



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

D.T.C. 07-SL-9

December 28, 2007

Complaint of James Walorz Jr., filed with the Department of Telecommunications and Cable pursuant to G. L. c. 93, §§ 108 *et seq.*, alleging an unauthorized switch of local and long distance service provider to Broadview Networks.

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APPEARANCES: James Walorz Jr.  
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PRO SE  
Complainant

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Respondent

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## I. INTRODUCTION

The Department of Telecommunications and Cable (“Department”) finds, for the reasons set forth in this Order, that respondent Broadview Networks (“Broadview”) conducted an unauthorized transfer of complainant Walorz Trucking Inc.’s (“Walorz”) local and long-distance carrier service as prohibited by G. L. c. 93, § 109.

On July 7, 2007, Walorz filed a complaint with the Department alleging that his local and long-distance carrier had been switched, from One Communications, Inc. (“One”) to Broadview, without authorization, a practice commonly known as “slamming.”<sup>1</sup> *See* 220 C.M.R. § 13.02 (defining any unauthorized change to a customer’s primary interexchange carrier as “slamming”); D.T.C. Exh. 1. On August 7, 2007, Broadview provided the Department with a copy of the Third Party Verification (“TPV”)<sup>2</sup> tape of the transaction, asserting that it properly authorized Broadview to switch Walorz’s telephone line. *See* D.T.C. Exh. 5. On September 26, 2007, Walorz filed a written challenge to the TPV with the Department, and requested a formal hearing. *See* D.T.C. Exh. 4.

After due notice served on November 2, 2007, the Department held an evidentiary hearing on November 27, 2007. *See* D.T.C. Exh. 6. At the hearing, James Walorz Jr. testified on behalf of complainant Walorz, and Eric Kirsch testified on behalf of respondent Broadview. Also at the November 27 hearing, the Department

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<sup>1</sup> Department exhibits will be cited as D.T.C. Exh. followed by the exhibit number. References to hearing transcripts will be denoted by Tr. followed by the page number to which the information may be found.

<sup>2</sup> A Third Party Verification (“TPV”) is a recorded record of a consumer’s authorization to change primary interexchange carrier. *See* G. L. c. 93, § 109. TPV’s must be conducted by a party independent from the carrier, and must meet the statutory requirements set forth in G. L. c. 93, § 109.

entered a total of 11 exhibits into the record.<sup>3</sup> On November 30, 2007, the Department issued the first set of Information Requests to Broadview. The Department received responses from Broadview on December 14, 2007, and enters into the record as D.T.C. 1.

## 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). Whether a customer did authorize a change is determined by the Department, which shall base its decision on a review of the LOA or TPV recording and any other relevant information. G. L. c. 93, § 110(j).

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<sup>3</sup> The Department exhibits are: Exh. 1, the Department’s complaint report; Exh. 2, letter from One Communications indicating that Walorz’s telephone number had been ported to Broadview; Exh. 3, Broadview’s response to the Department’s initial inquiry; Exh. 4, Walorz’s notice to challenge the TPV dated September 20, 2007; Exh. 5, a copy of the TPV recording; Exh. 6, Department’s notice of hearing; Exh. 7, Walorz’s initial signed complaint; Exh. 8, statement of Walorz’s account with Broadview; Exh. 9, statement from One Communications regarding Walorz Trucking Inc.’s accounts; Exh. 10, invoice from Broadview to Walorz Trucking Inc. dated July 25, 2007; Exh. 11, transcript of the TPV recording.

The Department, when evaluating the sufficiency of a TPV, must determine whether: 1) the consumer was informed that the sole purpose of the call is to verify that they are authorizing a change in their primary local or long distance carrier; 2) that the consumer is informed of the identity of their new primary carrier; 3) that the consumer does in fact authorize such a switch; and 4) that the person talking is in fact authorized to change carriers. *See* G. L. c. 93, § 109 (c)(2) (setting forth statutory requirements for TPV recordings).

If the Department determines that a slam occurred, the carrier responsible for the “slam” must refund the following to the customer: (1) the difference between what the customer would have paid in Interexchange Carrier (“IXC”) and Local Exchange Carrier (“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 LEC, or switching back to the original IXC or original LEC; and (3) 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 service 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 for customer refunds where the Department finds a slam has occurred).

### III. ANALYSIS AND FINDINGS

The Department specifically finds that because Broadview erroneously processed the transaction, Broadview failed to properly obtain a TPV for one of the

billing telephone numbers (“BTN”) in question, and therefore was not authorized to switch the service for that line. On April 2, 2007, Walorz requested the switch of three telephone lines to Broadview. The three lines were (1) a BTN ending in 90; (2) a line ending in 10 under the BTN ending in 90 (collectively “BTN 90”); and, (3) a BTN ending in 24 (“BTN 24”). *See* Attachment to Answer D.T.C. 1-3 (Order Cover Sheet of Broadview prepared by telemarketing firm to submit for account provisioning).

On the TPV, Broadview only properly confirms the switch of the two lines contained in BTN 90. After the request for line changes, Broadview’s agent connected Walorz with Human Touch Verification (“HTV”), a TPV agent registered with the Commonwealth. *See* D.T.C. Exh. 11 (transcript of Walorz TPV recording). At the beginning of the TPV recording, Broadview’s agent gives HTV a single BTN ending in 90. *Id.* HTV then asks Broadview’s agent “How many total lines are there?” The agent replies “three”. *Id.* HTV then asks whether there are “[a]ny additional BTN’s?”, Broadview’s agent answers “[n]o”. *Id.* Since HTV is only aware of BTN 90, Walorz only confirms those numbers. *Id.* The Department notes that at no time was Walorz asked to approve a switch with BTN 24.

Later in May 2007, Walorz contacted Broadview requesting that BTN 90 not be ported. This effectively rescinded the above-referenced TPV authorization for BTN 90. *See* Answer to D.T.E. 1-4. Broadview complied with this request, and did not port the BTN 90. *Id.* Broadview, however, did port the BTN 24 to its service explaining that “[u]nfortunately, the customer did not request that the second BTN (BTN 24) not be ported.” *Id.* Walorz, believing he had rescinded his authorization to switch to

Broadview, refused to pay Broadview invoices for BTN 24, and in October 2007, Broadview disconnected BTN 24 for nonpayment of charges. *See*. Answer to D.T.C. 1-5.

The Department finds that Broadview knew or should have known that BTN 24 was a separate BTN from BTN 90. Because Broadview ported BTN 24, after receiving and complying with Walorz's request to not port BTN 90, Broadview was aware that of the three original lines Walorz requested be switched, there were two BTN's, not just the one BTN 90 that Broadview obtained the TPV for. Had Broadview reviewed the TPV before it proceeded to port BTN 24, they would have realized that the TPV was deficient. Broadview should have obtained a TPV or Letter of Authorization ("LOA") for BTN 24 before it switched that number. *See* G. L. c. 93, § 109. The Department finds that the TPV in this case did not authorize BTN 24 to be switched. Consequently, Broadview was not justified in relying on the TPV to port that BTN. The Department finds that Broadview processed an unauthorized switch of Walorz's telephone number in violation of G. L. c. 93, § 108 *et seq.*

Because Walorz did not pay the bill issued by Broadview and in accordance with G. L. c. 93, § 112(a), Broadview is directed to absolve all charges for the first 30 days of billing. The Department directs One, Walorz's authorized local and long-distance carrier, to bill for any charges after the first 30 days at One's rates. Additionally, the Department directs Broadview to reactivate the BTN 24, and port the number back to One within ten (10) business days of the issuance of this Order. We further direct

Broadview to reimburse One for any charges associated with porting the number back to One.

IV. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: That Broadview Networks, having switched Walorz Trucking, Inc.'s local and long-distance telephone service provider without proper authorization in violation of the provisions of G. L. c. 93, § 109(a), shall comply with the directives contained in this Order, and it is

FURTHER ORDERED: That Broadview Networks shall submit to the Department within fifteen (15) business days of the issuance of this Order, an accounting of all credits and refunds made in satisfaction of this Order, including a confirmation that the telephone number in question has been ported back to One Communications, Inc.

By Order of the Department,

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Sharon E. Gillett, Commissioner



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

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COMMISSIONER

**Final Order**

**D.T.C. 07-SL-9**

**Adjudicatory proceeding in the matter of complaint of Jim Walorz relative to the services provided by Broadview Networks, Inc.**

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