

D.T.E. 99-18

Rulemaking by the Department of Telecommunications and Energy, pursuant to G.L. c. 166,

§ 25A, and 220 C.M.R. §§ 2.00 et seq., to promulgate rules and regulations implementing the law protecting consumers from the unauthorized switching of local and long distance telecommunications service providers as 220 C.M.R. §§ 13.00 et seq..

NOTICE OF PUBLIC HEARING AND REQUEST FOR COMMENTS BY THE
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY ON PROPOSED
RULES AND REGULATIONS IMPLEMENTING THE SLAMMING LAW

On June 10, 1999, the Department of Telecommunications and Energy ("Department") issued an Order instituting a rulemaking proceeding and promulgating proposed regulations as 220 C.M.R. §§ 13.00 et seq. to implement the law protecting consumers from the unauthorized switching of local or long distance telecommunications service providers ("slamming"). The matter has been docketed as D.T.E. 99-18. A copy of the Department's Order and the proposed regulations may be obtained at the Department's office at the Cambridge Street address listed below. In addition, the Department has posted a copy of this Order and the proposed regulations on its web site, the address of which is <<http://www.state.ma.us/dpu/>>.

The Department invites interested persons to file written comments on the proposed regulations no later than the close of business, June 30, 1999. Reply comments shall be filed by July 16, 1999. Comments may not exceed 20 one-sided, double-spaced, type-written pages. Commenters must, whenever possible, file comments on 3.5" floppy diskette, IBM-compatible format. The file format for all responses shall be compatible with either WordPerfect 6.0, for textual responses, or with Microsoft Excel 5.0 for data/spreadsheet responses. One original and three (3) copies of initial comments must be filed with:

Mary Cottrell, Secretary

Department of Telecommunications and Energy

100 Cambridge Street, Room 1210

Boston, MA 02202

One original and three (3) copies of reply comments must be filed with Mary Cottrell at the Department's new offices at One South Station, Boston, Massachusetts, 02110. In addition, the Department will conduct a public hearing to receive oral comment on the

proposed regulations at 10:00 a.m. on July 7, 1999, at One South Station, Boston, Massachusetts. All interested persons are advised to contact the Department at (617)305-3500 prior to July 7, 1999, to confirm the location of this hearing.

By Order of the Department,

Mary L. Cottrell, Secretary

D.T.E. 99-18

Order Instituting Rulemaking to Implement Certain Provisions of Massachusetts' Anti-Slamming Law, G.L. c. 93, §§ 108-113 and G.L. c. 159, § 12E.

ORDER INSTITUTING RULEMAKING

I. INTRODUCTION

On December 10, 1998, a law to protect consumers from the unauthorized switching of their local or long distance telecommunications carrier ("slamming") went into effect in the Commonwealth.⁽¹⁾ By statute, the Department of Telecommunications and Energy ("Department") is required to promulgate regulations implementing certain provisions of the slamming law. The statute also accords the Department discretion to establish procedures to curb slamming.

To protect consumers from being slammed, carriers are required to obtain either a letter of agency from a customer or the tape recording of a call between a third party verification ("TPV") agent and the customer, verifying certain information.⁽²⁾ The department is directed to "promulgate rules and regulations setting forth such further requirements for the conduct of third party verification calls and recordings to protect against incorrect, inaccurate or falsified verification." G.L. c. 93, § 109(c)(4). The law also contains a section establishing a process for Department consideration of consumer slamming complaints.⁽³⁾ Under this section, the Department is given discretion to create an alternative dispute resolution mechanism for these complaints. G.L. c. 93, § 110(k).

The Department is required by statute to "track instances" in which a carrier slams, as well as to compile monthly records of companies or their agents engaged in slamming.⁽⁴⁾ The Department is directed further to produce annual reports of slamming activity in the Commonwealth and make such reports available to the Joint Committee on Government Relations and to the Attorney General. *Id.* The statute directs the Department to promulgate rules and regulations implementing these requirements. G.L. c. 93, § 113(e).

The entities that provide TPV services must register with the Department, pursuant to G.L. c. 159, § 12E. This last section of the slamming law provides that these companies be physically separate and financially independent from the carrier. Moreover, the TPV companies cannot be directly or indirectly controlled or managed by the carrier and their compensation cannot be based upon the number of confirmed sales. The Department is directed to create an application form for TPV companies that makes clear that these companies comply with the separation provisions contained in this section. G.L. c. 159,

§ 12E(b).

II. PROPOSED REGULATIONS

This Order begins a rulemaking to implement provisions of the slamming law. The Department proposes several new rules in the new section 220 C.M.R. § 13.00, which, once in effect, will accord greater protection to consumers from being slammed.

To reduce the possibility of incorrect, inaccurate, or false verifications performed by TPV agents, the Department proposes that the TPV agent obtain independently verifiable information, which shall serve as the appropriate confirmation data, such as the customer's date of birth or last four digits of the customer's social security number (§ 13.03(1)). The customer must be at least 18 years of age to have authority to change carriers and, for a residence, the customer of record is assumed to have this authority (§ 13.03(2)) if the customer meets the minimum age requirement. In addition to stating the purpose of the confirmation call, the TPV agent shall provide his or her name and the address of the TPV company, and the identity of the customer's existing telecommunications provider

(§ 13.03(3)-(4)).

Unless a letter of agency is obtained from the customer, the carrier that initiated the change must mail either a letter or postcard to the customer within two weeks of the TPV call informing the customer of the terms and conditions of the new service, the amount of any charge that the customer shall pay to change carriers, a toll-free number of the new carrier, and the names and addresses of both the new carrier and the TPV company (§ 13.03(5)). Furthermore, unless the new carrier obtained a letter of agency from the customer or a waiver from the Department of the tape recording requirement, the failure to maintain the tape recordings shall be evidence that, if un rebutted, would establish that consent from the customer was not obtained (§ 13.03(6)).

To obtain a waiver of the tape recording requirement pursuant to G.L. c. 93,

§ 109(c)(5), the requesting carrier must demonstrate that its verification system complies with the standard the Department set forth in AT&T Communications of New England, Inc., D.T.E. 98-94 (1998). In addition, the carrier must provide the Department with its slamming history in every jurisdiction in which the carrier offers telecommunication services. This record shall cover the twelve months immediately preceding the carrier's waiver request and this slamming history shall contain enough information to enable the Department to determine the number of complaints of unauthorized changes attributed to that carrier by the state authority in each jurisdiction of operation. This slamming history will be a factor in the Department's decision of whether to grant the carrier's waiver request. Moreover, the Department may revoke a carrier's waiver of the tape recording requirement at any time.

The proposed rules establish an informal dispute resolution process that may, at the consumer's election, be followed (§ 13.05(1)). Selection of this mechanism requires the consumer to provide the Department with the following information: a copy of the customer's telephone bill; the name of the original carrier; the name and phone number of

the new carrier; and any other information the Department or the customer deems relevant to the inquiry

(§ 13.05(1)(a)). Upon receipt of this information, the Department will commence its investigation. The Department can apply the same penalties against a carrier in this informal process as in a formal investigation of carrier conduct (§ 13.05(1)(b)).

To comply with the record-keeping requirements contained in the slamming law, the Department proposes to compile monthly records of slamming complaints by company

(§ 13.06). To facilitate the tracking requirements, the Department directs all carriers providing service in Massachusetts to provide certain information about themselves, affiliated billing agents, and authorized representatives, as well as to inform the Department of any changes to that information (§ 13.06(1)). The Department would file an annual report with both the Joint Committee on Government Regulations and the Attorney General containing each slamming violation by company (§ 13.06(4)).

The Department's proposed application form for TPV companies is contained in Appendix A. The information required by the TPV entities is similar to that required by other companies regulated by the Department.

A copy of the proposed rules and regulations is attached.

III. SOLICITATION OF COMMENTS

The Department seeks written comments on these proposed rules and regulations to 220 C.M.R. §§ 13.00 et seq. no later than 5:00 p.m. June 30, 1999, and reply comments no later than 5:00 p.m. July 16, 1999. In addition, all written comments shall be limited in length to a maximum of 20 one-sided, double-spaced type-written pages. The Department requests electronic copies of written comments by either an IBM compatible, high-density diskette formatted for WordPerfect 5.0 or higher or an e-mail attachment to Nhathuy.Tran@state.ma.us (the file name should end with ".wpd"). Initial comments should be filed with Mary L. Cottrell, Secretary, Department of Telecommunications and Energy, 100 Cambridge Street, 12th Floor, Boston, Massachusetts 02202. Reply comments should be filed at the Department's new offices at One South Station, Boston, Massachusetts, 02110.

To provide further opportunity for comment, and pursuant to G.L. c. 30A, §§ 2 and 4, and 220 C.M.R. § 2.05, the Department will hold a public hearing on July 7, 1999, at 10:00 a.m., at the Department's offices, One South Station, Boston, Massachusetts. All persons interested in attending or participating at the public hearing are advised to confirm the location of this hearing by contacting the Department at (617)305-3500 prior to July 7, 1999.

By Order of the Department,

Janet Gail Besser, Chair

James Connelly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

1. G.L. c. 93, §§ 108-113, G.L. c. 159, §12E.
2. G.L. c. 93, § 109(a).
3. G.L. c. 93, § 110(k).

4. G.L. c. 93, § 113(a)-(d).