

DT 02-147

AMERICA'S DIGITAL SATELLITE TELEPHONE

Hearing on Deficiencies in Service and
Continued Operation as a Public Utility

Order to Show Cause Why Authority to Operate as a Public
Utility Should Not be Revoked and/or Penalties Imposed
And
Order to Cease and Desist Violation of FCC Rules

O R D E R N O. 24,035

August 13, 2002

I. BACKGROUND

America's Digital Satellite Telephone (ADST) was granted authority by the New Hampshire Public Utilities Commission (Commission) to engage in the business of providing intrastate telecommunications toll services on October 10, 2001, under IXC No. 10-003-01.

On April 23, 2002, Commission Staff (Staff) received three complaints against ADST from telephone customers in New Hampshire. Each of these customers complained that their in-state and out-of-state telephone service had been changed from their existing carrier (Authorized Carrier) to ADST without their consent. Staff received nine additional complaints by April 30, 2002. Five of those complaints were identical to those made on April 23, 2002. Of the remaining four complaints, one consumer complained that ADST had engaged in misleading telemarketing, one complained that their in-state

service had been changed to ADST without customer consent, and two complained that their out-of-state service had been changed to ADST without customer consent.

As of August 6, 2002, the Commission had notified ADST of 56 complaints making similar allegations against ADST.

The Commission has received 6 more complaints since August 6, 2002 which have not yet been referred to ADST. One additional complainant told Staff that he had agreed to change his service to ADST, but that ADST charged rates in excess of what ADST had quoted in the telephone solicitation.

Staff determined that the various allegations warranted thorough investigation as each allegation, if true, would constitute a prohibited act under relevant New Hampshire law. RSA 374:28-a prohibits "slamming," which is defined as changing a customer's telecommunications service carrier "without the customer's knowledge or consent." RSA 378:46 prohibits "cramming," defined in RSA 378:44, II as submitting or including unauthorized, misleading or deceptive charges for products or services on a customer's utility bill.

In addition, the Commission, pursuant to rules of the Federal Communications Commission (FCC), elected to administer FCC Rules that govern what telecommunications

carriers must do in order to effectively change a customer's service from a Preferred Carrier (Change Order). 47 CFR 64.1110 et seq. (FCC Rules). *CC Docket No. 94-129, Letter from Douglas L. Patch, Chair of the New Hampshire Public Utilities Commission, to Magalie Roman Salas, FCC Secretary, November 21, 2000.*

As part of its investigation, Staff contacted ADST by letters dated May 21, June 19, July 25 and August 6, 2002, directing ADTS to respond to various complaints. Staff also requested third party verifier information and copies of marketing scripts.

On July 31, 2002, the Consumer Affairs Director notified ADST in writing that ADST had failed to submit third party verification for certain customers and should refund specified charges. Confirmation of the refunds was instructed to occur by August 9, 2002 but ADST failed to meet the deadline.

On August 9, 2002, the Consumer Affairs Director submitted to the Commission a report on the slamming investigation. Based on the number of violations, and the failure of ADST to comply fully with the Commission's

directions, Staff recommended that a show cause proceeding be instituted.

II. DISCUSSION

Under the FCC Rules, any carrier purporting to execute a valid Change Order (Submitting Carrier) must demonstrate that it has authorization from the party who would be affected by the change. The rules specifically bar a Change Order from taking effect unless an independent, qualified Third Party Verifier (TPV) has confirmed the Change Order. The FCC rules prohibit the Submitting Carrier from owning, managing, controlling or directing the TPV. While the Submitting Carrier may use an automated system of verification, such system must provide the customer with an option to speak with a live person at any time during the call. 47 CFR 64.1120(c)(3)(iv). In addition, while the FCC Rules allow a carrier's sales representative to initiate a three-way conference call or a call through an automated verification system, the sales representative must drop off the call once the three-way connection has been established. 47 CFR 64.1120(c)(3)(ii).

To be valid according to FCC Rules, a Change Order must be susceptible to verification. FCC Rules require the

TPV to have verifiable proof that it elicited, at a minimum, the following: the identity of the customer; confirmation that the person on the call is authorized to make the carrier change;

confirmation that the person on the call wants to make the carrier change; the names of the carriers affected by the change;

the telephone numbers to be switched; and the types of service involved. 47 CFR 64.1120 (c)(3)(iii).

When a consumer makes a complaint to the Commission that its telecommunication service has been changed without authorization, the Staff begins its investigation by requesting the Submitting Carrier to provide a copy of any valid proof of verification to demonstrate compliance with FCC Rules. 47 CFR 64.1150. All carriers must maintain and preserve such verification in audio records for a minimum of two years after obtaining such verification. Failure of a Submitting Carrier to provide a copy of such verification, or failure of such verification to meet the minimum requirements of the FCC Rules, is presumed to be clear and convincing evidence that the Submitting Carrier violated the rules, and

instituted an unauthorized change in telecommunication service. *Id.*

Based on the receipt of these complaints, and pursuant to FCC Rules, Staff undertook an investigation of the allegations to determine whether the allegations were well-founded. As part of its investigation, Staff requested the TPV tape recordings of the calls made to the complaining customers to determine whether the verifications met the standards of the FCC Rules. As of July 25, 2002, Staff had requested TVPs for 47 slamming investigations. To date, ADST has provided twenty tapes. The company has failed to produce a TPV or any other proof of verification in one investigation.

After reviewing the 20 tapes, and investigating the contents of these tapes with the complainants, the Staff concluded that in each of the 20 cases where "slamming" was alleged, ADST had violated the FCC Rules. Staff has reported its findings to the Commission in a memo dated August 9, 2002, a copy of which will be sent to ADST along with this order. Specifically, Staff determined that TPV processes used by ADST did not meet the standards in the FCC Rules as follows:

1. ADST did not obtain separate authorization for intrastate and interstate toll service, and instead used a

single authorization for both services in violation of 47 CFR 64.1120(b);

2. ADST sales representatives did not drop off the call after initiating the third party verification call in violation of 47 CFR 64.1120 (c)(3)(ii);

3. ADST did not confirm that the person on the call was authorized to make the carrier change; did not identify the names of the Authorized Carrier and the Submitting Carrier; did not identify the telephone numbers subject to the Change Order; and did not identify the types of services involved, all in violation of 47 CFR 64.1120(c)(3)(iii); and

4. ADST used an automated verification process that did not allow consumers to speak with a live person at any point during the verification process, in violation of 47 CFR 64.1120(c)(3)(iv).

Staff also noted that ADST has failed to comply with FCC rules 47 CFR 64.1160 and 47 CFR 1170 regarding changing long distance service. According to Staff, ADST has provided information to Staff that indicates it has re-rated customers' bills, a practice no longer permitted by FCC rules.

The Commission has several options for action against ADST. NH RSA 374:28-a, which prohibits "slamming"

provides that the Commission may withdraw the right to engage in business in the state from anyone found engaged in slamming. RSA 374:28-a, III. In addition, the Commission may fine any person engaging in "slamming" up to \$2,000 per offense. RSA 374:28-a, II.

If the Commission determines that ADST billed services in excess of its tariff or in excess of quoted rates, ADST may be held in violation of NH RSA 378:46 and subjected to an additional administrative fine of \$1,000 for each offense.

In addition to these penalties, the FCC Rules, which the Commission has elected to administer, state that any carrier in violation of its rules shall be liable to the consumer's Authorized Carrier in an amount equal to 150% of all amounts paid to the unauthorized carrier after the violation. 47 CFR 64.1140(a). Furthermore, FCC Rules state that the customer has no liability to the Submitting Carrier for the first 30 days of service if billed charges have not been paid. Any charges billed by the Submitting Carrier after 30 days of service may be paid at the rate charged by the Authorized Carrier. 47 CFR 4.1140(b)(1). FCC Rules provide that the Submitting Carrier shall be liable for any charges

incurred by the customer in returning to the Authorized Carrier. 47 CFR 64.1140(b)(3).

Based upon the foregoing, it is hereby

ORDERED, that ADST immediately cease and desist any and all violations of applicable FCC Rules and state law including, but not limited to the TPV process, found at 47 CFR 64.1120, and "slamming", found at NH RSA 374:28-a; and it is

FURTHER ORDERED, that pursuant to NH RSA 365:41, RSA 374:17, RSA 374:28, RSA 374:47-a and RSA 374:28-a, ADST appear before the New Hampshire Public Utilities Commission at its offices at 8 Old Suncook Road, Concord New Hampshire at 10:00 a.m. on September 6, 2002, to respond to the allegations noted above and to show cause why fines or other allowed penalties should not be imposed or why its authority to operate a telecommunications service in the State of New Hampshire should not be revoked; and it is

FURTHER ORDERED, that ADST send a copy of this Order to each of its customers by first-class mail postmarked no later than August 20, 2002; and it is

FURTHER ORDERED, that the Executive Director send a copy of this order and the Staff memo of August 9, 2002 with attachments by first class mail, return receipt requested, to

ADST at its last known mailing address; and it is

FURTHER ORDERED, that the Executive Director shall notify all persons desiring to be heard at this hearing by publishing in a newspaper with statewide circulation: (1) a copy of this Order no later than August 16, 2002; and (2) a display ad setting forth the purpose, time and place of the hearing no later than August 20, 2002; and it is

FURTHER ORDERED, that pursuant to NH Administrative Rules Puc 203.01, any party seeking to intervene in the proceeding shall submit to the Commission an original and eight copies of a Petition to Intervene with copies sent to ADST and the Office of the Consumer Advocate on or before September 3, 2002, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding, as required by N.H. Admin. Rule Puc 203.02 and RSA 541-A:32, I(b); and it is

FURTHER ORDERED, that any party objecting to a Petition to Intervene make said Objection on or before September 5, 2002.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of August, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Michelle A. Caraway
Assistant Executive Director