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Decision 92-04-009 April 8, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

GTE CALIFORNIA INCORPORATED (U 1002 C),
a California corporation,

Complainant,

v.

American Comm. Net., Inc., a corporation,
Reliable Answering Service, Inc., a
corporation; Hi-Desert Answering Service,
a corporation; Touch Consultants, a
corporation; John J. Horne, an individual;
and Rulon V. Kartchner, an individual,

Defendants.

Case 89-10-015
(Filed October 3, 1989)

O P I N I O N

Defendant, American Comm. Net., Inc., (ACN) is a reseller interexchange telecommunication services within California pursuant to a certificate of public convenience and necessity (CPCN) granted by Decision (D.) 85-08-013. One of ACN's business addresses is 7281 Dumosa Avenue, Suite 1, Yucca Valley, California 92284.

GTE of California, Inc. (GTEC) alleges that defendants Reliable Answering Service (RAS), Hi-Desert Answering Service (Hi-Desert), and Touch Consultants (Touch) are corporations authorized to do business in one or more States of the United States. The business address of RAS and Hi-Desert is 7281 Dumosa Avenue, Suite 1, Yucca Valley, California 92284. The business address of Touch is 7281 Dumosa Avenue, Suite 6, Yucca Valley, California 92284. GTEC alleges that defendants John J. Horne (Horne) and Rulon Kartchner (Kartchner) are officers and stockholders of and own a majority and controlling interest in defendants ACN, RAS, Hi-Desert, and Touch. Their business address is 7281 Dumosa Avenue, Suite 1, Yucca Valley, California 92284.

GTE alleges that on or about August 1985, GTEC began providing network Feature Group A facilities and other telecommunication services to ACN for use in connection with the provision of its discounted long distance services in California. GTEC continued to provide such services to ACN until September 1988 when all service to ACN was disconnected because of its failure to pay GTEC's telephone charges totaling approximately \$218,869. No part of those charges have been paid by ACN.

Since September 1988, GTEC has received no request from ACN to re-establish service so that it could resume offering its discounted interexchange long distance service to the public. Instead, GTEC assumed that ACN had discontinued its utility operations.

On or about September 1989, approximately one year after GTEC disconnected ACN's service for nonpayment, GTEC was provided with copies of published advertisements for ACN's long distance service that appeared in newspapers and/or periodicals distributed in the Yucca Valley area of California. The advertisements state that ACN has been providing its interexchange service without interruption for several years.

At or about the same time, GTEC was provided by Call America, another reseller in the Yucca Valley area, with what are purported to be copies of bills that ACN submitted to several of its customers in February and April 1989, respectively, at a time when ACN was not one of GTEC's customers of record. Those bills show dollar amounts billed by ACN for its long distance services.

Upon receipt of the advertisements and customer bills, GTEC conducted an investigation to determine the names and telephone numbers of the subscribers at the business address shown for ACN on the bills and in the advertisements. GTEC's records show that service at ACN's business address is provided to defendants RAS and Hi-Desert. Defendant Touch is the subscriber of record for the telephone service shown for ACN appearing in the

advertisements and on ACN's customer bills. Touch is provided with telephone service at the same street address as RAS and Hi-Desert, but in a different suite. GTEC alleges that defendant RAS has an outstanding, delinquent bill of \$57,433.89; defendant Hi-Desert has an outstanding delinquent bill of \$1,209.75; and Touch has an outstanding delinquent bill of \$16,568.90.

GTEC alleges that RAS, Hi-Desert, Touch, Kartchner, and Horne have conspired together to operate ACN as a reseller of long distance service without the knowledge of GTEC and knowing that GTEC would not provide service to ACN because of its failure to pay the charges billed to it prior to and including September 1988, which led to the termination of ACN's telephone service. GTEC further alleges that those defendants conspired together to conceal from GTEC that they were continuing to operate ACN to avoid the payment of the access charges which GTEC would otherwise have charged ACN if it had continued to provide telephone service to ACN.

On or about September, 20, 1989, GTEC disconnected service to RAS, Hi-Desert, and Touch because their accounts were delinquent and because their businesses were operating ACN in violation of GTEC's tariffs and with the specific intent of avoiding the payment of ACN's outstanding final bill of \$218,869, and the payment of GTEC's tariff charges for access services.

GTEC requests that ACN have its authority revoked because of its fraudulent and unlawful business practices and for other relief.

Defendant ACN was served on October 26, 1989, by service on its agent, K. K. Hughes, and has not answered. The other defendants were served at the same time by service on this agent, K. K. Hughes, and have not answered. In our review of the records of the Commission regarding ACN, we have found that although ACN has filed tariffs, it has never filed an annual report, nor has it paid the fees required by law.

Our review of Commission records shows that two other telephone utilities have names similar to ACN. There is American Communications Network - granted a certificate by D.84-06-113 in A.84-04-105; and American Communications Network, Inc. - granted a certificate by D.91-11-063 in A.91-05-062.

We are concerned that ACN was permitted to operate without filing annual reports and complying with other provisions of law. We are concerned that two other telephone utilities have authority to operate in California under similar names, thus creating for the public a strong probability of confusion. (We are certainly confused.) And we are concerned that it apparently requires a formal proceeding to revoke a certificate.

Our staff should be authorized to bring such matters to our attention for summary proceedings when the facts warrant it, just as we do in trucking matters.

Findings of Fact

1. American Comm. Net., Inc. was issued a certificate of public convenience and necessity in D.85-08-013.
2. It filed an initial tariff in 1985 but has failed to maintain that tariff since filing. If it were to charge the rates and fees currently in its tariff, it would be charging incorrectly.
3. Between August 1985 and the date hereof, American Comm. Net., Inc. has failed to pay fees required by law or to file the reports required by law. It has failed to file (1) the CPUC Reimbursement Fee (2), the Universal Lifetime Telephone Fee, and (3) the D.E.A.F. Trust Fees.
4. Between 1986 and the date hereof, it failed to file the annual report required by law.
5. A copy of this complaint was served on American Comm. Net., Inc. on October 26, 1989.

6. American Comm. Net., Inc. has not answered the complaint.
7. We adopt as true all the allegations of the complaint.

Conclusions of Law

1. The certificate of public convenience and necessity issued to American Comm. Net., Inc. should be revoked and its tariffs canceled. (Re Holiday Airline, Inc. (1972) 73 CPUC 45; Re Napa Valley Co. v Victoria Express (1980) 3 CPUC 2d 684.)
2. The Commission Advisory and Compliance Division is instructed to present to the Commission by resolution its recommendation to revoke the certificate of public convenience and necessity or operating authority issued by this Commission to any entity when in its opinion such action is warranted. (Cf. Re Holiday Airlines, supra.)

ORDER

IT IS ORDERED that:

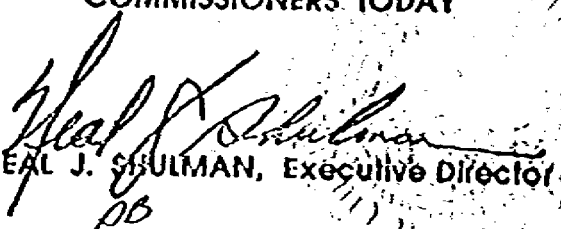
1. The certificate of public convenience and necessity issued to American Comm. Net., Inc. is revoked and its tariffs canceled.
2. The Executive Director is directed to mail a certified copy of this decision to American Comm. Net., Inc. at 7281 Dumosa, Suite 1, Yucca Valley, California 92284, and to its agent K. K. Hughes at the same address, the last known address as shown on the Commission's records.

3. The effective date of this order is the thirtieth day after the date hereof, unless before such effective date there shall have been filed with the Commission and served on complainant written response to this order requesting a public hearing, in which event the effective date of this order shall be stayed until further order of the Commission.

Dated April 8, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEAL J. SULMAN, Executive Director
PB