

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Rulemaking by the Department of Telecommunications)

And Energy, pursuant to G.L. c. 166, 25A, and 220)

C.M.R. 2.0 et seq. to promulgate rules and regulations) D.T.E. 99-18

Implementing the law protecting consumers from)

Unauthorized switching of local and long distance)

Telecommunications service providers as 220 C.M.R)

13.00 et seq.)

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COMMENTS OF THE

TELECOMMUNICATIONS RESELLERS ASSOCIATION

The Telecommunications Resellers Association (TRA), on behalf of its members, and pursuant to the Department of Telecommunications and Energy's (Department) June 10, 1999 Order Instituting Rulemaking in the captioned proceeding, comments on the Department's proposed rules and regulations implementing legislation to protect consumers from the unauthorized changing of local or long distance service providers (slamming rules).

TRA need not reiterate the critical importance of promulgating additional safeguards to protect the public from slamming. Clearly, slamming harms unsuspecting consumers as well as legitimate service providers who are victimized by the acts of unscrupulous entities. TRA believes that the proposed rules generally establish an effective framework for protecting the public and legitimate carriers from slamming, and for equitably resolving slamming complaints, consistent with the sound statutory provisions of M.G.L. c. 93 108 113 and c. 159, 12E and federal rules.

TRA takes no exception to the proposed alternative informal dispute resolution rules that TRA finds to be well-reasoned, comprehensive, and fully encompass legislative intent. Although TRA actively supports adoption of a national third party administrator (TPA) to oversee resolution of slamming complaints, TRA does not find the Department's proposed alternative informal dispute resolution procedures for customer complaints to necessarily conflict with adoption of a national TPA process.

With regard to the third party verification rules, however, TRA is concerned over additional written confirmation requirements associated with third party verification. The added confirmation requirement increases service provider burdens with negligible added public benefit, particularly when no additional protection is necessary. TRA urges elimination of the mandatory written third party verification confirmation requirements, and further proposes amendment of the rescission of the third party verification recording waiver provision for purposes of clarification, as discussed herein.

I. INTRODUCTION

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Massachusetts slamming law, G.L. c. 93 108-113 and c. 159 2E, in addition to establishing a practical framework for resolving consumer slamming complaints, established a process for verification of subscriber elections to change primary carriers through one of two methods. Carriers may either verify a subscriber's election to change carriers, 1) through a signed letter of agency obtained by the carrier; or 2) through confirmation of a subscriber's oral selection verified by an independent third party (Third Party Verification or TPV). These two options are clearly reflected in the Department's proposed rules. The Department takes the statutory verification requirements one step further by imposing a new requirement on carriers who confirm service provider change requests by TPV to also provide customers with written confirmation following TPV verification of the change request. This additional requirement undermines the value of TPV while unnecessarily increasing verification costs to carriers with little countervailing public benefit.

TRA generally supports promulgation of the proposed rules, with exception of the written confirmation requirements of 220 CMR 13:03(5) that TRA urges the Department to delete. As a minor matter, TRA also urges the Department to clarify the basis for removal of TPV recording waivers in 220 CMR 13.03(7)(c), to eliminate the ambiguity created by the proposed language.

I. THE DEPARTMENT EXCEEDS THE STATUTORY VERIFICATION REQUIREMENTS AND FEDERAL SLAMMING RULES BY IMPOSING ADDITIONAL BURDENSOME WRITTEN CONFIRMATION REQUIREMENTS FOR TPV-VERIFIED CARRIER ELECTIONS WHEN NO FURTHER PROTECTION IS NEEDED.

The Department proposes to adopt a new obligation on service providers who utilize TPV verification, which is based neither in state law or federal rules, and moreover, is unnecessary in light of the inherent protection already residing in the proposed verification options. According to the proposed rule 220 CMR 13:03(5), Written Confirmation of the Carrier Change, carriers utilizing TPV to verify changes in service providers will further be required to mail a letter or postcard to the customer confirming the change within two weeks of the TPV call.

TRA appreciates the Department's desire to require service providers to provide written confirmation of changes in carrier to subscribers. In an environment of increasing slamming abuse, written confirmations can be beneficial, arguably providing limited added security to the public and legitimate service providers after service provider elections have been verified. Written carrier change confirmations, such as those envisioned by the Department, are gaining industry favor and being used with greater frequency as an additional step to mitigate slamming complaints, regardless of the verification method used by the service provider. Written confirmations are, however, being implemented by the industry voluntarily and without regulatory directives.

The written confirmation requirement proposed by the Department in the instant proceeding imposes a costly, unnecessary burden on carriers who rely on TPV verification that seemingly ignores the inherent safeguards woven throughout the other TPV call provisions in 220 CMR 13:03 and 13:05. Moreover, the written confirmation requirement negates the desirability of TPV verification altogether, virtually eliminating what is otherwise a viable and proven method of carrier change verification.

A. The Additional TPV Written Confirmation Requirement Has No Basis in Commonwealth Slamming Law or Federal Slamming Rules.

The Commonwealth's slamming statute establishes two specific methods for verifying changes to primary carriers by the public. According to M.G.L. c. 93 109(a),

[a] change in a customer's primary IXC [interexchange carrier] or LEC [local exchange carrier] shall be considered to have been authorized only if the IXC or LEC

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that initiated the change provides confirmation that the customer did authorize such a change either through a signed LOA [letter of agency] or oral confirmation of authorization obtained by a company registered with the department to provide TPV services in the commonwealth.

Section 109(c)(5) of Chapter 93 accords the Department authority 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 [emphasis added]. Chapter 93 imposes no additional confirmation obligations on carriers who elect to confirm carrier changes through TPV nor does it direct the Department to promulgate rules governing additional written confirmation of TPV-verified carrier elections.

Similarly, federal slamming rules, while according three methods of carrier change verification, impose no additional written verification requirements on carriers utilizing the TPV verification option. Pursuant to section 64.1150(c) of the Federal Communications Commission's (FCC) Changes in Preferred Telecommunications Service Provider rules, telecommunications carriers are prohibited from submitting a preferred carrier change order unless

[a]n appropriately qualified independent third party has obtained the subscriber's oral authorization to submit the preferred carrier change order that confirms and includes appropriate verification

No additional written confirmation requirements are imposed under the FCC's rules.

Neither state law nor federal slamming rules mandate a separate obligation on entities utilizing TPV to further confirm subscriber carrier changes in writing.

B. The Proposed TPV Framework Under 220 CMR 13:03 Contains Inherent Safeguards that Render Added Written Confirmation Unnecessary.

Notwithstanding the fact that neither state statute nor federal regulations require the Department to impose written confirmation requirements on service providers, the need for an additional TPV confirmation requirement is unclear given the extensive safeguards which reside in the proposed verification rules. The proposed 220 CMR 13:03, Requirements for Third Party Verification Calls, framework already embodies the comprehensive TPV verification requirements established under M.G.L. c. 93 109. Third party verifiers are obligated to inter alia verify the subscriber's authority to change service providers, confirm the change request to the subscriber, and record the change request or otherwise maintain evidence of the subscriber's change in carrier. Such evidence is to be provided to the Department upon request as a proof that the carrier has been given bona fide subscriber authority to initiate a change request pursuant to the Department's dispute resolution procedures in 220 CMR 13:05, and the Failure to Maintain Audio Recordings requirements in 220 CMR 13:03(6). Service providers who are careless in following the proposed TPV requirements, or fail to follow those requirements altogether, run a significant risk of Commission enforcement action, including substantial penalties and revocation of operating authority. Legitimate service providers cannot be cavalier about compliance. Strict penalties and fines create strong incentives for providers to ensure that customer changes are confirmed and documented.

The foregoing obligations ensure the integrity of the TPV process, ensure full documentation of carrier change requests, and ensure that subscriber requests are duly confirmed. Their incorporation into the Department's proposed TPV rule raises doubts over the need for institution of an additional written confirmation requirement which offers little to no added protection to the public, yet imposes a substantial cost on service providers.

C. Mailed Carrier Change Confirmation Requirements Impose a Costly Burden on

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Entities Who Utilize TPV to Confirm Carrier Changes, Undermining the Utility of TPV.

The requirement to confirm carrier selections by mail in 220 CMR 13:03(5) constitutes a new costly requirement, particularly for smaller companies such as many of TRA's members. Under the proposed confirmation mailing requirement, service providers are expected to assume the expense of printing and mailing confirmation letters or postcards, as well as the far greater personnel and administrative costs associated with overseeing the confirmation mailing process. When these administrative costs are added to the cost of third party verification, the financial burden, particularly to smaller companies such as many of TRA's members, may become acute.

Aggregated verification and confirmation costs ultimately negate the operational and financial benefits of TPV as a viable confirmation option. The three verification options established in federal regulation and two confirmation options established under state law accord service providers added flexibility to utilize a confirmation method best suited to each provider's unique operational and budgetary considerations and constraints. Added administrative costs associated with the written confirmation requirement for TPV will virtually eliminate TPV as a viable option for all but the largest service providers.

D. The FCC's Conclusions Leading to the Elimination of the Welcome Package Confirmation Option are Instructive In Highlighting the Limited Value of Maintaining Written TPV Verification Confirmations.

The FCC's rationale for eliminating the ill-fated federal welcome package postcard confirmation option is instructive in highlighting the limited value of an additional TPV verification written confirmation requirement because of the close similarity between postcard confirmations and the written confirmation requirements envisioned by the proposed rules. With the adoption of its new slamming rules in December 1998, the FCC eliminated provisions allowing carriers to confirm service provider changes by mailing a welcome package to new customers. These provisions had allowed service providers to mail a package of material to new subscribers including a prepaid postcard to be used by the subscriber for the purpose of denying, canceling, or confirming the change in service provider. Unlike the proposed written confirmation requirements in proposed rule 220 CMR 13:03(5), however, subscribers receiving a welcome package were requested to send the prepaid card back to the service provider as confirmation of the change in provider.

In its Second Report and Order, the FCC found the welcome package verification option to be ineffective, not only because of the problems associated with subscribers who failed to return postcard confirmations, but more to the point, because of the problems experienced in providing written confirmation information to new subscribers. According to the FCC,

The record, as well as our experience with consumer complaints, supports our decision to eliminate the welcome package as a verification option. The welcome package has been a significant source of consumer complaints regarding slamming. As many of the commenters note, consumers often fail to receive the welcome package, or they throw it away as junk mail, or they have their service switched despite the fact that they returned postcards requesting that their service not be changed. In all instances, however, we find that the welcome package is an ineffective verification method because it does not provide evidence, such as a written signature or recording, that the subscriber has in fact authorized a carrier change [footnotes omitted, emphasis added].

Written confirmation of a change in service providers provides no further evidence of the customer's change in service provider. Moreover, written confirmations face the uncertain fate of welcome packages described by the FCC in its Second Report and

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Order: failing to be received by the customer who requested the change in providers, being discarded as junk mail, or otherwise being disregarded altogether. FCC and industry experience with the welcome package reveals the questionable value of mandating an additional written service provider election confirmation process similar to the welcome package approach after a bona fide election has already been verified.

Service providers should be accorded flexibility to design effective confirmation procedures as long as those procedures are compliant with federal and state regulatory safeguards and achieve the intended result of effectively protecting the public from abuse. TRA believes the proposed written confirmation requirements in 220 CMR 13:03(5) are excessively binding, unnecessary in light of the inherent safeguards and verification obligations established by the proposed rules and related sanctions for non-compliance, offer marginal added public benefit in light of the costs to carriers, and should be eliminated.

I. TPV RECORDING WAIVERS SHOULD BE RESCINDED ONLY UPON GOOD CAUSE.

Proposed rule 13.03(7)(c) authorizes the Department to rescind a waiver of the TPV recording requirement at any time. TRA does not dispute the Department's jurisdiction to rescind the recording waiver at any time, and for any reason. Yet, in keeping with the Department's rule enforcement practices, rescission of the recording requirement waiver should be initiated only upon good cause and subject to due process. It is unclear by the proposed ambiguous language whether this is the Department's intent. Proposed rule 13.03(7)(c) should be amended to clarify the basis under which the recording requirement waiver would be rescinded.

I. CONCLUSION

TRA generally supports adoption of the proposed TPV, alternative informal dispute resolution procedures for customer complaints, and recording requirements, with the exception of the proposed added written confirmation requirements under rule 13:03(5). The written confirmation requirement would impose a significant added burden and cost with negligible countervailing public benefit, that is not mandated under Commonwealth law or federal rule. TRA urges the Department to delete proposed section 13:03(5) and clarify proposed rule 13.03(7)(c) as proposed herein.

Respectfully submitted,

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June 29, 1999