

2-04-000065

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 6

STATE OF KANSAS, ex rel.,)
PHILL KLINE, Attorney General,)
)
Plaintiff,)
)
vs.)
)
VARTEC TELECOM, INC.,)
EXCEL TELECOMMUNICATIONS, INC.,)
)
Defendants.)

Case No. 04C1505

(Pursuant to K.S.A. Chapter 60)

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 2nd day of Nov., 2004, the Petition for Approval of Consent Judgment comes before the Court pursuant to K.S.A. 50-632(b)(K.S.A. 2003 Supp.). The Plaintiff, state of Kansas, *ex rel.*, Phill Kline, Attorney General for the state of Kansas, appears by and through Joseph N. Molina, Assistant Attorney General. Defendants VarTec Telecom, Inc., and Excel Telecommunications, Inc., appear by and through counsel James Scott Kreamer.

WHEREUPON the parties advise the Court that they have stipulated and agreed to the following:

PARTIES, JURISDICTION AND VENUE

1. Phill Kline is the duly elected Attorney General for the state of Kansas.
2. The Attorney General's authority to bring this action is derived from the statutory and

common law of the state of Kansas, specifically the Kansas Consumer Protection Act, ("KCPA") K.S.A. 50-623 *et seq.*

3. Defendant VarTec Telecom, Inc., is a foreign corporation organized under the laws of the state of Texas. The principal office of the corporation is located at 1600 Viceroy Drive, Dallas, Texas 75235.
4. Defendant Excel Telecommunications, Inc., is a foreign corporation organized under the laws of the state of Texas. The principal office of the corporation is located at 1600 Viceroy Drive, Dallas, Texas, 75235.
5. Defendants stipulate and admit that venue is proper in this Court.
6. Defendants are suppliers as defined within K.S.A. 50-624(j)(K.S.A. 2003 Supp.) and engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c)(K.S.A. 2003 Supp.).
7. Defendants engaged in the telecommunications business by providing telecommunication services, including interstate/state-to-state, intrastate/local toll and local services to Kansas consumers.

ALLEGATIONS

8. Beginning at a time unknown to Plaintiff but at least since February 8, 2002, Defendants have been contacting Kansas consumers in an effort to persuade these consumers to use its services.
9. The Attorney General alleges that Defendants engaged in deceptive and unconscionable acts and practices in violation of the KCPA, specifically, but not limited to, K.S.A. 50-626, K.S.A. 50-627, K.S.A. 50-6,103, K.S.A. 50-670 and

K.S.A. 50-670.

- a. Defendants, by entering into this Consent Judgment, make no admission of liability as to any practice set forth in paragraph nine (9).
 - b. In its telemarketing to Kansas consumers, Defendants concealed and/or suppressed and/or omitted the material fact that there was a ten (10) minute minimum which applied to all long distance calls associated with the Defendants' OneChoice calling plan (OneChoice). This OneChoice plan offered unlimited local calling and 200 free long distance minutes per month for \$29.95. However, any long distance call that did not last longer than the ten (10) minute minimum would have a full ten (10) minutes deducted from the 200 free long distance minutes, thus depleting the free minutes sooner than consumer expected. Consumers would then incur a fee for every minute used after the 200 free long distance minutes were exhausted.
 - c. Defendants failed to make timely refunds after its service was canceled by Kansas consumers. Defendants have an internal policy of refunding consumers within 45-75 days after cancellation.
10. Defendants agree to this Consent Judgment without trial or adjudication of any issue of fact or law solely for the purpose of this settlement.

INJUNCTIVE RELIEF

11. Defendants agree to refrain from, and to be permanently enjoined from, engaging in any acts and practices in violation of KCPA, specifically, but not limited to, K.S.A. 50-626, K.S.A. 50-627, K.S.A. 50-6,103, K.S.A. 50-670 and K.S.A. 50-670.

Defendants agree that engaging in any acts and practices in violation of the KCPA after the date of the Consent Judgment, shall constitute a breach of this Consent Judgment.

12. Defendants agree to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms of this Consent Judgment.
13. Defendants agree to make available the provisions of this Consent Judgment to its employees, agents and representatives.

CONSUMER RESTITUTION

14. Defendants agree to provide a full refund or credit for all the consumers listed in Exhibit "A", attached hereto and incorporated herein as though fully set forth herein, to the extent such full refund or credit has not already been received by the consumer. If the consumer who requested the refund has an outstanding balance on the account for which a refund was requested, the Defendants will credit the account so that it has a zero balance. The Defendants will also reimburse such consumers for any switching charges incurred. The Defendants also agree that no negative credit information will be reported to any credit reporting agency for nonpayment of a bill on the account for which a refund was requested for such consumers. In addition, if any negative information was reported to a credit reporting agency than the Defendants will take all necessary actions to remove and correct any negative information already reported to any credit reporting agency. The Defendants also

agree to forgo any collection proceedings for outstanding balances for such consumers on the account for which a refund was requested.

INVESTIGATIVE FEES AND CIVIL PENALTIES

15. Defendants agree to pay to the "Office of the Attorney General" of the State of Kansas \$40,000.00 pursuant to K.S.A. 50-632 and K.S.A. 50-636 (K.S.A. 2003 Supp.) to be paid in four (4) installments of \$10,000 per month. Payment of the first installment shall be made by cashier's check, payable to the Office of the Attorney General, and shall be delivered to the Attorney General of the State of Kansas at the time of signing this Consent Judgment. Each subsequent installment shall be paid within 30 days of the previous installment until all installments are paid in full.

OTHER PROVISIONS

16. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations thereof.
17. If any portion, provision, or part of this Consent Judgment is held to be invalid, unenforceable, or void for any reason whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining provisions, portions or parts.
18. Compliance with this Consent Judgment does not relieve Defendants of any obligation imposed by applicable federal, state, or local law, nor shall the Attorney

General be precluded from taking appropriate legal action to enforce civil or criminal statutes under his jurisdiction.

19. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of Defendants nor shall Defendants represent the decree as such an approval. The parties further understand that any failure by the State of Kansas or by the Attorney General to take any action in response to any information submitted pursuant to the Consent Judgment shall not be construed as an approval of or sanction of any representations, acts or practices indicated by such information, nor shall it preclude action thereon at a later date.
20. Each of the Defendant's representatives, signing this Journal Entry of Consent Judgment, warrants that the representative has been duly authorized by the Defendant for whom the representative appears to be acting to enter and execute this Journal Entry of Consent Judgment on behalf of the Defendants. Defendants further represent that they have had an opportunity to consult with and obtain the advice of private counsel prior to entering into this judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of fact and conclusions of law of the Court and any monies owed hereunder by Defendants immediately become a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants pay an amount of \$40,000.00 in four (4) equal installments of \$10,000.00

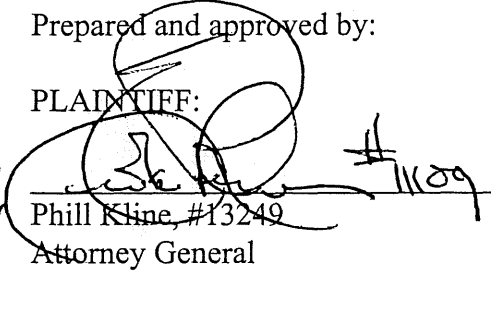
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. §50-632 (b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

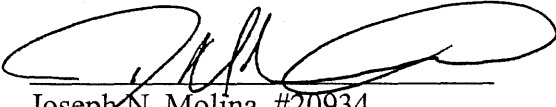
IT IS SO ORDERED


DISTRICT COURT JUDGE

Prepared and approved by:

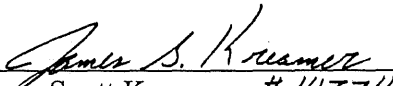
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