

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on September 18, 2002

COMMISSIONERS PRESENT:

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

CASE 01-C-0727 - In the Matter of Slamming Complaints Received
Against Talk America - Approval of Settlement
Agreement.

ORDER IMPOSING PENALTY FOR SLAMMING

(Issued and Effective October 30, 2002)

BY THE COMMISSION:

BACKGROUND

On July 30, 2001, a Notice of Apparent Liability (NAL) for slamming violations pursuant to §92-e(2) of the Public Service Law was issued against Talk America (formerly Talk.com, Inc.) The NAL alleged 44 customer complaints of unauthorized switching of the customer's preferred carrier and carried a potential penalty of \$86,000.

The 44 customer complaints alleged in the NAL were selected from the 234 slamming complaints received during a 9-month period between June 1, 2000 and February 28, 2001. In all cases, a Commission staff person interviewed each complainant to ascertain that the customer had not authorized

the switch.¹ Talk America was asked to provide verification in all cases but either failed to do so or its submission did not support a finding that the switch had been authorized.

On August 8, 2001, Talk America responded to the NAL. Subsequently, Talk America and Staff met via conference call to discuss outstanding issues relating to the Company's NAL Response. Talk America then filed a Supplemental Response to the NAL on October 12, 2001. According to Talk America:

1. Lack of authorization for 22 or the 44 complaints stemmed from a promotional check mismatch problem. Talk America admitted that this problem involved a provisioning error, but argued that no violation of the FCC's letter of authorization or customer verification rules had occurred and, therefore, these 22 complaints should be removed from the NAL.
2. In addition, Talk America claimed that 11 of the 44 complaints were validly authorized sign-ups as proven through the tapes and LOAs provided to Staff. Accordingly, Talk America claimed that these 11 complaints should be removed for NAL.
3. Five (5) of the remaining 11 complaints, according to Talk America, involved electronic authorizations that remained the subject of customer disputes despite submission of required customer-specific information and, therefore, should have been withdrawn from the NAL. Talk America claimed that three (3) complaints resulted from data entry errors, one (1) involved a cancellation dispute, and the remaining two (2) complaints lacked account information. None of these 11 complaints violated slamming regulations, according to Talk America, and should be removed from the NAL.

Finally, Talk America asserted that the complaints in the Commission's NAL did not constitute violations of federal slamming laws, the basis of section 92-e(2) of the Public

¹ Each complaint alleged that Talk America had switched the customer's preferred carrier and one or more services (local, intraLATA, or interLATA) without authorization.

Service Law of New York. At a minimum, according to Talk America, NAL complaints relating to the promotional check mismatch error and those for which the Company had valid authorizations, should be dismissed.

In July 2002, Talk America requested an opportunity to discuss its slamming problem and possible settlement of the July 30 NAL. As a result of discussions between the company and staff, the attached Memorandum of Understanding was negotiated. The Memorandum of Understanding requires Talk America to pay \$120,000 to the general fund over a 3-year period in full satisfaction and settlement of all penalty claims relating to slamming complaints received by the Department as of the date of settlement and for all slamming complaints related to sales made prior to May 1, 2001. The Memorandum also provides for system improvements by Talk America designed to alleviate slamming problems.

DISCUSSION AND CONCLUSION

Talk America has had a significant slamming problem. And that problem persisted after the period covered by the July 30 NAL. The Memorandum of Understanding reasonably addresses those past problems and should alleviate the company's slamming problems going forward.

Talk America made a number of improvements to correct problems encountered in processing new service orders. In October 2000, Talk America fired its telemarketing agent. The company also initiated a zero-tolerance policy against slamming. Any employee or independent contractor violating this policy is subject to immediate termination. The company also created a comprehensive sales training manual which includes a complaint resolution process with which all of Talk America's sales and customer service personnel must comply, and implemented an

improved company-wide monitoring and tracking system for customer complaints. This system tracks the number of slamming complaints received by the Company and the results of the company's investigation. This system is designed to enable the company to quickly identify and remedy problems.

The number of slamming complaints against Talk America has decreased significantly. While there were 275 slamming complaints against Talk America for the 5-month period from January 1, 2001 to May 31, 2001, there were 63 Complaints against Talk America for the same 5-month period in 2002.

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. Overall, the record in this case presents a significant number of substantiated customer complaints regarding carrier switches, processing errors, insufficient documentation of authorization, and reliance on someone other than the customer of record. After reviewing the record, considering measures undertaken by Talk America to correct slamming problems, and noting the reduced complaint rates, the Commission finds that the terms of the Memorandum of Understanding, which require Talk America to pay \$120,000 in full satisfaction and settlement of all penalty claims relating to slamming complaints received by the Department as of the date of this settlement and for any slamming related to sales made prior to May 1, 2001, to be reasonable and approves the proposed settlement with Talk America.

The Commission orders:

1. Talk America shall be liable for an administrative penalty of \$120,000.

2. Talk America shall remit payments 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 in accordance with the terms of the approved settlement, except that the first payment shall be remitted within 30 days of issuance of this Order.

3. Talk America's payments, made out 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

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**CASE 01-C-0727 – In the Matter of Slamming Complaints
Received Against Talk.com**

MEMORANDUM OF UNDERSTANDING

Talk America Inc. (formerly Talk.com Holding Corp. and Tel-Save Inc., hereinafter referred to as “Talk America” or “the Company”) and the New York Department of Public Service (“DPS” or “Department”), collectively the “Parties,” hereby agree to presentation and pursuit of the following proposed disposition of the above captioned matter before the New York Public Service Commission (hereinafter the “Commission”):

1. Talk America holds a Certificate of Public Convenience and Necessity to Resell all forms of telephone service in New York State, and provides local exchange, intrastate, intraLATA and interLATA telephone service.

2. Since April 1997, the Commission has received over 650 consumer complaints regarding Talk America. On July 11, 2001, the Commission issued a Notice of Apparent Liability for Slamming (“NAL”) in the above captioned matter, determining that the Company was apparently liable for a total penalty amount of \$86,000.

3. On August 8, 2001, Talk America submitted its response to the NAL. Following discussions with Department Staff, the Company filed a Supplemental Response to the NAL on October 12, 2001.

4. The Parties met on August 22, 2002, to discuss actions taken by Talk America in response to the complaints and possible terms for the settlement of all outstanding complaints.

The list of specific actions taken by the Company to reduce the number of complaints is attached hereto as Exhibit A.

5. The Parties hereby agree that Talk America shall pay One Hundred and Twenty Thousand Dollars (\$120,000.00) to the Commission in full satisfaction and settlement of all claims relating to complaints received by the Commission as of the date this settlement is approved by the Commission and for any future slamming complaints related to sales made prior to May 1, 2001. Talk America shall pay the \$120,000.00 in twelve (12) equal quarterly installments, with the first installment due October 1, 2002. Each subsequent installment shall become due on the first day of each subsequent quarter (*e.g.* January 1, 2003, April 1, 2003, etc.), with the final quarterly installment due July 1, 2005. Talk America shall remit payments to the New York State Department of Public Service, Director of Finance and Budget, 16th Floor, 3 Empire State Plaza, Albany, NY 12223-1350. The check should be made payable to the New York State Department of Public Service and it will be deposited in the State Treasury to the credit of the general fund.

6. The rights and obligations of the Parties as set forth in this Memorandum of Understanding shall not become effective until the terms hereof are approved by the Commission.

7. The undersigned authorized representatives acknowledge that they have read this Memorandum of Understanding and are familiar with its contents. The undersigned representatives further acknowledge that they have freely, knowingly and voluntarily signed this document and consent to the resolution of the above-captioned proceeding and incorporated complaints as provided herein.

Dated this _____ day of _____, 2002.

On behalf of the New York Department of
Public Service

Talk America Inc.

By: Aloysius T. Lawn IV
EVP – General Counsel
On behalf of Talk America Inc.