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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
 Division 12

STATE OF KANSAS, <u>ex rel.</u>)	
PHILL KLINE, Attorney General,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 04-C-1166
)	
ADVANTAGE TELECOMMUNICATIONS, CORP.,)	
)	
Defendant.)	
)	

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 13th day of December, 2004, the Petition for Approval of Consent Judgment comes before the Court pursuant to K.S.A. 50-632(b). The Plaintiff, the State of Kansas, *ex rel.* Phill Kline, Attorney General, appears by and through Joseph N. Molina, Assistant Attorney General. Defendant Advantage Telecommunications Corporation (hereinafter referred to as "Defendant") appears by and through counsel William E. Raney.

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

PARTIES, JURISDICTION AND VENUE

1. Phill Kline is the Attorney General of 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, K.S.A. 50-623 *et seq.*

3. Defendant Advantage Telecommunications Corporation is a foreign corporation organized under the laws of the State of Delaware. The principal office of the corporation is located at 3001 Aloma Ave., Suite 304, Winter Park, Florida, 32792. Defendant Advantage Telecommunications Corporation applied with the Kansas Secretary of State for authority to do business in Kansas in October, 1998 by filing a Foreign Corporation Application.

4. Defendant stipulates and admits that the Court has subject matter jurisdiction over this case and *in personam* jurisdiction over the parties.

5. Defendant stipulates and admits that venue is proper in this Court.

6. Defendant is a supplier within the definition of K.S.A. 50-624(j) (K.S.A. 2002 Supp.) and engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c) (K.S.A. 2002 Supp.).

7. Defendant Advantage Telecommunications Corporation is engaged in business as a reseller of telecommunication services (hereinafter "services"), including interstate/state-to-state and intrastate/local toll services to business entities located within the State of Kansas.

ALLEGATIONS

8. Beginning on a date unknown to Plaintiff but represented by Defendant to be November 16, 1999, Defendant, through its agents and representatives, has been conducting telemarketing to business entities located in Kansas in an effort to persuade such businesses to use its services.

9. The Attorney General alleges that the Defendant, directly or through its third party distributors, engaged in the following acts and practices:

- a. Misrepresenting that the purchaser was only giving Advantage Telecommunications Corporation authorization to provide billing services on behalf of the purchaser's current local or long distance carrier so the purchaser would only receive one bill for both services.
- b. Misrepresenting to purchasers that their current local or long distance carrier would not be changed, when in fact both services were changed to Advantage Telecommunications Corporation.
- c. Misrepresenting the company on whose behalf Defendant's representatives were calling in telemarketing contacts.
- d. Recapturing former customers by changing their services back to Advantage Telecommunications Corporation without express authorization.

10. The Attorney General alleges that the acts and practices described in paragraph nine (9) herein are deceptive and unconscionable acts and practices in violation of Kansas Statutes Annotated (K.S.A.) 50-626, 50-627, 50-6,103, 50-676 and 50-677 (K.S.A. 2002 Supp.), in that Defendant, its agents or representatives:

- a. Engaged in activity, conduct or representations while soliciting changes in telecommunications service to the Defendant's service that had the capacity to mislead, deceive or confuse ;
- b. Submitted orders to change telecommunication service providers without having obtained the express authorization to make the change and recapturing or switching former customers back to the Defendant's services without express authorization to do so;

c. Made representations knowingly or with reason to know that the services had a sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they did not have.

11. Defendant, by entering into this Consent Judgment, expressly denies any liability as to any practice set forth in paragraphs nine (9) and ten (10).

12. Defendant agrees to this Consent Judgment without trial or adjudication of any issue of fact or law solely for the purposes of settlement.

INJUNCTIVE RELIEF

13. Defendant agrees to refrain from, and to be permanently enjoined from, engaging in those acts and practices set forth in paragraphs nine (9) and ten (10) herein and Defendant agrees that engaging in any such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Consent Judgment.

14. Defendant agrees to be permanently enjoined from submitting or causing to be submitted to a local exchange carrier an order to change a consumer's telecommunications carrier or local exchange carrier to another carrier without having obtained the express authorization pursuant to K.S.A. 50-6,103 (K.S.A. 2002 Supp.) and the Defendant shall, at a minimum, comply with all Federal laws, statutes, rules and regulations relating to the sales of telecommunications services, including but not limited to 47 C.F.R. 64.1100, *et seq.*, as they now exist or as amended in the future and all Kansas laws, statutes, rules and regulations, as they now exist or as amended in the future.

15. Defendant agrees 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.

16. Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to each officer, director and employee of management level that is involved in Kansas operations of the Defendant within ten (10) days of signing the Consent Judgment.

17. Defendant agrees to maintain all records of authorization to switch telecommunications services of its Kansas customers for a period of three (3) years and to allow the Attorney General to inspect such records in the future.

18. Defendant agrees to be prohibited from making or causing to be made any solicitation calls to any Kansas residents for a period not to exceed twenty-four (24) months from the date hereof.

CONSUMER RESTITUTION

19. Defendant agrees to provide a full refund or credit for each complainant for each type of service listed in Exhibit 1, (which is 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 from the Defendant. Any complainants listed in Exhibit 1 that are currently entitled to refunds shall receive their refunds from the Office of the Attorney General, who shall be supplied with refund checks made payable to such complainants within ten (10) days of signing this Consent Judgment. If the complainant has not paid the Defendant and has outstanding bills, the Defendant will credit the account so that it has a zero balance. The Defendant will also reimburse such complainants for any switching charges incurred. The Defendant also agrees that no negative credit information has knowingly been or will be reported to any credit reporting agency for nonpayment of a bill from the Defendant for such complainants. The Defendant agrees to take all action necessary to remove and correct any negative information already reported related to a switch by the Defendant and

subsequent billing for such complainants upon thirty days notice of such negative information, and agrees to forego any collection of present outstanding amounts owed to the Defendant by such complainants.

20. Defendant agrees to provide, within ten (10) days of signing this Consent Judgment, an affidavit signed by an officer of Advantage Telecommunications Corporation which acknowledges that all action required in paragraph nineteen (19) herein has been taken by the Defendant and which provides a listing of the refund/credit amounts provided to each consumer listed in Exhibit 1.

21. For any complaints regarding a switch of telecommunications services occurring prior to the date of this Consent Judgment that are filed with or supplied to the Office of the Attorney General after the entry of this Consent Judgment, which complaints are meritorious as determined by the Office of the Attorney General, , the Defendant agrees to resolve such complaints by providing relief consistent with the type of relief provided in paragraph nineteen (19) above or as provided under federal or state law, whichever provides the greatest relief.

INVESTIGATIVE FEES

22. Defendant voluntarily agrees to pay to the "Office of the Attorney General" of the State of Kansas \$25,000.00 for costs, investigation fees and expenses pursuant to K.S.A. 50-632 and 50-636 (K.S.A. 2002 Supp.). Payment shall be made in two equal installments of \$12,500.00. The first such installment shall be due on the day the Defendant signs this Journal Entry of Consent Judgment. The second installation of \$12,500.00 shall be due no later than thirty (30) days from the date this Journal Entry of Consent Judgment is filed with the court. Both payments shall be made by cashier's check.

23. The Defendant further agrees that this judgment shall not be dischargeable in bankruptcy pursuant to the United States Bankruptcy Code, specifically 11 U.S.C. 523(a)(2)(A) and (a)(7).

OTHER PROVISIONS

24. This Consent Judgment, and Defendant's compliance herewith is intended to resolve all claims possessed by the State of Kansas and upon entry of this Consent Judgment, and compliance with the terms contained herein, the defendant shall be released from all claims.

25. 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.

26. 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.

27. Compliance with this Consent Judgment does not relieve the Defendant 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.

28. 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 the Defendant nor shall the Defendant 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.

29. 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 Defendant. Defendant further represents that they have each had an opportunity to consult with and obtain the advice of private legal counsel prior to entering into this Consent Judgment.

30. This Consent Judgment contains the complete agreement between the parties hereto. No promises, representations or warranties other than those set forth herein have been made or relied upon by either party. This Consent Judgment supersedes all prior communications, discussions or understandings (if any) of the parties hereto. This Consent Judgment may not be changed, altered or modified except by further order of the Court or by unanimous consent of the parties hereto.

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 Defendant immediately become a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this matter is settled upon the terms agreed to herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant is enjoined from soliciting Kansas consumers via telemarketing for a period not to exceed twenty-four (24) months from the date hereof.

