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220 CMR: DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

220 CMR 13.00: RULES AND REGULATIONS IMPLEMENTING LEGISLATION TO PROTECT CONSUMERS FROM THE UNAUTHORIZED CHANGING OF LOCAL OR LONG DISTANCE SERVICE PROVIDERS

Section

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13.01: Purpose and Scope

(1) Purpose. The purpose of 220 CMR 13.00 is to establish rules and regulations implementing the Massachusetts "anti-slamming" statute; specifically, these regulations govern the conduct of third party verification ("TPV"), alternative informal dispute resolution procedures for customer complaints, and the establishment of a record of complaints.

(2) Scope. These rules and regulations shall apply to all telephone interexchange carriers ("IXC") and local exchange carriers ("LEC"), and their agents doing business in Massachusetts or, where applicable, to companies that provide TPV services.

13.02: Definitions

For purposes of 220 CMR 13.00, the terms set forth below shall be defined as follows:

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Agent means a person authorized by another (principal) to act for or in place of the principal.

Customer means a person or business who resides in Massachusetts and subscribes to local or long distance telecommunications services.

Department means the Department of Telecommunications and Energy.

Interexchange Carrier or IXC means any telecommunications common carrier engaged in the provision of long distance telephone service.

Letter of Agency or LOA means a document meeting the form and content requirements of

M.G.L. c. 93, § 109 and 47 CFR 64.1150, signed by a customer to indicate that the customer has authorized a change of his or her IXC or LEC.

Local Exchange Carrier or LEC means a telecommunications common carrier registered with the Department to provide local exchange telecommunications service, not including persons engaged in the provision of commercial mobile service under section 332(e) of the Federal Communications Act of 1934, except to the extent that the Department determines such service should be included in the definition of such term.

Slamming means any unauthorized change to a customer's primary IXC or LEC.

Telecommunications Common Carrier means any entity registered with the Department to provide telecommunications services.

Third Party Verification or TPV means a customer's oral authorization to change an IXC or LEC that meets the requirements set forth in M.G.L. c. 93, § 109(c), recorded by an entity registered with the Department operating in a location physically separate from an IXC, LEC, or telemarketing representative.

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(1) Appropriate Verification Data. Pursuant to M.G.L. c. 93, § 109(c)(2)(i), the TPV agent must confirm appropriate verification data. For purposes of this subparagraph, appropriate verification data shall include:

- (a) the last four digits of the customer's social security number;
- (b) the customer's date of birth;
- (c) the customer's mother's maiden name; or
- (d) any other independently verifiable information.

Customers who do not wish to provide any of the above verification data may authorize a carrier change through a LOA.

(2) Authority to Authorize a Change in Carrier. Pursuant to M.G.L. c. 93, § 109(c)(2)(ii), to authorize a change in carrier or service, the person to whom the TPV agent spoke must be at least 18 years of age. For a residence, the customer of record is presumed to have this authority if the customer meets the minimum age requirement. For a business, the person designated as the contact for local or long distance telecommunications company, or an officer or the owner of the business is presumed to have this authority.

(3) Identification of the TPV Agent and Company. In addition to stating the purpose of the TPV call, the TPV agent must state his or her full name, and the name and address (city and state) of the TPV company. If requested, the TPV agent shall provide the customer with a toll-free number for the TPV company.

(4) Confirmation of Existing Carrier. The TPV agent shall confirm the customer's existing primary IXC or LEC, in addition to confirming the identity of the new, primary IXC or LEC.

(5) Written Confirmation of the Carrier Change. Unless a letter of agency is obtained from the customer, the carrier that initiated the change shall mail a letter or postcard to the customer confirming this change. This letter or postcard shall be mailed within two weeks of the TPV call and shall contain the following information:

- (a) the name and address of the customer of record;
- (b) a description of the terms and conditions of the new service;
- (c) the amount of any charge(s) that will be levied on the customer as a result of this change;
- (d) a toll-free number of the new carrier for customer complaints; and

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(e) the names and addresses of the new carrier and the TPV company.

(6) Failure to Maintain Audio Recordings. Unless the carrier that initiated the change obtained a letter of agency from the customer or received from the Department a waiver of the recording requirement, pursuant to M.G.L. c. 93, § 109(c)(5), the failure to maintain audio recordings shall be evidence that, if un rebutted, would establish that consent from the customer was not obtained.

(7) Minimum Standards to Receive a Waiver of the Tape Recording Requirement.

(a) In order to receive a waiver, pursuant to M.G.L. c. 93, § 109(c)(5), of the requirement that TPV calls be tape recorded, the Department requires a requesting carrier to demonstrate, at a minimum, that its verification system complies with the following:

1. captures in written or electronic form the information required to be tape recorded under M.G.L. c. § 109(c)(2);
2. maintains, or causes to be maintained, the record described in (a) for at least one year, making such record available at no cost and upon request to the Department, the Attorney General, or the customer;
3. prohibits the TPV company from using the information gathered in (a) for any marketing purpose;
4. requires the TPV employee to read from a script, to be provided to the Department at the time it makes its waiver request, that elicits the information required in M.G.L. c. 93, § 109(c)(2) and prohibits the TPV employee from deviating from the script;
5. prohibits the TPV employee from modifying, or otherwise altering, the billing telephone number ("BTN") and information regarding the service to be changed;
6. prohibits a verification from occurring if a discrepancy arises between the BTN or service information provided to the TPV employee by the carrier's agent or employee and that information given by the customer; and
7. monitors, and causes monitoring of, the TPV employees for quality assurance.

(b) At the time of filing its request for a waiver, the carrier shall provide the Department with its slamming history in every jurisdiction in which it operates. This slamming history shall cover the twelve-month period immediately preceding the date of its waiver request and shall contain sufficient 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. The Department shall consider the carrier's slamming history as a factor in deciding whether to grant the waiver request.

(c) The Department may rescind a carrier's waiver of the tape recording requirement at any time.

13.04: Authorized Changes, Complaint Resolution Procedure for Slamming Complaints

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(1) Unauthorized Change. An unauthorized change of a customer's primary IXC or LEC shall occur if the IXC or LEC that initiated the change fails to provide the required evidence set forth in

M.G.L. c. 93, § 109 for each and every type of service sold or provides a LOA or TPV that the Department determines was obtained by mistake, misunderstanding, misrepresentation, false and deceptive business practices or by any other unfair or unlawful means.

(2) Complaint Resolution Procedure. A customer, IXC or LEC may initiate a complaint that a customer's IXC or LEC has been changed without the customer's authorization. Such a complaint must be made to the Consumer Division within 90 days after the date of the notice indicating that the customer's IXC or LEC has been changed. The Department shall investigate such complaint pursuant to the procedures established by M.G.L. c. 93 §§ 108-113, inclusive.

13.05: Alternative Dispute Resolution Procedure for Slamming Complaints

(1) Election by Customer of Alternative Dispute Resolution Procedure. For any matter relating to the unauthorized changing of a customer's primary IXC or LEC, a customer may file a complaint with the Consumer Division of the Department and elect an alternative informal dispute resolution procedure.

(a) Customer Responsibility. Upon request, the customer shall provide the Department with the following information:

1. a copy of the customer's telephone bill;
2. the name of the original primary IXC or LEC;
3. the name of the IXC or LEC that initiated the change;
4. the telephone number of the IXC or LEC that initiated the change;
5. any other information the Department determines to be relevant; and
6. any other information the customer believes to be relevant to demonstrate that the change was unauthorized.

(b) Department Responsibility. Upon receipt of the information set forth in 220 CMR 13.05(1)(a), the Department shall investigate the customer's complaint to determine whether an unauthorized change occurred as described by 13.04. If the Department determines that an unauthorized change of the customer's primary IXC or LEC was initiated by the new IXC or LEC, the Department may:

1. require the IXC or LEC that initiated the unauthorized change to refund or adjust the difference between charges it billed to the customer and what the customer would have been billed by his or her primary IXC or LEC had no unauthorized change occurred;
2. require the IXC or LEC that initiated the unauthorized change to refund or adjust charges for any reasonable expenses the customer incurred in changing to the new IXC or LEC or in returning to the original primary IXC or LEC;
3. request the IXC or LEC that initiated the unauthorized change to refund to the customer's original primary IXC or LEC any lost revenue which shall consist of the

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amount of money the original IXC or LEC would have received for the service used by the customer from the date the IXC or LEC initiated the unauthorized change;

4. request the original primary IXC or LEC to refund, credit or adjust the customer's account to include any incentives that were lost by the customer as a result of the unauthorized change in the customer's original IXC or LEC, including, but not limited, to frequent flyer miles and charitable contributions; or

5. approve an independent resolution agreed upon by a customer and an IXC or LEC.

Upon reaching a final conclusion, the Department shall notify all parties to the dispute of the Department's determination.

(2) Sanctions. If the Department determines through the alternative dispute resolution process in 220 CMR 13.05(1) that an IXC or LEC changed a customer's primary IXC or LEC without first obtaining a valid authorization, after an adjudicatory hearing, the Department:

(a) shall fine any IXC or LEC that was found to have changed any customer's IXC or LEC without proper authorization more than once in a 12 month period 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; and

(b) may prohibit a carrier from selling communications services in Massachusetts when the Department determines that the IXC or LEC intentionally, maliciously or fraudulently changed the original primary IXC or LEC of more than 20 customers in Massachusetts in a 12 month period.

In determining the amount of the civil penalty to impose upon the IXC or LEC that initiated the unauthorized change of the customer's original primary IXC or LEC or to determine the length of suspension, the Department shall consider the nature, circumstances and gravity of the violation, the degree of culpability, and the carrier's history of prior offenses. If both the customer and the IXC or LEC agree, the adjudicatory hearing may be waived.

13.06: Procedure to Record Slamming Complaints

(1) Carrier Identification.

(a) All IXCs and LECs providing service to customers must inform the Consumer Division of the following:

1. the name, address, and direct telephone number of the IXC or LEC;
2. the names, addresses, and direct telephone numbers of any billing agents affiliated with the IXC and LEC;
3. the names, addresses, and telephone numbers of authorized representatives designated by the IXC or LEC to serve as liaisons between the IXC or LEC and the Department for the purpose of providing customer information and resolving complaints; and

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4. the toll-free customer information number of the IXC or LEC as listed on customers' bills.

(b) All IXCs or LECs providing service to customers in Massachusetts must notify the Department of any changes or modifications made to the information required by 220 CMR 13.06(1)(a) within ten (10) business days of such changes.

(2) Tracking. The Department shall track the instances in which an IXC, LEC or TPV company changed the IXC or LEC of customers without valid letters of agency or third party verification recordings.

(3) TPV Companies. The Department shall keep a record of any TPV company or any other agent affiliated with an IXC or LEC that has engaged in the unauthorized changing of IXCs or LECs of customers.

(4) Report to the Legislature. The Department shall keep monthly records of each unauthorized IXC or LEC change by company and prepare an annual report of each violation by company for submission to the Joint Committee on Government Regulations and the Attorney General.

13.07: Application Form for Third Party Verification Companies

The proposed application form for TPV companies is contained in Appendix A.

13.08: Exception

The Department may, where appropriate, grant an exception from any provision of 220 CMR 13.00

13.09: Effective Date

The rules and regulations contained in 220 CMR 13.00 shall be effective 30 days after being filed with the Secretary.

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REGULATORY AUTHORITY:

220 CMR 13.00: M.G.L. c. 93, §§ 109(c)(4), 110(k), 113(e), M.G.L. c. 159, § 12E(b).

APPENDIX A

The Commonwealth of Massachusetts
Department of Telecommunications and Energy
100 Cambridge Street, 12th Floor
Boston, MA 02202

(617) 305-3500 www.state.ma.us/dpu/telecom

Third Party Verification Service Provider

Registration application

In order to facilitate a change in a customer's primary Interexchange Carrier (IXC) or primary Local Exchange Carrier (LEC), an IXC or LEC may rely upon a Third Party Verification Service Provider (TPV) to provide customer authorization confirmation services as provided for in Massachusetts General Laws, Chapter 93, Sections 108-113, inclusive.

Pursuant to M.G.L., c. 159, §12E(a)(3), any company that provides TPV services, pursuant to Section 109 of Chapter 93, must register with the Department of Telecommunications and Energy (Department). In order to register with the Department, a prospective TPV service provider must complete the following registration application and submit it to the Department for approval.

Instructions:

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- Provide all requested information. Do not leave any question blank. If a question is inapplicable, answer "N/A" on the form and explain why it is inapplicable; attach a separate sheet if necessary.

- There is no filing fee. The application will be processed in the order in which it was received. Once the Department reviews the application, Registrant will be apprised of its status. If the application is approved, Registrant will receive a copy of the registration cover page bearing an "Approved" stamp, including the date of approval and registration number.

- Upon completion, submit the original Registration Form, all attached documents, and one copy of the form and attachments to:

Mary Cottrell, Secretary

Department of Telecommunications and Energy

100 Cambridge Street

Boston, Massachusetts 02202

A. Contact Information:

1. Legal Name of Registrant if a Natural Person:

Legal Name of Natural Person Applying if Registrant is a Corporation, Association, or Partnership:

Name Registrant is Doing Business As (D/B/A), if applicable:

2. Business Address (P.O. Box not acceptable):

No. and Street:

City/Town:

State/Zip:

3. Principal Place of Business, if applicable (P.O. Box not acceptable):

No. and Street:

City/Town:

State/Zip:

4. Mailing Address, if applicable:

No. and Street:

City/Town:

State/Zip:

5. Provide the name, title, mailing address, and telephone number of the appropriate person designated for the Department to contact regarding:

a. issues or questions related to processing this registration:

b. consumer-related issues, including dispute resolution:

c. technical and/or quality of service issues:

B. Company Information:

1. If Registrant is a corporation, association, or partnership

a. State where legally organized:

b. Date of organization:

c. Please attach a certificate of good standing from the Massachusetts Secretary of State's Office or the state in which your company is organized.

d. If Registrant is organized in a state other than Massachusetts, are you on file with the Massachusetts Secretary of State's Office?

e. Foreign Corporation Certificate Number (if applicable):

f. Please attach articles of incorporation, association, partnership agreement, or other document establishing legal organization

2. If Registrant is a corporation, list each officer, director, and stockholder owning 10% or more of Registrant's outstanding capital stock. (attach additional pages if needed):

Name	Title	Address	Percent	and class of shares
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3. If Registrant is a partnership, list the names and addresses of principal partners:

Name	Title	Address
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4. List the company or companies for which Registrant provides TPV services in Massachusetts. NOTE: this list must be updated each time a company is added or removed from the list. Registrant is required to notify the Department by mail within ten business days of a change to this list.

Company Name	Name and Tel. # of Contact at Company	Address
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C. Requirements for Third Party Verification Service Providers

By signing this document, Registrant attests that the information provided above is accurate, and that the Registrant will comply with the provisions provided below. If Registrant is a corporation, association, or partnership, the natural person authorized to act as the representative of Registrant shall sign (Signatory) for it and indicate his or her representative capacity.

1. Registrant operates in a location physically separate from any IXC, LEC, or telemarketing representative who has obtained a customer's oral authorization to submit a change order for an IXC or LEC.

2. Registrant is not directly or indirectly managed, controlled, directed, or owned wholly or partially, by any IXC or LEC.

3. Registrant does not receive commissions or compensation based upon the number of customer authorizations confirmed or sales confirmed for any IXC or LEC.

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4. Upon registration, Registrant shall be bound by the provisions of M.G.L. c. 93, Sections 108-113 inclusive and M.G.L. c. 159, § 12(E)(b), and any applicable rules and regulations subsequently promulgated by the Department pursuant to these provisions.

5. The Department is required to investigate consumer complaints and collect statistical information for the Massachusetts Legislature, pursuant to M.G.L. c. 93, Sections 108-113. To this end, Registrant agrees to provide the Department with any requested records needed to perform these tasks in a timely fashion. The Department will consider requests for protective treatment of proprietary or competitively sensitive data.

Signature of Registrant or Signatory:

Title of Signatory or

Representative Capacity:

Date:

Tax Attestation

Pursuant to M.G.L., c. 62C, Section 49A, I hereby certify under the pains and penalties of perjury that the Registrant, to the best of my knowledge and belief, has filed all federal and state tax returns and paid all federal and state taxes required by law. I further certify that I have made sufficient, good faith enquiries to enable me to make this attestation.

Social Security Number Signature of Individual or Corporate Name of Registrant

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Federal Identification Number Signature and Title of Corporate Officer (if Registrant is a Corporation)

Affidavit

The undersigned declares under the pains and penalties of perjury that (s)he is authorized to make this verification for and on behalf of Registrant; that (s)he has read the foregoing registration and is informed and believes that same are true and on that ground affirms that the matters therein stated are true.

The undersigned further declares that the Registrant understands and will abide by the Department's requirements concerning the provision of TPV service, including the provisions in the foregoing registration.

The undersigned understands that if the Registrant is found not to be in compliance with the Department's requirements, the Department may withdraw registration and prohibit Registrant from providing TPV services within the Commonwealth.

Dated this day of , 19

Signature

Print Name of Signatory

Title of Signatory or
Representative Capacity

NOTARIZED: