



**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

April 28, 2008

D.T.C. 07-SL-13

Complaint of Diana Reintges, filed with the Department of Telecommunications and Cable pursuant to G. L. c. 93, §§ 108 *et seq.*, alleging an unauthorized switch of local toll and long-distance service provider to ACCXX Communications.

I. INTRODUCTION

On August 8, 2007, Diana Reintges (“Reintges”), pursuant to G. L. c. 93, §§ 108, *et. seq.*, filed a complaint with the Department of Telecommunications and Cable (“Department”)¹ alleging that her local toll and long-distance telecommunications service provider was switched from Verizon Massachusetts (“Verizon”) to ACCXX Communications (“ACCXX”), without authorization, a practice commonly known as “slamming.” *See* C.M.R. § 13.02 (defining any unauthorized change to a customer’s primary interexchange carrier as “slamming”).

On August 9, 2007, the Department informed ACCXX that Reintges had filed a “slamming” complaint. In the same letter, the Department requested that ACCXX provide proof of authorization for the switch, either through a third party verification (“TPV”) recording obtained by a TPV provider registered with the Department or through a letter of authorization (“LOA”) signed by the customer.² ACCXX did not respond to the Department’s August 9th letter. Additionally, ACCXX failed to provide a letter of authorization or a TPV recording confirming the change in Reintges’s services as required by statute. *See* G. L. c. 93, § 100; 220 C.M.R. §13.04 (1) (respondent must provide information requested by the

¹ Pursuant to Chapter 19 of the Acts of 2007, the Department of Telecommunications and Energy was dissolved on April 11, 2007. Jurisdiction over telecommunications matters was placed in the newly-established Department of Telecommunications and Cable. St. 2007, c. 19. For administrative ease, Department as used herein refers to both Departments.

² G. L. c. 93, § 109(a) requires authorization for a change in a customer’s primary service provider to be confirmed either by TPV or LOA.

Department within 15 business days). To date, ACCXX has not provided a LOA or TPV recording authorizing the switch in service.

Due to ACCXX's failure to respond at all to the Department's inquiry, the Department decided to conduct an evidentiary hearing in order to determine whether ACCXX had committed the alleged "slam." To that end, the Department made numerous attempts to contact and inform ACCXX that it would hold a hearing in this matter. In November of 2007, the Department made approximately 15 to 20 attempts to contact ACCXX by telephone in order to schedule a hearing. *See* Affidavit of Catrice Williams, ¶¶ 3-5, Exhb.1. Despite the Department's numerous attempts to contact ACCXX, it was unable to reach ACCXX. On December 3, 2007, the Department served a final notice of hearing upon ACCXX, via certified mail, at its registered address, 3111 W Drive MLK Blvd., Suite 100, Tampa, FL 33607. The December 3rd letter specifically stated in bold capital print: "FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN (10) BUSINESS DAYS OF THE DATE PRINTED ON THIS NOTICE ***MAY RESULT IN A DEFAULT JUDGMENT AGAINST ACCXX COMMUNICATIONS.***" (emphasis added). *See* December 3, 2007 Department Letter to ACCXX, Exhb. 2. ACCXX did not respond to the Department's December 3rd notice letter. As a result, the Department was unable to schedule a formal hearing on this matter.

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.” In Massachusetts “a change in a customer’s primary interexchange carrier (“IXC”) or local exchange carrier (“LEC”) shall be considered to have been authorized only if the IXC or LEC that initiated the change provides confirmation that the customer did authorize such a change either through a signed LOA or oral confirmation of authorization obtained by a company registered with the Department to provide TPV services in the Commonwealth.” G. L. c. 93, § 109(a).

The Department shall base its decision of whether the customer authorized a change on a review of the LOA or TPV and any other relevant information. G. L. c. 93, § 110(j). If the Department finds that a slam occurred, the carrier responsible for the slam must refund the following: (1) to the customer, the difference between what the customer would have paid in IXC and LEC charges at the original IXC or original LEC and actual charges paid to the new IXC or new LEC; (2) to the customer, any reasonable expense the customer incurred in switching to the new IXC or new LEC, or switching back to the original IXC or original LEC; and (3) to the original IXC or LEC, any lost revenue, which shall consist of the amount of money the original IXC or LEC would have received for the services used by the customer during the time the customer received IXC or LEC services from the new IXC or new LEC if the customer’s IXC or LEC had not been switched. *See* G. L. c. 93, § 112(a) (providing customer refunds where the Department finds a slam has occurred).

Additionally, the FCC’s slamming liability rules stipulate that consumers do not have to

pay for service up to 30 days after being slammed; any changes beyond 30 days must be paid but at the rates charged by the company the consumer requested. *See In the Matter of Implementation of the Subscriber Carrier Selection Changes Provision 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*”).

III. ANALYSIS AND FINDINGS

Because ACCXX failed to respond to the Department's requests for information or appear before the Department to answer to charges of an alleged slam, the Department finds ACCXX in default. *See Shi Yang v. Yestel, Inc.*, D.T.E. 01-19-01 (2001) (Department authorized to find respondent in default where it failed to provide either a LOA or TPV confirming switch in complainant's services and appear at hearing to answer slam charges). As an initial matter, ACCXX failed to respond to the Department's repeated requests for information and has not challenged Reintges's allegations that a slam occurred. At the inception of this case, Reintges provided the Department with telephone bills demonstrating that her local toll and long-distance telephone service had been switched by ACCXX. *See ACCXX Invoices Billed to Diana Reintges*, Exhb. 3. These billing statements established a presumption that ACCXX switched Reintges' service. *See G. L. c. 93, § 109 (a); 220 C.M.R. 13.04*. This presumption that a “slam” occurred may be rebutted by evidence to the contrary. *See G. L. c. 93, § 109 (a); 220 C.M.R. 13.04*. The Department may only accept a LOA or TPV as evidence of a customer's authorization. *G. L. c. 93, §109(a)*. The Respondent is obligated to provide the Department with evidence of an authorized switch in service. Here,

ACCXX failed to do so. ACCXX failed to provide the Department with either a LOA or TPV recording confirming the switch in Reintges's local toll and long-distance service. Without an LOA or TPV in the record, the Department is left with a presumption that the alleged "slam" took place as described by Reintges.

Furthermore, the Respondent is obligated to follow-up and respond to the Department's inquiry and notices following commencement of a "slamming" complaint. *See* G. L. c. 93, § 110. Additionally, the Department in its December 3rd letter required ACCXX to respond within ten (10) business days and specifically warned that ACCXX's failure to respond may result in a default judgment against it. ACCXX failed to respond to this final notice as well as the Department's prior efforts to hold a formal evidentiary hearing on this matter. The Department made several attempts to provide ACCXX notice of hearing, but to no avail. To date, ACCXX's whereabouts remain unknown. Because the Department followed all of the procedures required by G. L. c. 93, §§ 108 *et seq.*, to ensure that the parties in this matter would have reasonable notice of the time and place of the evidentiary hearing and given ACCXX's failure to respond, the Department now issues this default judgment against ACCXX. *See Shi Yang v. Yestel, Inc.*, D.T.E. 01-19-01 (2001) (respondent's failure to provide either a LOA or TPV confirming switch in services and failure to appear at hearing warranted a default judgment); *Kim Dion v. American Digital Satellite Telephone*, D.T. E. 02-29-8 (2002) (respondent's failure to produce a LOA or TPV at hearing justified a default judgment); *Joseph Donnelly v. American Digital Satellite Telephone*, D.T.E. 02-29-9 (2002)

(default judgment entered against respondent upon failure to appear at hearing to contest slam charges).³

Because Reintges did not pay the bill issued by ACCXX, the Department directs ACCXX to absolve all charges for the first 30 days of billing, and directs Verizon, Reintges's authorized long-distance service provider, to bill Reintges for any charges after the first 30 days at Verizon's rates. *See* First Order on Reconsideration at ¶¶ 38, 39 and 47 C.F.R. § 64.1140(b)(1), (3).

This is the third instance in a 12-month period in which the Department has determined that ACCXX switched a customer's long-distance service without proper authorization.⁴ Pursuant to G. L. c. 93, § 112 (b) a carrier determined by the Department to have switched any customer's service more than once in a 12-month period, shall be subject to a civil penalty not to exceed \$1,000 for the first offense and not less than \$2,000 nor more than \$3,000 for any subsequent offense. Accordingly, ACCXX is directed to remit a civil penalty of two thousand dollars (\$2,000.00) to the Department within ten (10) days of receipt of this Order.

³ As previously mentioned, Department precedent has authorized default judgments to enter against non-responsive parties in slamming cases. In those cases, the Department issued defaults based largely on the fact that the Department had held a hearing and the party failed to appear after receiving due notice. The Department now expands the scope of its own precedent by finding that a default judgment shall also issue, without a hearing, against a non-responsive party where the Department has satisfied the notice requirements of G. L. c. 93A, § 108 in order to ensure that the parties have reasonable notice of the time and date of hearing. Because the Department has complied with the statutory notice requirements and ACCXX has repeatedly failed to respond, the Department now issues this default judgment against ACCXX.

⁴ *See Edward Leahy v. ACCXX Communications*, D.T.C. 07-SL-10 (February 13, 2008; *Philippe Rosier vs. ACCXX Communications*, D.T.C. 07-SL-11 (April 16, 2008).

IV. ORDER

Accordingly, after review, consideration, and determination, it is

ORDERED: That a default judgment against ACCXX is entered into the record;
and it is

FURTHER ORDERED: That ACCXX, having caused the switch in
Leahy's long-distance 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/___ Sharon E. Gillett_____

Sharon E. Gillett

RIGHT OF APPEAL

Appeals of any final decision, order or ruling of the Department of Telecommunications and Cable may be brought pursuant to applicable state and federal laws.



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**DTC 07-SL-13
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