The Commonwealth of Massachusetts

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. 06-SL-2 December 21, 2006

Complaint filed by Lubov Ivan Zabava, pursuant to G.L. c. 93, §§ 108 et seq., with the Department of Telecommunications and Energy claiming that her local toll exchange and long distance service provider was switched to Netecom Inc. without authorization.

APPEARANCES: Lubov Ivan Zabava
273 South Main Street
Sharon, MA 02067
PRO SE
Complainant

I. INTRODUCTION

On August 1, 2006, Lubov Ivan Zabava ("Complainant"), pursuant to G.L. c. 93, §§ 108, et seq., filed a complaint with the Department of Telecommunications and Energy ("Department") asserting that her local toll exchange and long distance telecommunications service provider was switched without authorization[1] from Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon") to Netecom Inc. ("Netecom"). On August 3, 2006, the Department informed Netecom that the Complainant had filed a complaint with the Department concerning Netecom's switch of the Complainant's local toll exchange and long distance services.[2] See G.L. c. 93, § 110(f). The Department required Netecom to provide proof of authorization of the switch either through a third party verification ("TPV") recording obtained by a service provider registered with the Department to provide such a service, or through a letter of authorization ("LOA") signed by the customer.[3] Netecom failed to respond to this request for information within 15 days as

---

1 Pursuant to 220 C.M.R. § 13.02, any unauthorized change to a customer's primary interexchange carrier or local exchange carrier is known as "slamming."

2 In addition, after a review of documents on file with the Telecommunications Division of the Department failed to show that Netecom had filed a Statement of Business Operations and a tariff as required by G.L. c. 159, § 19, and the Department's Order in Entry Deregulation, D.P.U. 93-98 (1994), on August 25, 2006, the Telecommunications Division sent a formal notice to Netecom to show cause why the Department should not find that Netecom is in violation of state requirements by providing telecommunications services in Massachusetts without an approved tariff and registration statement. Netecom has not yet responded. The Department will address Netecom's failure to respond in a separate docket.

3 Authorization for a change in service provider must be demonstrated by either a TPV

(continued…)

required by statute. See id. at § 110(g). However, on October 11, 2006, Netecom provided a copy of the TPV to the Department, which the Department sent to the Complainant on October 20, 2006. The Department received the Complainant's written notice to challenge the TPV on November 8, 2006.

In accordance with statutory requirements, the Department notified both parties on November 15, 2006, via certified mail, that the Department would hold an evidentiary hearing on this matter on December 7, 2006. Netecom failed to appear at the hearing after receiving a certified notice of the hearing. The Complainant appeared at the hearing and testified on her own behalf. At the evidentiary hearing, the Complainant entered a motion for default judgment, which the Hearing Officer took under advisement (Tr. at 4). The record consists of 16 Department exhibits.

II. STANDARD OF REVIEW

Pursuant to 47 U.S.C. § 258(a), "[n]o telecommunications carrier shall submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Federal Communications Commission ("FCC") may prescribe. Nothing in this section shall preclude any State commission from enforcing such procedures with respect to intrastate services." Pursuant to G.L. c. 93, § 109(a), a change in a customer's primary IXC or LEC shall be considered to be authorized only if the IXC or LEC that initiated the change provides

---

[3] (…continued)
or LOA. G.L. c. 93, § 109(a).

confirmation that the customer authorized the change either through a signed LOA or oral confirmation of authorization through a TPV obtained by a company registered with the Department to provide TPV services in the Commonwealth. Pursuant to G.L. c. 93, § 110(i), upon receipt of a slamming complaint, the Department shall hold a hearing to determine, based on our review of the LOA or TPV and any other information relevant to the change in telephone service, whether the customer did or did not authorize the carrier change.

In addition to the Massachusetts slamming laws set forth above, the FCC implemented slamming liability rules in May 2000. See In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, First Order on Reconsideration, FCC 00-135 (rel. May 3, 2000) ("First Order on Reconsideration"). In accordance with those rules, consumers do not have to pay for service for up to 30 days after being slammed; any charges beyond 30 days must be paid but at the rates charged by the company the consumer requested. First Order on Reconsideration at ¶¶ 7-14, 39; 47 C.F.R. § 64.1160(b). If an unauthorized switch is found to have occurred and the consumer has paid the bill, the company responsible for the unauthorized switch must pay the authorized company 150 percent of the charges it received from the consumer, and the authorized company will reimburse the consumer 50 percent of the charges the consumer paid to the slamming company. First Order on Reconsideration at ¶¶ 15-21, 42; 47 C.F.R. § 64.1170(b), (c). According to the FCC, state commissions should have primary responsibility for administering the FCC's slamming liability rules. First Order on

Reconsideration at ¶¶ 22-28, 33-37, 52, 84. On November 3, 2000, pursuant to 47 C.F.R. § 64.1110, the Department provided to the FCC its State Notification of Election to Administer FCC Rules. See Letter to Magalie Roman Salas, Secretary, Federal Communications Commission (November 3, 2000).

III. ANALYSIS AND FINDINGS

For the reasons discussed below, we grant the Complainant's motion and enter judgment in the Complainant's favor. First, the Department followed all of the procedures required by G.L. c. 93, §§ 108 et seq., to ensure that the parties in this matter had reasonable notice of the time and place of the evidentiary hearing. Netecom failed to appear at the hearing after receiving a certified notice of the hearing. Second, although not provided for expressly within the Department's regulations, the Department has granted motions for default judgment under similar circumstances. See, e.g., Delta Marketing Industrial Group, Inc. v. LCR Telecom, D.T.E. 04-SL-13 (2004); South Shore Oil Heat Supply, Inc. v. LCR Telecom, D.T.E. 04-SL-9 (2004); Masterson v. Fitchburg Gas and Electric Light Company, D.T.E. 98-AD-8 (1998). In Masterson, D.T.E. 98-AD-8, at 4-5, for example, the Department granted a motion for default judgment in the complainant's favor when the company (in that case, Fitchburg Gas and Electric Light Company) failed to attend the scheduled adjudicatory hearing after receiving notice of its requirement to do so.

Accordingly, because Netecom failed to attend the scheduled hearing and thereby defend this case, the Complainant's motion for default judgment is granted. We therefore grant the relief sought by the Complainant and determine that an unauthorized switch of the

Complainant's telecommunications service did occur. In compliance with the First Order on Reconsideration at ¶¶ 38, 39, and 47 C.F.R. § 64.1140(b)(1), (3), because the Complainant did not pay the bill issued by Netecom, Netecom is directed to absolve all charges for the first 30 days of billing, and we direct Verizon, the Complainant's authorized local toll exchange and long distance service provider, to bill the Complainant for any charges after the first 30 days at Verizon's rates.

IV. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That the motion for default judgment in favor of the Complainant, Lubov Ivan Zabava, is GRANTED; and it is

FURTHER ORDERED: That Netecom Inc. having caused the switch in Lubov Ivan Zabava's local toll exchange and long distance service provider without authorization and in violation of the provisions of G.L. c. 93, § 109(a), shall comply with the directives contained in this Order.

By Order of the Department,

/s/
Judith F. Judson, Chairman

/s/
James Connelly, Commissioner

/s/
W. Robert Keating, Commissioner

/s/
Brian Paul Golden, Commissioner

/s/
Soo J. Kim, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.