D.T.E. 01-19-04

Complaint filed by Aronson Insurance Agency, Inc., pursuant to G.L. c. 93, § 108 et seq., with the Department of Telecommunications and Energy claiming Network Plus, Inc. switched its local and regional telephone service from Verizon to Network Plus, Inc. without authorization.

APPEARANCES: Stephen J. Aronson, President
Aronson Insurance, Inc.
345 Boylston Street
Newton, Massachusetts 02459-2892
Complainant

Lisa Korner Butler, Vice President, Regulatory and Industry Affairs
Wayne Thomas, Compliance Administrator
Network Plus, Inc.
41 Pacella Park Drive
Randolph, Massachusetts 02368
Respondent

I. INTRODUCTION

On April 13, 2001, Aronson Insurance, Inc. ("Complainant" or "Aronson"), pursuant to G.L. c. 93, § 108 et seq., filed a complaint with the Department of Telecommunications and Energy ("Department") alleging that its local and regional telecommunications service was switched without authorization to Network Plus, Inc. ("Network Plus"or "Company").[1] On August 21, 2001, pursuant to notice duly issued, the Department conducted an evidentiary hearing. Stephen J. Aronson, president of Aronson Insurance, Inc., testified on behalf of the Complainant. Lisa Korner Butler, vice president of regulatory and industry affairs, and Wayne Thomas, compliance administrator, testified on behalf of Network Plus.

II. POSITIONS OF THE PARTIES

A. Complainant

Aronson contends that Network Plus switched their local and regional telephone service two times – once in October 2000 and the second time on March 8, 2001 (Tr. at 7, 18).[2] Moreover, the Complainant contends that its local and regional telecommunications services were suspended by Network Plus from March 8, 2001 through March 15, 2001 (Tr. at 48-49, 82). The Complainant requests the Department determine that: (1) Network Plus switched Aronson's local and regional telecommunications services on March 8, 2001 without

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[1] Such practices are commonly referred to as "slamming".

[2] G.L. c. 93, § 110(b) requires a customer, interexchange carrier, or local exchange carrier to initiate a complaint within 90 days after the statement date indicating that a complainant's telephone services were switched. As Aronson submitted his complaint to the Department on April 13, 2001, only the incident that occurred on March 8, 2001 can be considered in this proceeding.

authorization and that (2) the Department award Complainant $36,865 in damages.[3] Aronson confirmed that Network Plus credited them $700.68 as restitution for the alleged unauthorized switch of the Complainant's local and regional telecommunications services (Tr. at 79).

B. Network Plus

Network Plus stated that no Letter of Agency ("LOA") or third party verification ("TPV") recording exists that would establish that the Company was authorized to switch Aronson's local and regional telecommunications services on March 8, 2001(Tr. at 28). Moreover, Network Plus conceded that it blocked Aronson's local and regional telephone services for non-payment of its invoice between March 8, 2001 and March 15, 2001 (Tr. at 31-32). Network Plus contends that they credited Aronson's account for $700.68 (Tr. at 79).[4]

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[3] The Complainant submitted the following information in support of his request for damages (Exh. Customer-5):

Revenue lost for new business		$22,465
Lost existing clients		$6,072
"Ruined" Utah vacation with son		$3,000
Telephone repair calls		$34
Wasted Aronson Insurance staff time		$2,724
Lawyer's fees		$1000
Reimbursement for use of cell phone		$200
Postcard mailing to clients explaining the circumstances of the lack of telecommunications services		$870
Complainant's time for attendance at hearing	+	$500
TOTAL DAMAGES SOUGHT:		$36,865

[4] According to the Company and Aronson, Aronson had been a customer for long distance service as of October 31, 2000 (Exh. Customer-3; Tr. at 13-15, 19, 21). Aronson, however, had returned to Verizon as a customer on February 14, 2001 (Tr. at 27). The Company alleges that due to an internal error in updating its lost-line report for February, Network Plus placed an order for a hot-cut with Verizon on February 26, 2001, reinstituting Aronson as a Network Plus customer (Tr. at 28). The $700.68 credit consists of two separate credits (id. at 79). The first credit was made in

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Regarding the Complainant's request for damages amounting to $36,865, Network Plus argued that pursuant to 220 C.M.R. §13.00 et seq., and G.L. c. 93 §§ 110 and 112(a), the Department is not authorized to award the Complainant the damages he requested (Tr. at 64-65). Moreover, Network Plus argues that absent any documentation to support the Complainant's alleged losses, such damages should not be considered by the Department (Tr. at 65-66).

III. STANDARD OF REVIEW

Pursuant to G.L. c. 93, § 109(a), a change in a customer's primary interexchange carrier ("IXC") shall be considered to have been authorized only if the IXC or local exchange carrier ("LEC") that initiated that change provides confirmation that the customer did authorize such change either through a signed Letter of Authorization ("LOA") or oral confirmation of authorization through Third Party Verification ("TPV") obtained by a company registered with the Department to provide TPV services in the Commonwealth.

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[4](…continued)

compliance with the Company's practices in rebating service outages, in which the Company testified that it typically credits the consumer the monthly facilities fee for the length of the outage (Tr. at 47). Because of the nature of the outage from March 7, 2001 through March 15, 2001, however, the Company stated that it chose to credit Aronson its entire remaining balance at the end of that pay period, ending March 21, 2001, totaling $528 (Tr. at 46-47). The exact amount of the second credit varies, and is cited as $167.68, $165.20, and $172.68 throughout the hearing (Tr. at 47, 79). The parties agree, however, to the larger amount of $172.68, the amount billed in error following the Company's assessment of the $528 credit, for the period from March 15, 2001 through March 21, 2001, the end of the Company's billing cycle for the month of March (id.).

Pursuant to G.L. c. 93, § 110 (i), the Department shall hold a hearing to determine, based on our review of the LOA or TPV and any other information relevant to the change in telephone service, whether the customer did authorize the carrier change.

In addition to the Massachusetts' slamming law set forth above, the Federal Communications Commission ("FCC") implemented new slamming liability rules. Corrected Version First Order on Reconsideration, CC Docket No. 94-129 (May 3, 2000) ("Corrected Order"). In accordance with those rules the company that switches a customer's telephone service without authorization must pay the customer's authorized company a penalty equal to 150 percent of the charges received from the customer. The authorized company is then required to return one third of that amount, or 50 percent of what the customer paid to the unauthorized carrier, to the customer. See 47 C.F.R. § 64.1140. In the Corrected Order the FCC concluded that states should have primary responsibility for administering its slamming liability rules (See ¶¶ 22-28, 33-37, 52, 84). On November 3, 2000, pursuant to 47 C.F.R. § 64.1110, the Department provided to the FCC its State Notification of Election to Administer FCC Rules (See Letter to Magalie Roman Salas, November 3, 2000).

IV. ANALYSIS AND FINDINGS

In accordance with G.L. c. 93, § 110(i) the Department conducted a hearing to determine whether the change in the Complainant's long distance carrier was authorized. Network Plus conceded that the switch of the Complainant's local and regional telecommunications services was not supported by a valid LOA or TPV recording (Tr. at 28). Thus, the Department finds that Network Plus switched Aronson's local and regional

telecommunications services without authorization.[5]

With regard to the Complainant's request for damages, the provisions of G.L. c. 93, § 112(a)-(c) pertaining to customer refunds do not allow for the damages alleged by the Complainant. Therefore, the Department denies the Complainant's request for a monetary award of $36,865.

Having found that Network Plus initiated this unauthorized switch in Aronson's local and regional service, and in accordance with the FCC's Corrected Order, the Department directs Network Plus to pay Verizon, the Complainant's authorized local and regional service provider, 150 percent of the charges it received from the Complainant within 10 days of this Order. Verizon shall remit one third of that amount, or 50 percent of what Aronson paid to Network Plus, to Aronson.

V. ORDER

Accordingly, after notice, hearing, consideration, and determination that Network Plus switched Aronson Insurance's local and regional telephone service provider without authorization in violation of the provisions of Massachusetts G.L. c. 93, § 109 (a), it is hereby

ORDERED: That Network Plus, Inc. shall comply with the directives contained in this

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[5] An IXC determined by the Department to have intentionally, maliciously or fraudulently switched the service of more than 20 customers in a 12-month period, may be prohibited from selling telecommunications services in the Commonwealth for a period of up to one year. G.L. c. 93, § 112(b). Also, pursuant to G.L. c. 93, § 112(b) an IXC or LEC determined by the Department to have switched any customer's IXC or LEC without proper authorization more than once in a 12 month period, shall be subject to a civil penalty not to exceed $1,000 for the first offense and not less than $2,000 for any subsequent offense. Since this is a first offense, the Department determines that no penalty under G.L. c. 93, § 112(b) shall be imposed.

order; and it is

FURTHER ORDERED: That Network Plus, Inc. shall submit to the Department within ten (10) business days of the issuance of this order, an accounting of refunds and credits made to Verizon.

By Order of the Department,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).