

98-041

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FILED IN COURT
AS DEPT. OF JUSTICE
OCT 27 1998
TOPEKA, KANSAS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 1

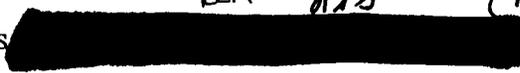
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|-------------------------------------|---|----------------------------|
| STATE OF KANSAS, <i>ex rel.</i> |) | |
| CARLA J. STOVALL, Attorney General, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | Case No. <u>98 CV 1420</u> |
| |) | |
| MINIMUM RATE PRICING, INC |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 26 day of October, 1998, 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.* Carla J. Stovall, Attorney General, appears by and through Kristy L. Hiebert, Assistant Attorney General. Defendant, Minimum Rate Pricing, Inc., appears by and through Robert T. Stephan. Whereupon the parties advise the Court that they have stipulated and agreed to the following:

I.

PARTIES SUBJECT TO ORDER

1. **ORDERED, ADJUDGED AND DECREED** that this Journal Entry of Consent Judgment ("Judgment") shall extend to Minimum Rate Pricing, Inc., its principals, directors, officers, parent corporation, subsidiaries, shareholders, employees, representatives, agents, assigns, successors, or other business entities  whose acts, practices or policies are directed, formulated or controlled by Minimum Rate Pricing, Inc., (hereinafter collectively referred to as ("MRP" or "Defendant"). Defendant denies any wrongdoing in the conduct of its business. This Consent Judgment does not constitute any evidence or admission of any kind. This Consent Judgment does not constitute a finding by any court that MRP has engaged in any act or practice declared unlawful by any laws, rules or regulation of the State of Kansas. By agreeing to the entry of this Consent Judgment, MRP does not hereby admit or consent to any individual liability for the actions of MRP, its officers, agents, employees, representatives, independent contractors or assigns; and it is further

II.

DEFINITIONS

2. **ORDERED, ADJUDGED, AND DECREED** that as used in this Judgment, the following definitions shall apply:

a. "Clear and conspicuous" means that the required disclosures are presented in such a manner, given their size, color, contrast and proximity to any related information as to be readily noticed and understood by consumers. A disclosure is not clear and conspicuous if, among other things, it is ambiguous or it is obscured by the background against which it appears, or by its

location within a lengthy disclosure of non-material information. Clear and conspicuous also means in an oral presentation that the information is presented in a manner that a consumer will hear and understand, at a normal speed in the same tone and volume as the sales offer.

b. “Material” means likely to affect a person’s choice of, or conduct regarding, goods or services.

c. “Offer” means an offer of goods and/or services to one or more consumers, including, but not limited to an offer of telecommunications services, regardless of whether the offer is conveyed in writing, orally, electronically, over the internet, or in any other manner. The term “offer”, includes any solicitation made directly to consumers by telemarketing or any written solicitation, including but not limited to, any written solicitation forwarded to a consumer after an initial telemarketing call to the consumer.

d. “Represent” and “representation” include any communication, whether made in writing, orally, electronically, over the internet, or in any other manner.

e. “Solicitation” means any communication to a consumer which contains an offer, whether made in writing, orally, electronically, over the internet, or in any other manner; and it is further

III.

Injunctive Relief

3. **ORDERED, ADJUDGED AND DECREED** that MRP shall permanently refrain and desist from engaging in any acts or practices in violation of the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*, including, but not limited to, 1998 Kan. Sess. Laws, Chapter 138 as

codified in K.S.A. 50-6,103 (1998), and including, but not limited to, any and all of the following acts or practices:

a. Representing, expressly or by implication, that a sales person is a "notification operator" or some term of similar import or otherwise misrepresenting the function, role or status of a sales person;

b. Representing, expressly or by implication, to a particular prospective customer that a particular telecommunications service is available at a rate that is less than the rate that particular subscriber is paying to his or her current carrier for such service unless MRP first ascertains the subscriber's plan with his or her current carrier and has a reasonable basis to make such representation. Absent particular subscriber information, MRP may only represent its applicable rate and any comparison shall be limited to a comparison between such rate and a prevailing basic rate offered by one or more dominant suppliers of such service;

c. Failing to provide clearly and conspicuously accurate and complete information about material terms and conditions of the offer, including but not limited to, limitations and restrictions related to discounts to be provided such as minimum time, time of day requirements for discounts, rate distinctions between intrastate and interstate toll calls, minimum usage requirements, or termination fees;

d. Representing, expressly or by implication, that MRP is anything other than a company engaged in providing long distance telecommunications services, unless such is the case;

e. Representing, expressly or by implication, that MRP's long distance service uses network facilities of AT&T, MCI, Sprint or other carrier unless such is the case;

f. Representing, expressly or by implication, that MRP or persons soliciting prospective customers on behalf of MRP are employees or agents, acting on behalf of another carrier, unless such is the case;

g. Representing, expressly or by implication, that the amount to be charged for a toll call is determined at the time the toll call is made or on a periodic basis by comparing the charge that AT&T, Sprint, MCI or another telecommunications service would charge for the same call and using the lowest rate as the basis to determine the cost of the particular toll call, unless such is the case;

h. Failing, in the context of a telemarketing solicitation initiated by MRP for telecommunications service, to disclose clearly and conspicuously before any statement other than an initial greeting:

- i. the identity of sales person;
- ii. that MRP is a long distance company, not affiliated with the prospective customer's present long distance company;
- iii. that long distance service is being offered for sale; and
- iv. that a prospective customer is being asked to agree to convert or switch presubscribed long distance service from their current carrier to MRP;

i. Failing to obtain a prospective customer's authorization before submitting a change order to change a prospective customer's long distance carrier to MRP;

j. Failing to verify a prospective customer's request for telecommunications service as required under 47 C.F.R. § 64.1100, as such provision may be amended to provide hereafter, and, in connection with the information package method described in 47 C.F.R. § 64.1100(d) without

limiting the generality of the foregoing, failing to include all the required information, such as, but not limited to, the name of the person requesting the change, and the name of the prospective customer's instant carrier;

k. Failing to clearly and conspicuously disclose at the beginning or inception of any method used to verify a prospective customer's agreement to change long distance service to MRP that such prospective customer's long distance service will be changed from the current carrier to MRP;

l. Representing, expressly or by implication, that MRP is a facilities based long distance carrier or part of a facilities based long distance carrier, unless such is the case. Such representations include, but are not limited to, using the term "minimum rate pricing" in close conjunction with AT&T, MCI or Sprint, unless used for the purpose of differentiating MRP from its competitors;

m. Representing, expressly or by implication, that the Federal Communications Commission or other government entity has approved or endorsed MRP's business or offer. In the event MRP uses the name of the Federal Communications Commission or other governmental entity in the course of a solicitation, MRP shall concurrently, clearly and conspicuously disclose that such governmental entity has not approved or endorsed the offer;

n. Failing to send a written confirmation to a customer of their agreement to obtain long distance service from MRP;

o. Failing to honor promptly a customer's oral or written request to cancel service provided by MRP;

p. Providing in tariffs that customers who fail to notify MRP directly of a switch to another carrier will automatically be switched back to MRP; and

q. Submitting PIC orders to local exchange carriers for MRP customers who have changed interexchange carriers without complying with 47 CFR §§64.1100 and 64.1150; and

r. Failing to promptly discontinue a telephone solicitation when a prospective Kansas customer gives a negative response pursuant to K.S.A. 50-670; and it is further

IV.

CORRECTIVE ACTION AND RESTITUTION

4. **ORDERED, ADJUDGED AND DECREED** that MRP shall immediately discontinue any and all incentive payments to any agents based upon the number of persons who agree to change long distance providers unless such incentive payment program includes provisions for monitoring of employees, ensuring that a proper authorization is obtained from consumers and additional verification is obtained from consumers, and disciplining employees for improper conduct; and it is further

5. **ORDERED, ADJUDGED AND DECREED** that within ten days of entry of this Judgment, MRP shall mail current and past subscribers who became subscribers prior to January 1, 1998 a letter, a copy of which is attached hereto as Exhibit A, the purpose of which is to inform subscribers that their service was changed and provide subscribers with an opportunity to file complaints and obtain refunds provided, however, that in the event that the number of mailings on any day exceeds fifty thousand addresses, then the remainder of the letters that exceed that number shall be mailed on the following business day in which they can be accommodated with that limit and in the order in which they would otherwise have been mailed, until all letters required by this section have been mailed by MRP. MRP shall also mail the letter attached as Exhibit A to all

persons who became subscribers during the calendar year 1998 and (i) who have filed a complaint or on whose behalf a complaint was filed concerning MRP with the Kansas Attorney General, Kansas Corporation Commission, or MRP, or (ii) who file a complaint or on whose behalf a complaint is filed concerning MRP with the Kansas Attorney General, Kansas Corporation Commission, or MRP on or before ~~December 31, 1998~~. The letter to the 1998 subscribers shall be mailed within ten business days of receipt of the complaint by MRP from the Attorney General or the Kansas Corporation Commission. The letter shall be mailed in an envelope which contains the following statement on the face of the envelope in bold-face, 12-point type: "Important Information About Your Long Distance Service"; and it is further

JANUARY 31, 1999 (TNS) RTD LKH [Signature]

6. **ORDERED, ADJUDGED AND DECREED** that MRP shall provide restitution to all current and former subscribers who timely respond to the letter attached hereto as Exhibit A with a re-rating and switch fee refund request form incorporated and who have indicated that MRP switched their long distance service without authorization or that the conversion was based on misrepresentations, in the following manner:

- a. Within twenty (20) business days of receipt of the re-rating request form, MRP shall refund all service charges incurred by the subscriber in switching the subscriber to MRP and in switching back to their pre-selected long distance carrier; and
- b. Within twenty (20) business days of receipt of the re-rating request form, MRP shall also provide a refund to the subscriber for each call, equal to the amount by which MRP's charges exceed the charges that the customer would have paid if their long distance carrier had remained their pre-selected long distance carrier. In the event MRP does not have information regarding a

customer's prior rate, MRP shall base re-rating on the basic applicable rate offered by AT&T at the time that such customer's service was switched to MRP;

c. For each subscriber who has not paid MRP's charges, MRP shall provide a bill credit to the subscriber for each call, equal to the amount by which MRP's charges exceed the charges that the customer would have paid if their long distance carrier had remained their pre-selected long distance carrier. In the event MRP does not have information regarding a customer's prior rate, MRP shall base re-rating on the basic applicable rate offered by AT&T at the time that such customer's service was switched to MRP;

d. The amount of any refund or credit to which a subscriber may be eligible to receive pursuant to this Consent Judgment shall be reduced by any other bill credit or refund check that MRP issues to such subscriber;

e. MRP shall either mail the subscriber a refund or provide a bill credit pursuant to the terms of this paragraph. For those subscribers being mailed refund checks, MRP shall include in the envelope a copy of the letter which is attached hereto as Exhibit B; and it is further

7. **ORDERED, ADJUDGED AND DECREED** that the Attorney General of Kansas shall be the final arbiter of whether a subscriber is entitled to restitution and the amount of that restitution in accordance with the eligibility requirements established in this Consent Judgment; and it is further

8. **ORDERED, ADJUDGED AND DECREED** that within thirty days (30) of mailing the subscriber refunds and providing bill credits, MRP shall provide the Attorney General of Kansas with an affidavit sworn to by an officer of MRP indicating the name, address, and refund amount

for each subscriber who receives restitution and shall provide access to such other records and information relating to the refund program upon request of Plaintiff; and it is further

9. **ORDERED, ADJUDGED AND DECREED** that in the event MRP is unable to locate Kansas subscribers entitled to restitution under this Consent Judgment whose checks are returned as undeliverable or who fail to deposit the checks, those funds due such Kansas customers shall be paid to the Attorney General of the State of Kansas. Any such unclaimed money distributed to the State of Kansas will be reported and remitted to the State Treasurer of Kansas in accordance with the Kansas Uniform Unclaimed Property Act, K.S.A. 58-3934 *et seq.* MRP shall provide whatever information is needed by the State of Kansas to handle the funds as unclaimed properties; and it is further

V.

PENALTIES

10. **ORDERED, ADJUDGED AND DECREED** that MRP is obligated for and shall pay to the "Office of the Attorney General" of the State of Kansas civil penalties pursuant to K.S.A. 50-636 in the amount of \$26,315.79 and investigative costs pursuant to K.S.A. 50-632 in the amount of \$26,315.78, which together with the corrective action and restitution provided in Paragraph IV shall be in full satisfaction of all claims without limitation or exception that have or hereinafter may have arisen against Minimum Rate Pricing, Inc. at anytime pursuant to the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*, including but not limited to 1998 Kan. Sess. Laws, Chapter 138 as codified in K.S.A. 50-6,103 (1998), and on or before the date of entry of this Judgment; and it is further

11. **ORDERED, ADJUDGED AND DECREED** that MRP shall pay the amount set forth in paragraph 10 in four installments of \$13,157.89 each with the first payment due upon the filing of this Journal Entry of Consent Judgment with the Shawnee County District Court of the State of Kansas, and the next three payments due to be paid on ~~October 30, 1998, November 30, 1998, and December 30, 1998,~~ ^{RTS (TNS) KUH} ~~November 23, 1998, December 23, 1998,~~ ^{RTS (TNS) KUH} and ~~January 30, 1999,~~ ^{RTS (TNS) KUH} ~~January 23, 1999,~~ ^{RTS (TNS) KUH} respectively. In order to insure that funds are available for such installment

payments, Defendant shall remit to the Escrow Account of its attorneys Rubin, Winston, Diricks, Harris & Cooke, LLP, \$250,000 on or before ~~September 15, 1998,~~ ^{October 23 (TNS) RTS KUH} \$250,000 on or before ~~October 30, 1998,~~ ^{November 23 (TNS) RTS KUH} \$250,000 on or before ~~November 30, 1998,~~ ^{December 23 (TNS) RTS KUH} and \$250,000 on or before ~~December 30, 1998,~~ ^{January 23, 1999 (TNS) RTS KUH}

Defendant shall cause its attorneys to remit each installment payment pursuant to the installment schedule herein. Each payment shall be forwarded to the Kansas Attorney General's Office, Consumer Protection Division, Attn: Kristy Hiebert, 301 W. 10th Street, Topeka, KS 66612-1597; and it is further

12. **ORDERED, ADJUDGED AND DECREED** that in the event MRP fails to make refund payments to subscribers or fails to make any other payment herein required, MRP shall pay all court costs and attorney's fees and any other costs associated with enforcement of this Judgment; and it is further

VI.
COMPLIANCE

13. **ORDERED, ADJUDGED AND DECREED** that within thirty (30) calendar days of execution of this stipulation and entry of this Judgment, MRP shall provide the State of Kansas with an acknowledgment that each officer, director and employee of management level that is involved

in the Kansas operations of MRP has received a copy and has certified as to having read it; and it is further

14. **ORDERED, ADJUDGED AND DECREED** that MRP shall keep, for a period of thirty-six months from the date of entry of this Judgment (i) a copy of each solicitation sent to prospective customers in the State of Kansas, whether by mail or by electronic means; (ii) a copy of each telemarketing or telephone script used to solicit or respond to customers or prospective customers in the State of Kansas; and (iii) records reflecting the name and address of each Kansas customer who pays MRP for services and the type of services for which the customer paid; and it is further

15. **ORDERED, ADJUDGED AND DECREED** that MRP shall maintain procedures with regard to the handling of oral and written complaints from customers residing in the State of Kansas and/or requests for refunds, including maintaining a copy of all written complaints or requests for refunds received, maintaining a record of all oral complaints or requests for refunds, including the name and address of such customer from whom each complaint or request for refund was received from such customers, the amount of refund requested, the resolution of each complaint and amount refunded, if any, and Defendant's response to each request or complaint for a period of at least thirty-six months from the date of receipt of the complaint or request; and it is further

16. **ORDERED, ADJUDGED AND DECREED** that in the event that the provisions of 47 C.F.R. § 64.1100, 47 C.F.R. § 64.1150 or any other state or federal law or regulation are amended, or in the event that any other law or regulation is enacted in a manner which would render compliance with any term of this Judgment a violation of such law or regulation, it is understood that MRP's compliance with such amended or newly enacted law or regulation will constitute compliance

with this Judgment. The remainder of the terms and conditions of this Judgment shall not be affected thereby; and it is further

17. **ORDERED, ADJUDGED AND DECREED** that Plaintiff may request or review MRP's records required to be kept under the terms of this Judgment upon seven days notice to defendants with a copy to their counsel, Jeffrey Harris, Esq. of Rubin, Winston, Diercks, Harris & Cooke, L.L.P., 1333 New Hampshire Avenue, N.W., Washington, D.C. 20036; and it is further

VII.

CUSTOMER RIGHTS AND CONTINUING JURISDICTION

18. **ORDERED, ADJUDGED AND DECREED** that nothing contained in this Judgment shall be construed to deprive any customer or other person or entity of any private right under the law; and it is further

19. **ORDERED, ADJUDGED AND DECREED** that nothing contained in this Judgment shall be construed as approval, sanction or authorization of any act, practice or conduct of MRP, and it is further

20. **ORDERED, ADJUDGED AND DECREED** that this Judgment may be enforced only by the parties hereto; and it is further

21. **ORDERED, ADJUDGED AND DECREED** that nothing in this Judgment shall be construed to limit the authority of Plaintiff to enforce prospectively laws, regulations or rules against MRP; and it is further

22. **ORDERED, ADJUDGED AND DECREED** that jurisdiction is retained by this Court for the purpose of enabling any of the parties to this proceeding to apply to this Court for any other

such further orders and directions as may be necessary and appropriate for the enforcement of, or compliance with, this Judgment.

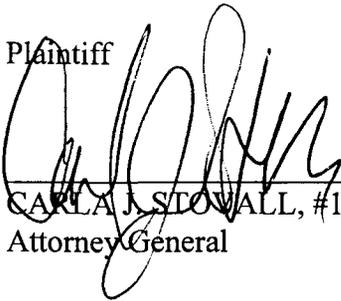
IT IS SO ORDERED.

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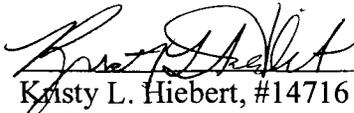
DISTRICT COURT JUDGE

Approved by:

Plaintiff



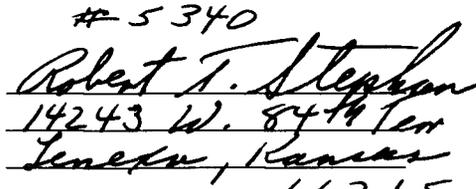
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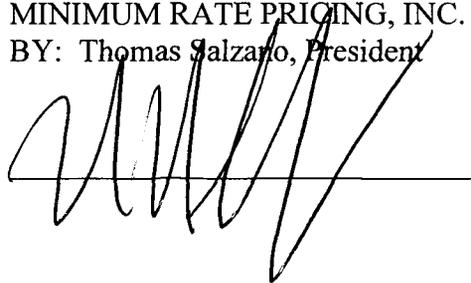
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MINIMUM RATE PRICING, INC.
BY: Thomas Salzano, President



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