



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

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SHARON E. GILLETT
COMMISSIONER

September 27, 2007

D.T.C. 07-SL-5

Complaint of Toan Bui, filed with the Department of Telecommunications and Cable pursuant to G.L. c. 93 §§ 108 et seq., alleging an unauthorized switch of long distance service provider to 011 Communications Inc.

APPEARANCES: Toan Bui
1050 Main Street
Worcester, MA 01603
PRO SE
Complainant

I. INTRODUCTION

On April 6, 2007, Toan Bui (“Complainant”), pursuant to G.L. c. 93, §§ 108, et. seq., filed a complaint with the Department of Telecommunications and Energy¹ (“Department”) asserting that his long distance telecommunications service provider had been switched without authorization² from Verizon Massachusetts (“Verizon”) to 011 Communications (“Respondent”).

On April 9, 2007, the Department informed the Respondent that a complaint had been filed against it and required the Respondent to provide proof of authorization for the switch, either through a third party verification (“TPV”) recording obtained by a TPV provider registered with the Department to provide such a service, or through a letter of authorization (“LOA”) signed by the customer.³ On April 23, 2007, the Department received a TPV recording and translated transcript of the TPV recording from the Respondent, which the Department sent to the Complainant on April 24, 2007. See D.T.C. Exhs. DTC - 6 and 7. The Department received the Complainant’s written notice to challenge the TPV on May 7, 2007.

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 Pursuant to 220 C.M.R. § 13.02, any unauthorized change to a customer’s primary interexchange carrier is known as “slamming”.

3 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.

In accordance with statutory requirements, the Department notified both parties on May 17, 2007, via certified mail, that the Department would hold an evidentiary hearing on this matter on May 31, 2007. On May 18, 2007, at the request of the Complainant, the May 31, 2007 hearing was postponed. On September 5, 2007, both parties were informed that the docket had been assigned to a new Hearing Officer and that a hearing date of September 13, 2007 had been set.

On September 11, 2007, Nazario J. Jureidini, counsel for the Respondent, contacted the Department via telephone and electronic mail to notify the Department of the Respondent's intent not to attend the hearing. On September 13, 2007, the Respondent failed to appear at the hearing. The Complainant appeared at the hearing and testified on his own behalf. The Complainant entered a motion for default judgment, which the Hearing Officer took under advisement. The record consists of seven 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 proscribe. Nothing in this section shall preclude any State commission from enforcing such procedures with respect to intrastate services.” In Massachusetts “a change in a customers primary IXC or 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).

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 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”). In accordance with those rules, 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. First Order on Reconsideration at ¶¶ 7-14, 39; 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, the Department grants the Complainant's motion and enters 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. 011 Communications failed to appear at the hearing after receiving 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); Lubov Ivan Zabava v. Netcom, Inc., D.T.E. 06-SL-2. In Zabava, D.T.E. 04-SL-9 at 4-5, for example, the Department granted a motion for default judgment in the complainant's favor when the respondent (Netcom, Inc.) failed to attend the scheduled evidentiary hearing after receiving notice to do so.

Accordingly, because 011 Communications failed to attend the scheduled hearing and, thereby, defend this case, the Complainant's motion for default judgment is granted. We, therefore, 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)(2), (3), because the Complainant paid a service transfer fee of \$5.50 as a result of the unauthorized switch, Respondent 011 Communications is directed to reimburse Verizon, the Complainant's authorized local toll exchange and long distance service provider, \$5.50 incurred as a service transfer charge, and any additional charges incurred in switching the Complainant's service back to Verizon as the authorized provider. As the Complainant did not make any long distance calls during the switched period, no other charges were accrued. We, therefore, further direct Verizon to credit the Complainant's account \$5.50 paid as a result of this unauthorized transfer.

IV. ORDER

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

ORDERED: That the motion for default judgment if favor of the Complainant is GRANTED; and it is

FURTHER ORDERED: That 011 Communications, having caused the switch in Toan Bui's 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; and it is

FURTHER ORDERED: That Verizon Massachusetts credit the Complainant's account the \$5.50 transfer fee, and verify that Verizon Massachusetts has been restored as the Complainant's long distance service provider.

By Order of the Department,

/s/ _____
Sharon E. Gillett, Commissioner

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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COMMISSIONER

Final Order

D.T.C. 07-SL-5

Adjudicatory proceeding in the matter of complaint of Boan Tui relative to the services provided by 011 Communications.

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