

PROJECT NO. 28324

RULEMAKING TO AMEND	§	PUBLIC UTILITY COMMISSION
SUBSTANTIVE RULES §26.32	§	
(PROTECTION AGAINST	§	OF TEXAS
UNAUTHORIZED CHARGES) AND	§	
§26.130 (SELECTION OF	§	
TELECOMMUNICATIONS	§	
UTILITIES)	§	

**PROPOSAL FOR PUBLICATION OF §26.130 AS APPROVED
AT THE OCTOBER 23, 2003 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §26.130 relating to Selection of Telecommunications Utilities, also known as “Slamming.” The proposed amendments to §26.130 reflect administrative changes adopted by the Federal Communications Commission (FCC) after the current version of this rule was adopted. Project Number 28324 is assigned to this proceeding.

This rulemaking was instituted by the commission to address the following:

1. To update rule references to changes in FCC Rule citations;
2. Clarification of the definition of “customer;”
3. Modification of the authorization and verification requirements for oral authorizations, Letters of Agency (LOA), and pre-subscribed inter-exchange carrier (PICC) freeze forms;
4. Establishment of certification requirements for telecommunication utilities that are unable to have their sales agents drop off of the verification portion of a telemarketing call when the verification portion of the call commences;

5. Elimination of the filing of semi-annual slamming reports by telecommunication utilities and identification of the current telecommunication utility on written and oral authorizations and verifications;
6. Requirement that a telecommunications utility submit change orders within 60 days of receipt from the customer except for LOAs relating to certain types of business customers under a term agreement that allows for a different time period;
7. Requirement that a customer's preferred telecommunication utility be compensated for billing and collection expenses incurred in collecting charges from the unauthorized telecommunication utility;
8. Establishment of specific time period for telecommunication utilities to provide records of customer authorization with verification after commission staff request; and
9. Notice of the standard of proof imposed upon telecommunication utilities in enforcement actions.

Mr. John Costello, Senior Policy Analyst, Telecommunication Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Ruthalyn Anderson, Director, Customer Protection Division – Complaints Section, and Mr. John Costello have determined that for each year of the first five years the proposed

section is in effect the public benefit anticipated as a result of enforcing the section will be increased clarification of the rights and responsibilities for telecommunication utilities and enhanced protection for Texas customers in their selection of local and long distance telecommunications utilities. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Costello has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Thursday, January 22, 2004, at 1:30 PM. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed amendment (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments

regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 28324.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2003) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and specifically, PURA §55.302 which grants the commission the authority to adopt and enforce rules to implement the provisions of PURA Chapter 55, Subchapter K, Selection of Telecommunications Utilities; and PURA §64.001 which confers on the commission authority to adopt and enforce rules to protect customers from fraudulent, unfair, misleading, deceptive, or anticompetitive practices.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 55.301-55.308, and 64.001-64.004.

§26.130. Selection of Telecommunications Utilities.**(a) Purpose and Application.**

- (1) **Purpose.** The provisions of this section are intended to ensure that all customers in this state are protected from an unauthorized change in a customer's local or long-distance telecommunications utility.
- (2) **Application.** This section, including any references in this section to requirements in 47 Code of Federal Regulations (C.F.R.) [Subpart K \(entitled "Changing Long Distance Service"\)](#) ~~§64.1120 and §64.1130 (changing long distance service)~~, applies to all "telecommunications utilities," as that term is defined in §26.5 of this title (relating to Definitions). This section does not apply to an unauthorized charge unrelated to a change in preferred telecommunications utility which is addressed in §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")).

(b) Definitions. The following words and terms when used in this section shall have the following meanings unless the context indicates otherwise:

- (1) **Authorized telecommunications utility** — Any telecommunications utility that submits a change request, [after obtaining customer authorization with verification](#), ~~that is~~ in accordance with the requirements of this section.
- (2) **Customer** — Any person, [including the](#) ~~and that~~ person's spouse, in whose name telephone service is billed, including individuals, governmental units at all levels of government, corporate entities, and any other entity with legal

capacity to request a change in local and/or telecommunications utilities be billed for telephone service.

- (3) **Executing telecommunications utility** — Any telecommunications utility that affects a request that a customer's preferred telecommunications utility be changed. A telecommunications utility may be treated as an executing telecommunications utility;³ however, if it is responsible for any unreasonable delays in the execution of telecommunications utility changes or for the execution of unauthorized telecommunications utility changes, including fraudulent authorizations.
- (4) **Submitting telecommunications utility** — Any telecommunications utility that requests on behalf of a customer that the customer's preferred telecommunications utility be changed.
- (5) **Unauthorized telecommunications utility** — Any telecommunications utility that submits a change request that is not in accordance with the requirements of this section.

(c) **Changes in preferred telecommunications utility.**

- (1) **Changes by a telecommunications utility.** No telecommunications utility shall submit or execute a change on the behalf of a customer in the customer's selection of a provider of telecommunications service except in accordance with this section. Before a change order is processed by the executing telecommunications utility, the submitting telecommunications utility must obtain authorization~~verification~~ from the customer that such change is desired for each affected telephone line(s) and ensure that ~~such~~-verification of the

authorization is obtained in accordance with 47 C.F.R. Subpart K§64.1120. In the case of a change by written solicitation, the submitting telecommunications utility must obtain verification as specified in 47 C.F.R. Subpart K§64.1130, and subsection (d) of this section, relating to “Letters of Agency.” ~~The submitting telecommunications utility shall submit a change order within 60 days after obtaining verification from the customer. The submitting telecommunications utility must maintain records of all changes, including verifications, for a period of 24 months and shall provide such records to the customer, if the customer challenges the change, and to the Public Utility Commission (commission) staff upon request.~~ A change order must be verified by one of the following methods:

- (A) Written or electronically signed authorization from the customer in a form that meets the requirements of subsection (d) of this section. A customer shall be provided the option of using another authorization method in lieu of an electronically signed authorization.
- (B) Electronic authorization placed from the telephone number which is the subject of the change order except in exchanges where automatic recording of the automatic number identification (ANI) from the local switching system is not technically possible. The submitting telecommunications utility must:
 - (i) ensure that the electronic authorization confirms the information described in subsection (d)(3) of this section; and

- (ii) establish one or more toll-free telephone numbers exclusively for the purpose of verifying the change so that a customer calling toll-free number(s) will reach a voice response unit or similar mechanism that records the required information regarding the change and automatically records the ANI from the local switching system.

(C) Oral authorization by the customer for the change that meets the following requirements:

- (i) The customer's authorization shall be given to an appropriately qualified and independent third party that ~~obtainseonfirms~~ appropriate verification data including at a minimum, but not limited to, such as the customer's month and year date of birth, ~~or~~ mother's maiden name, or the last four digits of the customer's social security number.
- (ii) The customer's authorization and the customer's verification of authorization shall~~verification must~~ be electronically recorded in their~~its~~ entirety on audio tape, a wave sound file, or other recording device that is compatible with the commission's equipment.
- (iii) The ~~recordings~~recording shall be dated and include clear and conspicuous confirmation that the customer authorized the change in telephone service provider.
- (iv) The third party verification shall elicit, at a minimum, the identity of the customer, confirmation that the person on the call is authorized to make the change in service, the name(s)~~names~~ of the

telecommunications utilities affected by the change (not including the name of the displaced carrier), the telephone number(s) to be switched, and the type of service involved. The third party verifier shall not market or advertise the telecommunications utility's services by providing additional information, including information regarding preferred carrier freeze procedures.

- (v) The third party verification shall be conducted in the same language used in the sales transaction.
- (vi) Automated systems shall provide customers the option of speaking with a live person at any time during the call.
- (vii) A telecommunications utility or its sales representative initiating a three-way call or a call through an automated verification system shall drop off the call once a three-way connection with the third party verifier has been established unless:-

(I) the telecommunications utility files sworn written certification with the commission that the sales representative is unable to drop off the sales call after initiating a third party verification. Such certification should provide sufficient information as to the reason(s) for the inability of the sales agent to drop off the line after the third party verification is initiated. The carrier shall be exempt from this requirement for a period of two years

from the date the certification was filed with the commission;

(II) telecommunications utilities that wish to extend their exemption from this clause must, before the end of the two-year period, and every two years thereafter, recertify to the commission the utility's continued inability to comply with this clause.

(viii) The third party verification shall immediately terminate if the sales agent of a telecommunications utility that has filed a sworn written certification in accordance with clause (vii) of this subparagraph responds to a customer inquiry or speaks after third party verification has begun.

(ix)(viii) The independent third party shall:

- (I) not be owned, managed, directed or ~~directly~~ controlled by the telecommunications utility or the telecommunications utility's marketing agent;
- (II) not have financial incentive to confirm change orders; and
- (III) operate in a location physically separate from the telecommunications utility and the telecommunications utility's marketing agent.

(2) **Changes by customer request directly to the local exchange company.** If a customer requests a change in the customer's current preferred

telecommunications utility by contacting the local exchange company directly, and ~~that~~ the local exchange company is not the chosen carrier or affiliate of the chosen carrier, the verification requirements in paragraph (1) of this subsection do not apply. The customer's current local exchange company shall maintain a record of the customer's request for 24 months.

(d) **Letters of Agency (LOA).** A written or electronically signed authorization from a customer for a change of telecommunications utility shall use a letter of agency (LOA) as specified in this subsection:

- (1) The LOA shall be a separate or easily separable document or located on a separate screen or webpage containing only the authorization and verification ~~authorizing~~ language described in paragraph (3) of this subsection for the sole purpose of authorizing the telecommunications utility to initiate a telecommunications utility change. There must be no unanswered questions on the LOA, which must also ~~The LOA must~~ be signed and dated by the customer requesting the telecommunications utility change. An LOA submitted with an electronically signed authorization shall include the consumer disclosures required by the *Electronic Signatures in Global and National Commerce Act* §101(c).
- (2) The LOA shall not be combined with inducements of any kind on the same document, screen, or webpage except that the LOA may be combined with a check as specified in subparagraphs (A) and (B) of this paragraph:

- (A) An LOA combined with a check may contain only the language set out in paragraph (3) of this subsection, and the necessary information to make the check a negotiable instrument.
- (B) A check combined with an LOA shall not contain any promotional language or material but shall contain on the front and back of the check in easily readable, bold-faced type near the signature line, a notice similar in content to the following: “By signing this check, I am authorizing (name of the telecommunications utility) to be my new telephone service provider for (the type of service that will be provided).”
- (3) LOA language.
- (A) At a minimum, the LOA shall be printed in a text not smaller than Arial 12-point~~with sufficient size and readable type to be clearly legible~~ and shall contain clear and unambiguous language that includes and confirms:
- (i) the customer’s billing name and address and each telephone number to be covered by the preferred telecommunications utility change order;
- (ii) the decision to change preferred carrier from the current telecommunications utility to the new telecommunications utility ~~and identifies each~~;
- (iii) that the customer designates (insert name of the new telecommunications utility) to act as the customer’s agent for the preferred carrier change;

(iv) that the customer understands that only one preferred telecommunications utility may be designated for each type of service (local, intraLATA, and interLATA) for each telephone number. The LOA shall contain separate statements regarding those choices, although a separate LOA for each service is not required; ~~and~~

(v) that the customer understands that any preferred carrier selection the customer chooses may involve a one-time charge to the customer for changing the customer's preferred telecommunications utility and that the customer may consult with the carrier as to whether a fee applies to the change; ~~and-~~

~~(vi) appropriate verification data, including at a minimum, but not limited to, the customer's month and year of birth, mother's maiden name, or the last four digits of the customer's social security number.~~

~~(B) Any telecommunications utility designated in a LOA as the customer's preferred and authorized telecommunications utility shall be the carrier directly setting rates for the customer.~~

~~(C)(B)~~ The following LOA form meets the requirements of this subsection. Other versions may be used, but shall comply with all of the requirements of this subsection.

Customer billing name: _____

Customer billing address: _____

Customer street address: _____

City, state, zip code: _____

Customer's month and date of birth, mother's maiden name, or the last four digits of the customer's social security number: _____

If applicable, name of individual legally authorized to act for customer:

Relationship to customer: _____

Telephone number of individual authorized to act for customer:

Only one telephone company may be designated as my preferred carrier for each type of service for each telephone number.

_____ By initialing here and signing below, I am authorizing (insert name of new telecommunications utility) to become my new telephone service provider ~~in place of (current telecommunications utility)~~ for **local** telephone service. I authorize (insert name of new telecommunications utility) to act as my agent to make this change happen, and direct my (current telecommunications utility) to work with the new provider to make the change.

_____ By initialing here and signing below, I am authorizing (insert name of new telecommunications utility) to become my new telephone service provider in place of my (current telecommunications utility) for

local toll telephone service. I authorize (insert name of new telecommunications utility) to act as my agent to make this change happen, and direct my (current telecommunications utility) to work with the new provider to make the change.

_____ By initialing here and signing below, I am authorizing (insert name of new telecommunications utility) to become my new telephone service provider in place of my (current telecommunications utility) for **long distance** telephone service. I authorize (insert name of new telecommunications utility) to act as my agent to make this change happen, and direct my (current telecommunications utility) to work with the new provider to make the change.

I understand that I may be required to pay a one-time charge to switch providers and may consult with the carrier as to whether the charge will apply. If I later wish to return to my current telephone company, I may be required to pay a reconnection charge. I also understand that my new telephone company may have different calling areas, rates, and charges than my current telephone company, and I am willing to be billed accordingly.

Telephone number(s) to be changed: _____

Initial here _____ if you are listing additional telephone numbers to be changed.

I have read and understand this Letter of Agency. I am at least eighteen years of age and legally authorized to change telephone companies for services to the telephone number(s) listed above.

Signed: _____ Date _____

- (4) The LOA shall not require or suggest that a customer take some action in order to retain the customer's current telecommunications utility.
- (5) If any portion of an LOA is translated into another language, then all portions of the LOA must be translated into that language. Every~~The~~ LOA must be translated into the same language as promotional materials, oral descriptions or instructions provided with the LOA.
- (6) The submitting telecommunications utility shall submit a change order on behalf of a customer within 60 days after obtaining a written or electronically signed LOA from the customer except LOAs relating to multi-line and/or multi-location business customers that have entered into negotiated agreements with a telecommunication utility to add presubscribed lines to their business locations during the course of a term agreement shall be valid for the period specified in the term agreement.

(e) **Notification of alleged unauthorized change.**

- (1) When a customer informs an executing telecommunications utility of an alleged unauthorized telecommunications utility change, the executing telecommunications utility shall immediately notify both the authorized and alleged unauthorized telecommunications utility of the incident.
- (2) Any telecommunications utility, executing, authorized, or alleged unauthorized, that is informed of an alleged unauthorized telecommunications utility change shall direct the customer to contact the Public Utility Commission of Texas [for resolution of the complaint](#).
- (3) The alleged unauthorized telecommunications utility shall remove all unpaid charges pending a determination of whether an unauthorized change occurred.
- (4) The alleged unauthorized telecommunications utility may challenge a complainant's allegation of an unauthorized change by notifying the complainant [in writing](#) to file a complaint with the Public Utility Commission of Texas within 30 days [after the customer's assertion of an unauthorized switch to the alleged unauthorized telecommunications utility](#). If the complainant does not file a complaint within 30 days, the unpaid charges may be reinstated.
- (5) The alleged unauthorized telecommunications utility shall ~~take all actions within its control to facilitate the customer's prompt~~ return [the customer](#) to the original ~~telecommunication~~[telecommunication](#) utility within three business days of the customer's request.

- (6) The alleged unauthorized telecommunications utility shall also be liable to the customer for any charges assessed to change the customer from the authorized telecommunications utility to the alleged unauthorized telecommunications utility in addition to charges assessed for returning the customer to the authorized telecommunications utility.

(f) **Unauthorized changes.**

(1) **Responsibilities of the telecommunications utility that initiated the change.**

If a customer's telecommunications utility is changed without verification consistent with this section, the telecommunications utility that initiated the unauthorized change shall:

- (A) take all actions within its control to facilitate the customer's prompt return to the original telecommunication utility within three business days of the customer's request;
- (B) pay all charges associated with returning the customer to the original telecommunications utility within five business days of the customer's request;
- (C) provide all billing records to the original telecommunications utility related to the unauthorized change of services within ten business days of the customer's request;
- (D) pay, within 30 business days of the customer's request, the original telecommunications utility any amount paid to it by the customer that would have been paid to the original telecommunications utility if the

unauthorized change had not occurred, ~~within 30 business days of the customer's request;~~

- (E) return to the customer within 30 business days of the customer's request:
- (i) any amount paid by the customer for charges incurred during the first 30 days after the date of an unauthorized change; and
 - (ii) any amount paid by the customer after the first 30 days in excess of the charges that would have been charged if the unauthorized change had not occurred; ~~and~~

(F) remove all unpaid charges; ~~and~~

(G) pay the original telecommunications utility for any billing and collection expenses incurred in collecting charges from the unauthorized telecommunications utility.

(2) **Responsibilities of the original telecommunications utility.** The original telecommunications utility shall:

(A) inform the telecommunications utility that initiated the unauthorized change of the amount that would have been charged for identical services if the unauthorized change had not occurred, within ten business days of the receipt of the billing records required under paragraph (1)(C) of this subsection;

(B) where possible, provide to the customer all benefits associated with the service, such as frequent flyer miles that would have been awarded had the unauthorized change not occurred, on receiving payment for service provided during the unauthorized change;

- (C) maintain a record of customers that experienced an unauthorized change in telecommunications utilities that contains:
- (i) the name of the telecommunications utility that initiated the unauthorized change;
 - (ii) the telephone number(s) affected by the unauthorized change;
 - (iii) the date the customer asked the telecommunications utility that made the unauthorized change to return the customer to the original telecommunications utility; and
 - (iv) the date the customer was returned to the original telecommunications utility; and
- (D) not bill the customer for any charges incurred during the first 30 days after the unauthorized change, but may bill the customer for unpaid charges incurred after the first 30 days based on what it would have charged if the unauthorized change had not occurred.

(g) Notice of customer rights.

- (1) Each telecommunications utility shall make available to its customers the notice set out in paragraph (3) of this subsection.
- (2) Each notice provided under paragraph (5)(A) of this subsection shall contain the name, address and telephone numbers where a customer can contact the telecommunications utility.
- (3) **Customer notice.** The notice shall state:

Selecting a Telephone Company -- Your Rights as a Customer

Telephone companies are prohibited by law from switching you from one telephone service provider to another without your permission, a practice commonly known as “slamming.”

If you are slammed, Texas law requires the telephone company that slammed you to do the following:

1. Pay, within five business days of your request, all charges associated with returning you to your original telephone company ~~within five business days of your request~~.
2. Provide all billing records to your original telephone company within ten business days of your request.
3. Pay, within 30 days, your original telephone company the amount you would have paid if you had not been slammed.
4. Refund to you within 30 business days any amount you paid for charges during the first 30 days after the slam and any amount more than what you would have paid your original telephone company for charges after the first 30 days following the slam.

Your original telephone company is required to provide you with all the benefits, such as frequent flyer miles, you would have normally received for your telephone use during the period in which you were slammed.

If you have been slammed, you can change your service immediately back to your original provider by calling [the alleged unauthorized telecommunications provider](#)~~your local telephone company~~. You should also report the slam by writing or calling the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1 (888) 782-8477, fax: (512) 936-7003, e-mail address: customer@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

You can prevent slamming by requesting a preferred telephone company freeze from your [current service provider](#)~~local telephone company~~. With a freeze in place, you must give formal consent to “lift” the freeze before your phone service can be changed. A freeze may apply to local toll service, long distance service, or both. The Public Utility Commission of Texas can give you more information about freezes and your rights as a customer.

- (4) The customer notice requirements in paragraph (3) of this subsection may be combined with the notice requirements of §26.32(g)(1) and (2) of this title (relating to Protection Against Unauthorized Billing Charges (“Cramming”)) if all of the information required by each is in the combined notice.
- (5) **Language, distribution and timing of notice.**
 - (A) Telecommunications utilities shall send the notice to new customers at the time service is initiated, and upon customer request.

(B) Each telecommunications utility shall print the notice in the white pages of its telephone directories, beginning with any directories published 30 days after the effective date of this section and thereafter. The notice that appears in the directory is not required to list the information contained in paragraph (2) of this subsection.

(C) The notice shall be in both English and Spanish as necessary to adequately inform the customer. The commission may exempt a telecommunications utility from the Spanish requirement if the telecommunications utility shows that 10% or fewer of its customers are exclusively Spanish-speaking, and that the telecommunications utility will notify all customers through a statement in both English and Spanish that the information is available in Spanish by mail from the telecommunications utility or at the utility's offices.

(h) Compliance and enforcement.

(1) Records of customer verifications and unauthorized changes.

(A) The submitting telecommunications utility must maintain records of all change orders, including verifications of customer authorizations, for a period of 24 months and shall provide such records to the customer, if the customer challenges the change.

(B) A telecommunications utility shall provide a copy of records maintained under the requirements of subsections (c), (d), and (f)(2)(C) of this section to the commission staff on or before the 21st calendar day of staff ~~upon~~ request.

(2) **Administrative penalties.** If the commission finds that a telecommunications utility is in violation of this section, the commission shall order the utility to take corrective action as necessary, and the utility may be subject to administrative penalties pursuant to the Public Utility Regulatory Act (PURA) §15.023 and §15.024.

(3) **Evidence.** The rules of evidence as applied in a non-jury civil case in district court govern contested case hearings, including enforcement proceedings to enforce the provisions of this section, conducted by the State Office of Administrative Hearings, except that evidence inadmissible under those rules may be admitted if it meets the standards set out in Texas Government Code §2001.081. Such evidence may include, but is not limited to, one or more affidavits from a customer challenging the change.

(4)(3) **Certificate revocation.** If the commission finds that a telecommunications utility is repeatedly ~~and recklessly~~ in violation of this section, and if consistent with the public interest, the commission may suspend, restrict, deny, or revoke the registration or certificate, including an amended certificate, of the telecommunications utility, thereby denying the telecommunications utility the right to provide service in this state.

(5)(4) **Coordination with the office of the attorney general.** The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, unfair, misleading, deceptive, and anticompetitive business practices with the Office of the Attorney General~~office of the attorney general~~ in order to ensure consistent treatment of specific alleged violations.

(i) **Notice of identity of a customer's telecommunications utility.** Any bill for telecommunications services must contain the following information in easily-read, bold type in each bill sent to a customer. Where charges for multiple lines are included in a single bill, this information must appear on the first page of the bill if possible or displayed prominently elsewhere in the bill:

- (1) The name and telephone number of the telecommunications utility providing local exchange service if the bill is for local exchange service.
- (2) The name and telephone number of the primary interexchange carrier if the bill is for interexchange service.
- (3) The name and telephone number of the local exchange and interexchange providers if the local exchange provider is billing for the interexchange carrier. The commission may, for good cause, waive this requirement in exchanges served by incumbent local exchange companies serving 31,000 access lines or less.
- (4) A statement that customers who believe they have been slammed may contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1 (888) 782-8477, fax: (512) 936-7003, e-mail address: customer@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. This statement may be combined with the statement requirements of §26.32(g)(4) of this title if all of the information required by each is in the combined statement.

(j) **Preferred telecommunications utility freezes.**

- (1) **Purpose.** A preferred telecommunications utility freeze (“freeze”) prevents a change in a customer’s preferred telecommunications utility selection unless the customer gives consent to the local exchange company that implemented the freeze.
- (2) **Nondiscrimination.** All local exchange companies that offer freezes shall offer freezes on a nondiscriminatory basis to all customers regardless of the customer’s telecommunications utility selection except for local telephone service.
- (3) **Type of service.** Customer information on freezes shall clearly distinguish between intraLATA and interLATA telecommunications services. The local exchange company offering a freeze shall obtain separate authorization for each service for which a freeze is requested.
- (4) **Freeze information.** All information provided by a telecommunications utility about freezes shall have the sole purpose of educating customers and providing information in a neutral way to allow the customer to make an informed decision, and shall not market or induce the customer to request a freeze. The freeze information provided to customers shall include:
 - (A) a clear, neutral explanation of what a freeze is and what services are subject to a freeze;
 - (B) instructions on lifting a freeze that make it clear that these steps are in addition to required verification for a change in preferred telecommunications utility;

- (C) an explanation that the customer will be unable to make a change in telecommunications utility selection unless the customer lifts the freeze, including information describing the specific procedures by which the freeze may be lifted; and
- (D) a statement that there is no charge to the customer to impose or lift a freeze.
- (5) **Freeze verification.** A local exchange company shall not implement a freeze unless the customer's request is verified using one of the following procedures:
- (A) A written and signed or electronically signed authorization that meets the requirements of paragraph (6) of this subsection.
- (B) An electronic authorization placed from the telephone number on which a freeze is to be imposed. The electronic authorization shall confirm appropriate verification data including, but not limited to, the customer's month and year of birth, mother's maiden name, or the last four digits of the customer's social security number ~~such as the customer's date of birth or mother's maiden name~~ and the information required in paragraph (6)(G) of this subsection. The local exchange company shall establish one or more toll-free telephone numbers exclusively for this purpose. Calls to the number(s) will connect the customer to a voice response unit or similar mechanism that records the information including the originating ANI.
- (C) An appropriately qualified independent third party obtains the customer's oral authorization to submit the freeze that includes and confirms appropriate verification data ~~such as~~ required by subparagraph (B) of this

~~paragraph the customer's date of birth or mother's maiden name and the information required in paragraph (6)(G) of this subsection.~~ This shall

include clear and conspicuous confirmation that the customer authorized a freeze. The independent third party shall:

- (i) not be owned, managed, or directly controlled by the local exchange company or the local exchange company's marketing agent;
- (ii) not have financial incentive to confirm freeze requests; and
- (iii) operate in a location physically separate from the local exchange company ~~and~~ its marketing agent.

(D) Any other method approved by Federal Communications Commission rule or order granting a waiver.

(6) **Written authorization.** A written freeze authorization shall:

- (A) be a separate or easily separable document with the sole purpose of imposing a freeze;
- (B) be signed and dated by the customer;
- (C) not be combined with inducements of any kind;
- (D) be completely translated into another language if any portion is translated;
- (E) be translated into the same language as any educational materials, oral descriptions, or instructions provided with the written freeze authorization;
- (F) be printed with readable type of sufficient size to be clearly legible; and
- (G) contain clear and unambiguous language that confirms:
 - (i) the customer's name, address, and telephone number(s) to be covered by the freeze;

- (ii) the decision to impose a freeze on the telephone number(s) and the particular service with a separate statement for each service to be frozen;
 - (iii) that the customer understands that a change in telecommunications utility cannot be made unless the customer lifts the freeze; and
 - (iv) that the customer understands that there is no charge for imposing or lifting a freeze.
- (7) **Lifting freezes.** A local exchange company that executes a freeze request shall allow customers to lift a freeze by:
- (A) written and signed or electronically signed authorization stating the customer's intent to lift a freeze;
 - (B) oral authorization stating an intent to lift a freeze confirmed by the local exchange company with appropriate confirmation verification data ~~such as indicated in paragraph in (5)(B) of this subsection~~the customer's date of birth or mother's maiden name;
 - (C) a three-way conference call with the local exchange company, the telecommunications utility that will provide the service, and the customer with appropriate confirmation verification data from the customer as indicated in paragraph (5)(B) of this subsection; or
 - (D) any other method approved by Federal Communications Commission rule or order granting a waiver.
- (8) **No customer charge.** The customer shall not be charged for imposing or lifting a freeze.

- (9) **Local service freeze prohibition.** A local exchange company shall not impose a freeze on local telephone service.
- (10) **Marketing prohibition.** A local exchange company shall not initiate any marketing of its services during the process of implementing or lifting a freeze.
- (11) **Freeze records retention.** A local exchange company shall maintain records of all freezes and verifications for a period of 24 months and shall provide these records to customers and to the commission staff upon request.
- (12) **Suggested freeze information language.** Telecommunications utilities that inform customers about freezes may use the following language. Other versions may be used, but shall comply with all of the requirements of paragraph (4) of this subsection.

Preferred Telephone Company Freeze

A preferred telephone company freeze (“freeze”) prevents a change in a customer’s telephone provider unless you consent by contacting the local telephone company. A freeze can protect you against “slamming” (switching your telephone service without your permission). You can impose a freeze on your local toll, long distance service, or both. To impose a freeze, contact your local telephone company. The local telephone company must verify your freeze request by getting your written and signed authorization, electronic authorization, or through an independent third party verification. You will not be able to change your telephone provider without lifting the freeze. You may

lift a freeze by giving your local telephone company a written and signed request or by calling your local telephone company with your request. You must do this in addition to providing the verification information that your new telephone provider will request. There is no charge to the customer for imposing or lifting a freeze.

- (13) **Suggested freeze authorization form.** The following form is recommended for written authorization from a customer requesting a freeze. Other versions may be used, but shall comply with all of the requirements of paragraph (6) of this subsection.

Freeze Authorization Form

Customer billing name: _____

Customer service address: _____

City, state, zip code: _____

Customer mailing address: _____

City, state, zip code: _____

Telephone number (1): _____

Telephone number (2): _____

Telephone number (3): _____

Customer's month and year of birth, mother's maiden name, or last four digits of the customer's social security number: _____

The purpose of a freeze is to prevent a change in your telephone company without your consent. A freeze is a protection against “slamming” (switching your telephone company without your permission). You can impose a freeze on either your local toll or long distance service provider, or both. If you want a freeze, you must contact (name of local telephone company) at (phone number) to lift the freeze before you can change your service provider. You may add or lift a freeze at any time at no charge.

Please complete the following for each service for which you are requesting a freeze:

I authorize a freeze for the telephone number(s) listed above for **local toll** service.

Current preferred local toll company: _____

Customer’s signature: _____

Date: _____

Customer’s printed name: _____

I authorize a freeze for the telephone number(s) listed above for **long distance** service.

Current preferred long distance company: _____

Customer’s signature: _____

Date: _____

Customer's printed name: _____

Mail this form to:

(Name of local telephone company)

(Address)

Or FAX to: (FAX number)

- (14) **Suggested freeze lift form.** The following form is recommended for written authorization to lift a freeze. Other versions may be used, but shall comply with all of the requirements of paragraph (7) of this subsection.

Freeze Lift Form

Customer billing name: _____

Customer service address: _____

City, state, zip code: _____

Customer mailing address: _____

City, state, zip code: _____

Telephone number (1): _____

Telephone number (2): _____

Telephone number (3): _____

Customer's month and year of birth, mother's maiden name, or last four digits of the customer's social security number: _____

Please complete the following for each service that you wish to lift a freeze:

I wish to remove a freeze for the telephone number(s) listed above for **local toll** service.

Current preferred local toll company: _____

Customer's signature: _____

Date: _____

Customer's printed name: _____

I wish to remove a freeze for the telephone number(s) listed above for **long distance** service.

Current preferred long distance company: _____

Customer's signature: _____

Date: _____

Customer's printed name: _____

Mail this form to:

(Name of local telephone company)

(Address)

Or FAX to: (FAX number)

(k) **Transferring customers from one telecommunications utility to another.**

- (1) A telecommunications utility may acquire, through a sale or transfer, either part or all of another telecommunications utility's customer base without obtaining each customer's authorization and verification in accordance with subsection (c)(1) of this section, provided that the acquiring utility complies with this section. Any telecommunications utility that will acquire customers from another telecommunications utility that will no longer provide service due to acquisition, merger, bankruptcy or any other reason, shall provide notice to every affected customer. The notice shall be in a billing insert or separate mailing at least 30 days prior to the transfer of any customer. If legal or regulatory constraints prevent sending the notice at least 30 days prior to the transfer, the notice shall be sent promptly after all legal and regulatory conditions are met. The notice shall:
- (A) identify the current and acquiring telecommunications utilities;
 - (B) explain why the customer will not be able to remain with the current telecommunications utility;
 - (C) explain that the customer has a choice of selecting a service provider and may select the acquiring telecommunications utility or any other telecommunications utility and that the customer may incur a charge if the customer selects another telecommunications utility;
 - (D) explain that if the customer wants another telecommunications utility, the customer should contact that telecommunication utility or the local telephone company;

- (E) explain the time frame for the customer to make a selection and what will happen if the customer makes no selection;
 - (F) identify the effective date that customers will be transferred to the acquiring telecommunications utility;
 - (G) provide the rates and conditions of service of the acquiring telecommunications utility and how the customer will be notified of any changes;
 - (H) explain that the customer will not incur any charges associated with the transfer;
 - (I) explain whether the acquiring carrier will be responsible for handling complaints against the transferring carrier; and
 - (J) provide a toll-free telephone number for a customer to call for additional information.
- (2) The acquiring telecommunications utility shall provide the Customer Protection Division (CPD) with a copy of the notice when it is sent to customers.
- (l) **Complaints to the commission.** A customer may file a complaint with the commission's Customer Protection Division against a telecommunications utility for any reasons related to the provisions of this section.
- (1) **Customer complaint information.** CPD ~~may~~ request, at a minimum, the following information:
- (A) the customer's name, address, and telephone number;
 - (B) a brief description of the facts of the complaint;
 - (C) a copy of the customer's and spouse's legal signature; and

(D) a copy of the most recent phone bill and any prior phone bill that shows the switch in carrier.

(2) **Telecommunications utility's response to complaint.** After review of a customer's complaint, CPD shall forward the complaint to the telecommunications utility. The telecommunications utility shall respond to CPD within 21 calendar days after CPD forwards the complaint. The telecommunications utility's response shall include the following:

(A) all documentation related to the authorization and verification used to switch the customer's service; and

(B) all corrective actions taken as required by subsection (f) of this section, if the switch in service was not verified in accordance with subsections (c) and (d) of this section.

(3) The proof of authorization and verification of authorization as required from the alleged unauthorized telecommunications utility pursuant to paragraph (2)(A) of this subsection must establish a valid authorized telecommunication utility change as defined by subsections (c) and (d) of this section. Failure by the alleged unauthorized telecommunications utility to timely submit a response that addresses the complainant's assertions, relating to an unauthorized change, within the time specified in paragraph (2) of this subsection establishes a violation of this section.

~~(4)~~(3) CPD investigation. CPD shall review all of the information related to the complaint and make a determination on whether or not the telecommunications utility complied with the requirements of this section.

CPD shall inform the complainant and the alleged unauthorized telecommunications utility of the results of the investigation and identify any additional corrective actions that may be required. CPD shall also inform, [if known](#), the authorized telecommunications utility if there was an unauthorized change in service.

(m) Additional requirements for changes involving certain telecommunications utilities.

- (1) **Definitions.** The following words and terms, when used in this subsection, shall have the following meanings unless the context clearly indicates otherwise.
 - (A) Local service provider (LSP) — the certified telecommunications utility chosen by a customer to provide local exchange service to that customer.
 - (B) Old local service provider (old LSP) — The local service provider immediately preceding the change to a new local service provider.
 - (C) New local service provider (new LSP) — The local service provider from which the customer requests new service.
 - (D) Primary interexchange carrier (PIC) — the provider chosen by a customer to carry that customer's toll calls. For the purposes of this subsection, any reference to primary interexchange carrier refers to both interLATA and intraLATA toll carriers.
 - (E) Old primary interexchange carrier (old PIC) — The primary interexchange carrier immediately preceding the change to a new primary interexchange carrier.

- (F) New primary interexchange carrier (new PIC) — The primary interexchange carrier from which the customer requests new service or continuing service after changing local service providers.
- (G) Change execution — means the date the LSP initially has knowledge of the PIC or LSP change in the switch.
- (2) **Contents and delivery of notice required by paragraphs (3) and (4) of this subsection.**
- (A) Notice shall contain at least:
- (i) the effective date of the change in the switch;
 - (ii) the customer's billing name, address, and number; and
 - (iii) any other information necessary to implement the change.
- (B) If an LSP does not otherwise have the appropriate contact information for notifying a PIC, then the LSP's notification to the PIC shall be deemed complete upon delivery of the notice to the PIC's address, facsimile number or e-mail address listed in the appropriate Utility Directory maintained by the commission.
- (3) **Notification requirements for change in PIC only.** The LSP shall notify the old PIC and the new PIC of the PIC change within five business days of the change execution.
- (A) The new PIC shall initiate billing the customer for presubscribed services within five business days after receipt of such notice.
- (B) The old PIC shall discontinue billing the customer for presubscribed services within five business days after receipt of such notice.

- (4) **Notification requirements for change in LSP.**
- (A) Requirement of the new LSP to notify the old LSP. Within five business days of the change execution, the new LSP shall notify the old LSP of the change in the customer's LSP.
- (B) Requirement of the new LSP to notify the new PIC. Within five business days of the change execution, the new LSP shall notify the new PIC of the customer's selection of such PIC as the customer's PIC.
- (C) Requirement of the old LSP to notify the old PIC. Within five business days of the old LSP's receipt of notice pursuant to subparagraph (A) of this paragraph, the old LSP shall notify the old PIC that the old LSP is no longer the customer's LSP.
- (5) **Requirements of the new PIC to initiate billing customer.** If the new PIC receives notice pursuant to paragraph (4)(B) of this subsection, within five business days after receipt of such notice, the new PIC shall initiate billing the customer for presubscribed services.
- (6) **Requirements of the old PIC to discontinue billing customer.** If the old PIC receives notice pursuant to paragraph (4)(C) of this subsection that the old LSP is no longer the customer's LSP, the old PIC shall discontinue billing the customer for presubscribed services within seven business days after receipt of such notice, unless the new LSP notifies the old PIC that it is the new PIC pursuant to paragraph (4)(B) of this subsection.
- (7) Compliance with this subsection is required by January 1, 2003.

~~(n) **Reporting requirement.** Each telecommunications utility shall file a semiannual slamming report with the commission's Central Records in the assigned project number as required by paragraphs (1) and (2) of this subsection. A project number will be assigned each calendar year for this report.~~

~~(1) The report shall use the format and information required by 47 C.F.R. §64.1180 containing only Texas-specific data.~~

~~(2) Reports shall be submitted on August 31 (covering January 1 through June 30) and February 28 (covering July 1 through December 31).~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 24th DAY OF OCTOBER BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**

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