 40601 APR 1 2008 USPS

Postage	$
Certified Fee	2.65
Return Receipt Fee (Endorsement Required)	2.15
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 6.79

Postmark Here

Sent To Michael A. Conway
Street, Apt. No.; or PO Box No. 3100 Cumberland Blvd SE, Suite 900
City, State, ZIP+4 Atlanta, GA 30339-5930

PS Form 3800, January 2001 See Reverse for Instructions

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

7001 0360 0002 0621 4116

TW 2007-400

FRANKFORT KY APR 1 2008

Postage	$
Certified Fee	2.65
Return Receipt Fee (Endorsement Required)	2.15
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 6.79

Postmark Here

Sent To TCS Corporate Services, Inc
Street, Apt. No.; or PO Box No. 828 Lane Allen Rd, Suite 219
City, State, ZIP+4 Lexington KY 40504

PS Form 3800, January 2001 See Reverse for Instructions

Attachment 1C