

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
New York on December 19, 2001

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman
Thomas J. Dunleavy
James D. Bennett
Leonard A. Weiss
Neal N. Galvin

CASE 97-C-0229 - In the Matter of Slamming Complaints Received
Against AT&T Communications of New York, Inc.

ORDER IMPOSING PENALTY FOR SLAMMING

(Issued and Effective January 17, 2002)

BY THE COMMISSION:

BACKGROUND

On October 3, 2000, a Notice of Apparent Liability (NAL) for slamming violations pursuant to §92-e(2) of the Public Service Law was issued against AT&T Communications of New York, Inc. (AT&T). The NAL alleged 33 customer complaints of unauthorized switching of the customer's preferred carrier and carried a potential penalty of \$53,000.¹

¹ Previously AT&T had been ordered to stop slamming and submit a compliance plan detailing actions to reduce and eliminate slamming. Case 97-C-0229, In the Matter of Slamming Complaints Received Against AT&T Communications of New York; Order Directing Response (issued March 21, 1997). AT&T's compliance plan was approved [Case 97-C-0229, In the Matter of Slamming Complaints Received Against AT&T Communications of New York; Order Approving AT&T Plan with Modifications (issued June 27, 1997)], but slamming complaints increased from an average of 7 per month in 1999 to an average of 31 per month through July 2000, the time period during which the complaints in the NAL arose.

The 33 customer complaints alleged in the NAL were selected from over 300 slamming complaints received between January 1999 and August 2000. Each complaint alleged that AT&T had switched the customer's preferred carrier and one or more services (local, intraLATA, or interLATA) without authorization.

Before the NAL was issued, proof of verification to confirm customer authorization of a carrier switch was requested from AT&T but nothing was submitted other than letters stating AT&T's basis for believing that a slam had not occurred. After the NAL was issued, AT&T submitted a written response (Response) and 17 audio recordings. AT&T claimed that its efforts to curtail slamming had been successful and that the complaints in the NAL were "almost entirely associated with AT&T's efforts, beginning in September 1999, to enter the State's local service market on a broad scale."² According to AT&T, while technical violations of law may have occurred, there had been no "willful change in the telecommunications carrier of a customer without that customer's authorization."³ AT&T stated that it shared the Commission's zero tolerance of slamming.

On October 17, 2001, Staff and AT&T representatives met to review the sufficiency of the documentation for the customer complaints.

² AT&T Response at 2.

³ AT&T Response at 2.

DISCUSSION AND CONCLUSION

A. Undisputed Slams

AT&T acknowledged that 5 of the complaints (Edkin, Forsblad, Jasikiewicz, McKinley, and Swerdloff)⁴ involved customers switched to AT&T without authorization due to "down time" errors. A "down time" error occurs when customer change requests cannot be processed automatically because of system operation problems, necessitating manual entry. Manual entry of data carries an increased risk that errors will occur; i.e. services not originally authorized will be entered when the data is transferred to the automated system. AT&T has since modified its procedures to reject a customer order when there isn't a precise match between the manual form and third party verification (TPV).

Two complaints (Dooley and Fabi)⁵ involved "welcome package" verification, a method of verification originally authorized by the Federal Communications Commission (FCC) but withdrawn and invalid after April 27, 1999. Although both the Dooley and Fabi complaints arose before that date, AT&T did not have documentation to substantiate that "welcome package" letters had been sent and chose to not contest the allegations in these 2 complaints.

B. Withdrawn Complaints

Audio recordings that AT&T submitted with its Response provided clear and conspicuous confirmation that a change in service had been authorized for 9 complaints (Banick, Brickwedde,

⁴ These five complaints resulted in the switch of 6 services. The fines associated with these five complaints remain at \$6,000.

⁵ These two complaints resulted in the switch of 2 services. The fines associated with these two complaints remain at \$2,000.

Caso, Collins, Dee, DiMuro, Friedman, Kossman, and LaSorsa)⁶. Therefore, allegations of slamming in these cases are dismissed. Had the tapes been provided when they were requested, before the NAL was prepared, slamming charges would not have been brought in these cases.

In addition, the Hutton⁷ complaint is dismissed based on a letter AT&T submitted with its Response in which Mr. Hutton acknowledged that AT&T had been his carrier before March 31, 2000. Due to a delay in provisioning of the order switching service to Verizon, AT&T continued to bill Mr. Hutton, leading him to believe he had been slammed, when in fact, his new preferred carrier had not yet been switched.

C. Disputed Slams Where Tapes Were Submitted

Although AT&T submitted tapes in the Alvarez, Dzierzanowski and Tellman complaints, the tapes raised customer authorization issues. In Tellman, the customer questioned the TPV interviewer about the consequences of not cashing AT&T's check. AT&T maintained that the question about the check was information gathered for a future decision. The customer did eventually cancel service with AT&T without cashing the check, thereby refuting AT&T's contention that the question did not relate to the transaction in dispute.

In Dzierzanowski, AT&T alleged that Anna Sawulak had given authorization for the Dzierzanowski carrier switch. However, the Dzierzanowski's stated that they did not know an Anna Sawulak, who was not the customer of record and did not

⁶ These nine complaints resulted in the switch of 13 services. The fines associated with these nine complaints are reduced from \$13,000 to \$0.

⁷ This complaint resulted in the switch of 1 service. The fine associated with this complaint is reduced from \$1,000 to \$0.

reside with the Dzierzanowski's. The FCC recently clarified that while authorization to change carriers is not restricted to the customer of record, carriers are ultimately responsible for ascertaining the authorization held by that individual.⁸

The Alvarez complaint also presented an apparent authority issue. The individual who spoke to the third party verifier on the tape identified himself as the owner of the business and provided a unique identifying number. However, this individual was unable to provide the verifier with the customer's business address. The marketer, who stayed on the line, had to provide the customer's business address to the verifier. AT&T maintained that it was entitled to rely on the unique identifier given as confirmation of apparent authority, however, this reliance was not reasonable given that the "owner" did not know the address of this business.

The Alvarez, Dzierzanowski, and Tellman complaints presented a failure to substantiate that there was a "clear and conspicuous confirmation" of authorization and, therefore, violated §92-e(2) of the Public Service Law.⁹

D. Other Disputed Complaints

As proof of verification, AT&T provided third party verification letters in 13 cases (Brown, Crispell, Dugan, Lawrence, Masi, Miller, Montoya, Orlando, Palladino, Roland, Riegger, Su Yiu and Vescia). These form letters, submitted on

⁸ In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Third Report and Order and Second Order on Reconsideration, CC Docket No. 94-129 (released August 15, 2000), at paragraph 51.

⁹ These three complaints resulted in the switch of 7 services. The fines associated with these three complaints remain at \$7,000.

behalf of J.C. Penney Company, Inc., acting as third party verifier, contained the following "transactional details": TPV confirmation date, customer name, billing telephone number, name of person authorizing switch, service/response, and unique identifying information. Three categories of services were listed in the service/response: local, inter, and intra. "Y's," indicating that the third party verifier believed customer authorization to switch a particular service had been given, are filled in for each category of service on all of the letters submitted.

At the time these complaints were made, FCC regulations required that verification of an order be via 1) written letter of authorization, 2) electronic authorization, or 3) independent TPV.¹⁰ Part 64, §1150(d) states that verification content "must include clear and conspicuous confirmation that the subscriber has authorized a preferred carrier change." In an April 17, 2001 Order of Forfeiture against AT&T,¹¹ the FCC found that a similar document which used the term "pass" next to AT&T service offerings, "fail[ed]" to provide evidence of a "clear and conspicuous confirmation" that a change in carrier had been authorized.¹² Regarding the inclusion of a unique identifier, the FCC stated in the same case that

¹⁰ Under §92-e(2) of the Public Service Law, no telephone company is permitted to change a customer's preferred carrier unless it has complied with authorization and confirmation procedures established by the Commission and by federal law and rules. Since there are no separate Commission authorization and confirmation procedures, compliance with FCC rules satisfies §92-e(2).

¹¹ In the Matter of AT&T Communications, Inc. Apparent Liability for Forfeiture, Order of Forfeiture, File No. EB-00-TC-006 (released April 17, 2001).

¹² Id. at 5.

"[t]he issue here is not whether a verifier spoke with ...[the customer] but whether ...[the customer] authorized a change ...[of service]." ¹³

The customer complaints discussed above presented similar issues. AT&T believed that the documentation it submitted provided verification consistent with regulatory requirements. While the verification submitted was consistent with that allowed by slamming regulations, the documentation provided by AT&T did not rebut the customer allegation that a switch had not been authorized, therefore, §92-e(2) of the Public Service Law was violated.

However, because there were provisioning delays in switching away from AT&T service and billing confusion as a result of such delays in the Brown, Crispell, Dugan, Lawrence, Masi, Miller, Montoya, Orlando, Palladino, Riegger, Su Yiu, and Vescia complaints, the \$1000.00 maximum penalty is reduced by \$250.00 pursuant to §92-e(6) which allows the Commission to take into account "the nature, circumstances, extent and gravity ..." of the violations. ¹⁴

In the Roland complaint, the customer admitted that initially she did agree to switch her local, intraLATA and interLATA services to AT&T but realized while on the phone with the third party verifier that she did not want to switch her local carrier and requested cancellation of the entire order. The verifier informed her that she would have to call another number to cancel the order. The order was processed as though

¹³ Ibid.

¹⁴ These 12 complaints resulted in the switch of 22 services. The fines associated with these 12 complaints are reduced from \$22,000 to \$16,500.

authorization had been given. AT&T submitted a letter from J.C. Penney, AT&T's third party verifier, stating that while a call had been verified for Ms. Roland, no recording was found due to system problems. In this case, the customer's allegation that she had rescinded her initial authorization was not rebutted by the documentation submitted which stated that a third party verifier had spoken to her.¹⁵

AT&T submitted a list of improvements that have been made to correct problems encountered in processing new service orders: 1) third party verifications checked against orders for each type of service and automatic cancellation of any service that does not have a corresponding verification, 2) all TPV transactions taped, enabling customers, AT&T, and Commission Staff to hear conversations during which customer orders are verified, 3) all tapes tagged for prompt retrieval, 4) third party verifier performance monitored by reviewing tapes, 5) improved intercarrier communication used to obtain timely information about customer migration, and 6) third party verification script used that asks customers to state a telephone number and which asks questions to ascertain whether an individual who is not the customer of record has authority to switch carriers.

Slamming regulations hold carriers to a high standard, strict liability, in order to protect customers against overzealous sales activities and other abuses related to switching carriers. While the record in this case establishes that slamming occurred, it also presents a number of circumstances that should be taken into account: delays in provisioning, processing errors, insufficient documentation of

¹⁵ This complaint resulted in the switch of 1 service. The fine associated with this complaint remains at \$1000.

authorization, and reliance on authorization by someone other than the customer of record. After reviewing the record, applying PSL §92-e(6), and considering measures undertaken by AT&T to correct the problems identified in these 33 complaints, a penalty of \$32,500 is imposed.

The Commission Orders:

1. AT&T Communications of New York, Inc. shall be liable for an administrative penalty of \$32,500.
2. AT&T Communications of New York, Inc. shall remit \$32,500. to the New York State Department of Public Service, Director of Finance and Budget, 16th Floor, Three Empire State Plaza, Albany, New York 12223-1350 within 30 days from the issuance of this Order.
3. AT&T Communications of New York, Inc.'s payment, payable to the New York State Department of Public Service, will be deposited in the State Treasury to the credit of the general fund.
4. This proceeding is continued.

By the Commission,

(SIGNED)

JANET HAND DEIXLER
Secretary