



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

IN THE MATTER OF THE BOARD OF PUBLIC UTILITIES VS. COVISTA COMMUNICATIONS, INC. - IMPLEMENTING <u>N.J.A.C. 14:10-11:3</u> - ADMINISTRATIVE INVESTIGATION INTO ALLEGED SLAMMING VIOLATIONS)	Customer Assistance
)	
)	<u>CONSENT ORDER</u>
)	
)	
)	DOCKET NO: TC06090654S

(Service List Attached)

BY THE BOARD:

WHEREAS, this matter was commenced by the New Jersey Board of Public Utilities (“Board” or “BPU”) as an administrative investigation into allegations of violations by Covista Communications, Inc. (“Covista”), a public utility doing business in the State of New Jersey, of the New Jersey Public Utilities Laws, N.J.S.A. 48:2-1 et seq. (“the Public Utilities Laws) and the regulations adopted pursuant to the Public Utilities Laws, and the anti-slamming provisions of the New Jersey Consumer Fraud Act at N.J.S.A. 56:8-86 through 8-91 (“the Act”) and regulations adopted pursuant to the Act; and

WHEREAS, an investigation was initiated by Board staff in response to a number of alleged violations of N.J.A.C. 14:10-11.1 et seq. (also referred to as “slamming complaints”), and staff has made findings of twenty-seven (27) alleged violations of N.J.A.C. 14:10-11.1 et seq. in eleven (11) alleged slamming complaints; and

WHEREAS, Covista has denied that any of its actions constitute violations of the applicable law and regulations but has cooperated in this investigation conducted by Board staff into the alleged slamming violations, and the parties have engaged in discussions and have exchanged information regarding this matter; and

WHEREAS, the parties desire to resolve this matter without resort to litigation and without any admission of liability or fault by or on the part of Covista;

NOW THEREFORE, and in consideration of the terms and conditions herein, on the date set forth below, the parties HEREBY STIPULATE AND AGREE that:

1. As used in this Order, "Covista" shall mean Covista Communications, Inc. and any of its principals, directors, officers, parent corporations, subsidiaries, affiliates, shareholders, employees, representatives, agents, assigns, successors, independent contractors/third party distributors, any trustee in bankruptcy or other trustee, and/or any receiver appointed pursuant to proceedings in law or equity.

2. By executing and entering into this Consent Order, Covista admits no wrongdoing or liability for any allegations made or implied by the BPU in the investigation, and this Consent Order does not constitute any evidence, admission or finding of wrong doing or liability.

3. This Consent Order shall fully and finally resolve all slamming complaints against Covista that were received by the Bureau of Investigations on or before January 19, 2007 concerning the switching of a customer's telephone service inconsistent with N.J.A.C. 14:10-11.3 through 14:10-11.5. These claims or allegations include the following types of violations: failure to provide Board staff with the requested proof of authorization regarding a switch of a complainant's telephone service, failure to acquire separate yes answers from a customer when switching more than one service, and failure of a Covista sales representative to drop off the line during the Third Party Verification. A list of the eleven (11) slamming complaints that are resolved by this Consent Order is attached as Exhibit "A".

4. Covista shall comply with all effective and applicable New Jersey statutes, laws and regulations as adopted or amended regarding telecommunication service providers, including, but not limited to, the Act at N.J.S.A. 56:8-86 through 8-91, the Public Utilities Laws, N.J.S.A. 48:2-1 et seq. and N.J.A.C. 14:10-11.1 et seq. Covista shall require compliance with such laws and regulations by its employees, agents, representatives and independent contractors engaged in marketing to customers in New Jersey.

5. Covista shall, in accordance with the New Jersey Administrative Code, provide a requested proof of authorization to switch a complainant's telephone service within thirty (30) days of any slamming allegation received from the Board on behalf of a telecommunications consumer.

6. Covista shall, in accordance with the New Jersey Administration Code, implement the following measures:

a. Prior to provisioning a new or additional Primary Service to a subscriber, Covista shall obtain the requesting party's express authorization, either in the form of a Letter of Authorization or Third Party Verification, including, at a minimum (1) the requesting party's identity, (2) the requesting party's representation of authority to initiate the requested service; (3) the telephone number(s) to be switched; and (4) the type of service involved, in accordance with N.J.A.C. 14:10-11.3 (b)(3)(iii).

b. Covista shall modify its verification script to incorporate three questions when requesting authorization from the customer to switch local, regional, and long distance services, as required by N.J.A.C. 14:10-11.5 (d)(2). Covista must obtain separate authorizations from the customer for each service sold, although the authorizations may be made within the same solicitation. Each authorization must be verified separately from any other authorizations obtained in the same solicitation.

c. A Covista sales representative initiating a three-way conference call or a call through an automated verification system shall drop off once the three-way connection has been established, as required by N.J.A.C. 14:10-11.3 (b)(3)(ii).

d. Covista shall provide the BPU with an acknowledgement that each current Covista employee with direct responsibility for sales or marketing in the State of New Jersey, as well as any employees involved in the Third Party Verification process, has received a copy of this Consent Order. Covista shall have a continuing obligation to ensure that all future Covista employees with direct responsibility for sales or marketing in the State of New Jersey are aware of the requirements set forth in this Consent Order and the applicable laws, rules and regulations and train its staff regarding the same.

7. Within thirty (30) days of the execution of this Consent Order, Covista shall provide the BPU with the name, title, telephone number and address of the senior management-level corporate official designated by Covista to assume responsibility for the proper implementation of and full compliance with this Consent Order. Any change in the designation of that corporate official shall be provided in writing to the BPU within 10 days of the change.

8. In the interest of resolving the issues raised in the investigation and in settlement of this matter, Covista agrees to pay the State of New Jersey the sum of forty thousand dollars (\$40,000) within 30 days of the signing of this Order. Payments shall be made payable to "Treasurer, State of New Jersey" and delivered to the following address:

Kristi Izzo, Secretary of the Board
Board of Public Utilities
2 Gateway Center, 8th Floor
Newark, NJ 07102

9. Covista shall not represent or imply that any business practice or other practice used or engaged in by Covista has been required or approved, in whole or in part, by the State of New Jersey or any of the State's agencies, agents or subdivisions, with the exception of the practices expressly required by this Consent Order.

10. The parties agree that New Jersey law shall govern the terms of this Consent Order.

11. This Consent Order constitutes the entire agreement between the parties and shall bind the parties and their respective officers, directors, agents, representatives, employees, parent corporations, subsidiaries, affiliates, successors and assigns. It is further understood and agreed that nothing contained in this Consent Order shall be construed to limit or affect the rights of any persons or entities who are not parties to this agreement, including any state agencies.

12. Nothing contained in this Consent Order shall limit or affect any position that the parties may take in any future or pending litigation.

13. The parties represent that a representative of each has signed this Consent Order with the authority to legally bind the respective party, and that each party has full knowledge, understanding and acceptance of the terms of this Consent Order.

14. In the event this Consent Order is not approved by the Board or Covista in its entirety and without modification, the agreement is null and void and no party shall have waived its litigation rights.

15. Any and all notices shall be sent to:

- a. Kristi Izzo, Secretary of the Board
Board of Public Utilities
2 Gateway Center, 8th Floor
Newark, NJ 07102
- b. Charles Kaczka, Supervisor
Division of Customer Assistance
Board of Public Utilities
2 Gateway Center, 13th Floor
Newark, NJ 07102
- c. Andrew B. Lustigman, Esq.
The Lustigman Firm, P.C.
149 Madison Avenue, Suite 805
New York, NY 10016
- d. Kevin Alward, President & CEO
Covista Communications
4803 Highway 58
Chattanooga, TN 37416

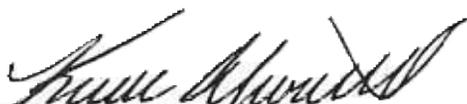
16. The agreement may not be amended except by written instrument executed by each party and approved by the Board.

17. This Consent Order may be signed in counterparts, each of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties.

18. If any provision of this Consent Order shall be invalid or unenforceable, the remainder of the Consent Order shall not be affected and shall be valid and enforceable to the fullest extent permitted by law.

DATED:

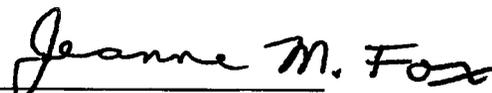
COVISTA COMMUNICATIONS, INC.

By: 
Kevin Alward, President & CEO

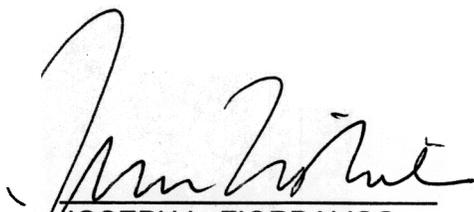
DATED: 5/25/07

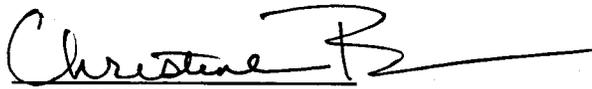
BOARD OF PUBLIC UTILITIES

By:


JEANNE M. FOX
PRESIDENT


CONNIE O. HUGHES
COMMISSIONER

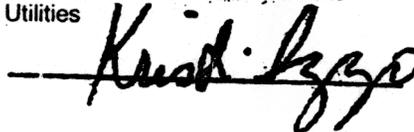

JOSEPH L. FIORDALISO
COMMISSIONER


CHRISTINE V. BATOR
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



In the matter of the Board of Public Utilities vs. Covista Communications, Inc. – Implementing
N.J.A.C. 14:10-11.3 – Administrative Investigation Into Alleged Slamming Violations

BPU Dkt. No. TC06090654S

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Exhibit A

CA# 118
1855
1859
2078
2224
2235
2308
2615
2653
2702
2480