

The Public Utility Commission of Texas (the commission) adopts an amendment to §26.130 (relating to Selection of Telecommunications Utilities) with changes to the proposed text as published in the February 18, 2000 *Texas Register* (25 TexReg 1231). The amendment is necessary to implement the provisions of Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §§55.301 - 55.308 (Vernon 1998, Supplement 2000). These provisions: (1) eliminate the distinction between carrier-initiated and customer-initiated changes, (2) eliminate the information package mailing (negative option) as a verification method, (3) absolve the customer of any liability for charges incurred during the first 30 days after an unauthorized telecommunications utility change, (4) prohibit deceptive or fraudulent practice, and (5) require consistency with applicable federal laws and rules. This amendment also addresses the related issue of preferred telecommunications utility freezes. This amendment was adopted under Project Number 21419.

The amendment:

1. Eliminates the distinction between customer-initiated and carrier-initiated for change orders submitted by the prospective telecommunications utility to the local exchange company (LEC).
2. Requires tape recording third party verification for a change order.
3. Requires as part of third party verification, clear confirmation by the customer for authorization to change service provider.

4. Requires that an independent third party verifier not be owned or directly controlled by the telecommunications utility or its marketing agent, and have no financial incentive to affirmatively confirm change orders.
5. Eliminates the information package (negative option) as a verification method.
6. Provides flexibility in meeting the Letter of Agency (LOA) language requirements.
7. Absolves the customer of liability for charges from an unauthorized carrier incurred during the first 30 days after an unauthorized change.
8. Adds information about freezes to the customer notice.
9. Eliminates the 30-day cure period to avoid an administrative penalty.
10. Requires that freezes be offered on a nondiscriminatory basis.
11. Requires separate freeze authorization for each type of service (intraLATA and interLATA).
12. Establishes requirements for freeze information provided to customers by telecommunications utilities.
13. Requires LEC verification of a freeze request by one of three methods: written and signed authorization; electronic authorization; or third party verification.
14. Establishes requirements for each verification method related to a freeze request.
15. Establishes requirements for lifting a freeze.
16. Prohibits charging customers to impose or lift a freeze.
17. Prohibits freezes for local telephone service.
18. Prohibits initiating marketing by the LEC during the process of imposing or lifting a freeze.

19. Provides suggested language for freeze information, freeze authorization form, and freeze lift form.
20. Establishes notice requirements when acquiring customers from another telecommunications utility that will no longer provide service.
21. Includes many changes to the current rule to enhance clarity and readability.

The changes to §26.130 are based on the following considerations: ensuring customer protection while fostering competition in providing telecommunications services; minimizing administrative requirements and cost; ensuring compliance with all PURA requirements; and ensuring consistency with current applicable Federal Communications Commission (FCC) rules.

Several issues surfaced during this rulemaking and are discussed below.

Informing customers about freezes

Slamming victims often indicate they wish they had been aware of the availability of freeze protection before being slammed. Customers should not have to wait until they are slammed before being informed about freezes. The amendment allows telecommunications utilities to inform customers about freezes, but prescribes the content of the information. The amendment allows for "education," but not "marketing." The distinction between the two is that "marketing" is aimed at inducing behavior, whereas

"education" is aimed at providing information in a neutral way so that customers can make informed decisions.

Prohibition on local telephone service freezes

Recent events have shown that local telephone service competition in Texas has great promise. However, local competition is still in its early stages, particularly for residential customers, and far behind the level of competition in the intraLATA and interLATA markets. Furthermore, local service slamming is considerably more difficult, more expensive, and more easily discovered by customers than long distance service slamming. Due to the limited value of a local service freeze and the potential for anticompetitive use, the amendment prohibits freezes on local telephone service.

No customer charge for freezes

Several parties recommended that LECs be allowed to charge for implementing a freeze based on related cost. It appears that under current practice, LECs implement freezes without charge. A freeze is a basic customer protection that should be made available to customers at no charge. The amendment prohibits charging customers to impose or lift a freeze.

Prohibition on marketing during freeze processing

Some parties expressed concern about incumbent local exchange companies (ILECs) marketing their services when a customer contacts the ILEC to request imposing or lifting a freeze. The LEC function of administering freezes must be completely separated from any marketing efforts to prevent anticompetitive behavior. The amendment prohibits the initiating of any marketing by the LEC during the processing of a request to impose or lift a freeze.

Consistency with FCC rule changes

On December 23, 1998, the FCC issued a Second Report and Order, CC Docket Number 94-129, Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers. In this order, the FCC adopted new rules related to verification, liability, and preferred carrier freezes. On May 18, 1999, the DC Circuit Court of Appeals ordered a stay of the FCC liability rules pending further order of the court. Also, the FCC has received several Petitions for Reconsideration of the rules released in the December 1998 order.

On May 3, 2000, the FCC released a First Order on Reconsideration, CC Docket Number 94-129, Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers. This order: (1) rejects the industry proposal for a third party administrator (TPA) to process slamming complaints, (2) allows a state the option to adjudicate slamming complaints instead of the FCC, and (3)

revises liability provisions currently stayed by the court. However, it is uncertain when these amended provisions will become effective. The revised rules will not be in effect until the court lifts the current stay. Furthermore, the revised liability provisions may also be challenged in court.

The amendment is consistent with FCC rules that are currently in effect. It is essential that changes to the current §26.130 resulting from Senate Bill 86 (SB86) and Senate Bill (SB560), 76th Legislative Session, be implemented as soon as possible and that this rulemaking not be delayed pending the final outcome of court and FCC actions. Should subsequent federal regulatory or judicial action require further revision to §26.130, the rule can be modified at that time.

Carrier submission of freeze forms to LECs

The current FCC preferred carrier freeze rules are based on customers submitting freeze requests to the LECs and the LECs verifying the requests. The current FCC rules do not specifically address the issue of preferred carriers submitting customer freeze requests to the LECs. Several carriers have requested guidance from the FCC on this issue. The amendment reflects the current FCC rules on freezes. If necessary, the amendment will be revised to accommodate a final FCC ruling on this issue.

Suggested language for freeze information and forms

The FCC rules and the amendment establish requirements for the content of freeze information provided to customers and for the content of freeze requests. Some parties requested that the commission develop specific language for use by carriers so that they can be assured that they comply with these requirements. National carriers expressed concern about requiring specific language since this may hinder development of nationwide standard information and forms. The amendment addresses both views by including suggested language for freeze information and forms, but allows other versions as long as they comply with the requirements in the rule.

The commission received comments on the proposed amendment from Sprint Communications Company L.P., United Telephone Company of Texas, Inc., and Central Telephone Company of Texas (jointly referred to as Sprint), MCI WORLDCOM, Inc. (MCIW), Telecommunications Resellers Association (TRA), TEXALTEL, and Competitive Telecommunications Association (CompTel) (jointly referred to as Associations), Billing Concepts, Inc. (BCI), Texas Telephone Association (TTA), AT&T Communications of Texas, L.P. (AT&T), Texas Statewide Telephone Cooperative, Inc. (TSTCI), GTE Southwest Incorporated (GTE), TXU Communications Telephone Company (TXU Telephone), Southwestern Bell Telephone Company (SWBT), and The Office of the Attorney General of Texas (OAG). The commission also received reply comments from GTE, SWBT, and AT&T.

A public hearing on the proposed amendments was held at the commission offices on April 11, 2000, at 9:30 a.m. Representatives from BCI, MCIW, John Staurulakis, Inc., Consumers Union, TTA, TXU

Telephone, Sprint, Casey, Gentz, and Sifuentes, L.L.P., SWBT, Global Crossing, Inc., and TSTCI participated in the public hearing.

Subsection (b), Application

AT&T suggested that this proposed rule be cross-referenced to the commission's rule, §26.32 (relating to Protection Against Unauthorized Billing Charges ("Cramming")), to avoid any potential confusion between the two sections. AT&T recommended a specific exception to the application of this proposed rule similar to that found at §26.32(b)(1).

The commission agrees that clarifying language is needed to distinguish between the application of this slamming rule, §26.130, and the application of the cramming rule, §26.32. Accordingly, the commission revises proposed (b) to add that §26.130 does not apply to an unauthorized charge unrelated to a change in preferred telecommunications utility which is addressed in §26.32.

Section (c), Definitions

Sprint recommended expanding the definition of "customer" to include any person authorized to make changes in providers of telephone service. BCI supported Sprint's comments. MCIW strongly urged the commission to expand the definition of "customer" to include "decision maker or person authorized to make a carrier change." MCIW cited two reasons for the recommended change, limited access to

LEC account-holder records and customer convenience. AT&T also recommended expanding the "customer" definition to include "any person authorized to act on behalf of the customer listed on the bill." AT&T indicated this change would prevent customer confusion and anger over the inability of a spouse, roommate, or other authorized person to make changes in their shared telephone service. In its reply comments, GTE agreed that the definition of "customer" was too narrow and concurred with AT&T's recommended change. SWBT proposed an added definition for "change" to make clear that changes covered by this rule are changes in a customer's local or long distance telecommunications utility and not other changes or change orders, which may be covered by the cramming rule, §26.32.

The commission does not agree with expanding the definition of "customer." The definition in proposed (c) already includes a spouse, is consistent with the definition used by the commission since it was granted jurisdiction over slamming in 1997, and is consistent with the definition used for cramming in §26.32. Nevertheless, the commission revises proposed (c) to specifically indicate that spouses are included in the definition. The commission agrees with SWBT on the need to distinguish between the application of the slamming and cramming rules and believes that the revision made to proposed (b) provides the required clarity.

Subsection (d), Changes by a telecommunications utility

TTA expressed concern that the proposed amendment to subsection (d) would not allow a customer to contact the LEC directly to request a change in preferred carrier. TTA indicated that this is inconsistent

with the FCC's position in FCC 98-334, Second Report and Order CC Docket Number 94-129. TTA recommended including language to allow a customer to change long distance service by contacting the LEC. TXU Telephone supported TTA's comments. SWBT expressed similar concern about subsection (d) and sought clarification that the proposed amendment does not require verification where the customer calls the LEC to initiate a change in intraLATA or interLATA toll service to a provider other than the LEC. AT&T agreed with these comments, but proposed a change to TTA's recommended language to require verification if the chosen carrier is the LEC or an affiliate of the LEC.

At the public hearing, SWBT disagreed with AT&T's recommendation that the LEC should be required to verify a request by the customer to the LEC to switch to a service provider that is an affiliate of the LEC. Sprint supported AT&T's position and indicated that Sprint performs verification if a customer calling Sprint requests a switch to either Sprint's local or long distance service. Global Crossing supported SWBT and took the position that there should be no requirement to verify any customer-initiated request and that there should be no exception to this.

Proposed (d) applies only to a switch in service submitted by the prospective carrier to the LEC whether the request for a change was initiated by the prospective carrier contacting the customer or by the customer contacting the prospective carrier. In either case, verification by the prospective carrier, including the LEC or its affiliate, must follow one of the prescribed methods in proposed (d). Proposed (d) does not apply to a switch in service as a result of a customer request directly to the LEC when the

LEC is not the prospective carrier or an affiliate of the prospective carrier. The commission revises proposed (d) to clarify this point.

TTA recommended deleting the requirement in proposed (d)(3) to electronically record on tape third party verification. TTA stated that this requirement would add significantly to the cost of the third party verification method. TXU Telephone agreed with TTA's comments.

The commission does not agree with TTA's recommendation. The commission proposed adding the requirement to electronically record verification based on over two years experience in investigating slamming complaints. Most carriers using the third party verification method already electronically record the verification. However, the commission has experienced significant difficulty in determining the validity of customer switches involving carriers that indicate they use the third party verification method but do not electronically record the customer's consent.

Proposed (d)(3)(B) states that the independent third party shall not have financial incentive to confirm change orders. AT&T commented that the language in the proposed amendment is too broad since the independent third party is paid to verify orders. AT&T recommended revising the proposed amendment to indicate that the independent third party shall not have financial incentive to affirmatively confirm change orders.

The commission does not agree with the recommended change to proposed (d)(3)(B), now (d)(1)(C)(ii). The term "affirmatively confirm" is a redundancy.

Subsection (e), Letters of Agency (LOA)

Sprint commented that adding state-specific information to Sprint's LOA would increase operating cost and that identification of the current telecommunications utility is not available to Sprint. Sprint recommended deleting from proposed (e)(3)(A), "relationship to customer, telephone number of individual authorized to act for customer," identification of the current telecommunications utility, and directing the current telecommunications utility to work with the new provider to make the change. BCI supported Sprint's comments. SWBT did not concur with deleting the requirement for the current provider to cooperate with the new one to make the change, pointing out that such cooperation is necessary to complete the change expeditiously.

The Associations recommended that proposed (e)(3)(A) be revised to set forth minimum LOA content guidelines such as those of the FCC appearing in 47 C.F.R. §64.1160(e), rather than prescribing specific language. The Associations pointed out that this would adequately protect the public without unnecessarily burdening new market entrants. The Associations further commented that the commission is already considering such an approach in the proposed freeze subsection of the rule, (j)(6). AT&T also recommended using suggested instead of required language for LOAs as proposed by the commission in the new freeze subsection of the rule. AT&T further commented that if a revised LOA

form is required, the rule should expressly allow use of the existing forms until the supply on hand is exhausted.

TTA recommended minor wording and placement changes to proposed (e)(3)(A). TTA's recommendations included listing all customer-specific information together, deleting the name of the carrier being replaced, changing "must" to "may" regarding paying a carrier change charge, and replacing "telephone company" with "telecommunications utility." TXU Telephone agreed with TTA's recommendations. SWBT disagreed with the recommendation to delete the name of the former provider stating that this information provides an added measure of customer protection.

TSTCI commented that two changes should be made to proposed (e)(3)(A) to ensure consistency with FCC in 47 C.F.R. §64.1160(e)(4). First, TSTCI noted that the FCC requires LOAs to state that only one telecommunications carrier may be designated as the subscriber's preferred carrier for each line for each type of service and proposed (e)(3)(A) does not include this statement. Second, TSTCI indicated that the FCC requires separate verification of each type of service, which may be on one LOA, and that proposed (e)(3)(A) does not allow a separate authorization statement for each service. TSTCI recommended revisions to proposed (e)(3)(A) to reflect the FCC requirements.

SWBT and GTE, like the Associations and AT&T, also commented that some flexibility in the LOA language should be allowed. SWBT recommended revising proposed (e)(3)(A) to replace "use only the following language" with "use the following language or its substantial equivalent." GTE proposed

replacing the word "required" with the word "suggested." SWBT also recommended several changes to the proposed LOA format including alternatives to the listing of each telephone number by stating "all telephone numbers billed under account (account number)" and providing a check-off option that would authorize providing service to future telephone numbers associated with a billing telephone number unless otherwise specified at the time the request for service was submitted. SWBT indicated that this would save business customers from having to sign a separate verification each and every time it wishes to add or change services.

The commission agrees with the majority of the commenters to allow some flexibility regarding the LOA format. The commission also concurs with the two proposed changes by TSTCI to provide consistency with FCC requirements. The commission does not agree with SWBT's recommended changes to provide alternatives to listing each telephone number because they would reduce the level of customer protection. The commission revises proposed (e) to: 1) identify minimum LOA format requirements consistent with those prescribed by the FCC; 2) make changes to the LOA language based on TSTCI's comments; and 3) state that the LOA language is recommended, but other versions may be used as long as all of the requirements of subsection (e) are met.

Subsection (f), Unauthorized charges

SWBT recommended adding a new paragraph to proposed (f)(1) that requires the unauthorized telecommunications utility to take all actions within its control to facilitate the customer's prompt return

to the original telecommunications utility within three business days of the customer's or original telecommunications utility's request. SWBT also recommended revising proposed (f)(1)(A), (f)(1)(B), and (f)(1)(C) to require the unauthorized telecommunications utility to act on the request of the original telecommunications utility. AT&T expressed concern about this recommendation indicating that it would create an exception to the verification procedures and that allowing the original telecommunications utility to "represent" the customer without any proof of agency would lead to conflicts, confusion, and complications.

Proposed (f)(1)(B) requires the unauthorized telecommunications utility to provide all billing records to the original telecommunications utility related to the unauthorized change of service. Proposed (f)(2)(A) requires the original telecommunications utility to inform the unauthorized telecommunications utility of the amount that would have been charged to the customer. Sprint indicated it does not have available any information concerning the customer's original telecommunications utility and that currently there is no systematic method to transfer billing records between long distance carriers. Sprint further commented that the proposed amendment mirrors the FCC slamming rules that have been stayed and recommended the commission wait for the federal ruling concerning a third party administrator (TPA) that will be responsible for handling liability. BCI concurred with Sprint's comments.

Proposed (f)(1)(D) requires the unauthorized carrier to refund to the customer any amount paid during the first 30 days after an unauthorized switch and any amount in excess of the authorized carrier's charges paid after the first 30 days. The Associations stated that while this is generally consistent with

the FCC in 47 C.F.R. §64.1100(d), the federal provision is currently stayed by the Court of Appeals for the D.C. Circuit. The Associations suggested that proposed (f)(1)(D) not be implemented pending the D.C. Court of Appeals and FCC decisions. The Associations indicated that a delay in implementing the commission's proposed carrier liability requirements does not preclude the commission from directing slamming carriers to refund all amounts to slammed customers on an ad hoc basis following a commission review of a slamming complaint.

AT&T and GTE also recommended deleting proposed (f)(1)(D) stating that the proposed amendment is in conflict with PURA §55.302(a)(3) which mandates consistency with FCC rules, since the absolution requirement is not currently in effect for the FCC. GTE further commented that the proposed rules would only apply to "state services" since the FCC granted states authority to adopt additional state rules that apply only to "state services" and that the FCC has authority over interstate services.

SWBT recommended revisions to proposed (f)(1)(D) to make it consistent with the FCC in 47 C.F.R. §64.1100(d). SWBT's proposal stated that a customer is absolved of liability for all charges within the first 30 days if the customer has not paid those charges. If the customer paid those charges, the unauthorized carrier is responsible to pay the original carrier what it would have been paid by the customer and refund any excess to the customer. SWBT further commented that the proposed amendment by the commission would require an unauthorized carrier to pay twice the amount it

received, a refund to the customer under proposed (f)(1)(D) and a payment to the original carrier under proposed (f)(1)(C).

The commission agrees with SWBT's recommendation to add a requirement under proposed (f)(1) that the unauthorized telecommunications utility take all actions within its control to facilitate the customer's prompt return to the original telecommunication utility within three days of the customer's request.

The commission does not agree with SWBT's recommendation to allow the original carrier to represent the customer in making various requests to the unauthorized carrier. The commission agrees with the concerns expressed by AT&T about this recommendation.

The commission agrees with SWBT's comment that the 30-day absolution period in PURA also applies when the customer has not paid the unauthorized charges. To clarify this point in the rule, the commission adds (f)(1)(F) and (f)(2)(D).

The commission does not agree with the recommendations to either delete proposed (f)(1)(D) or delay its implementation pending actions by the D.C. Court of Appeals and the FCC. Proposed (f)(1)(D) is necessary to implement PURA §55.304(d) and is not in conflict with FCC rules that are currently in effect. Should subsequent federal action require further revision to §26.130, the rule can be modified at that time.

Subsection (g), Notice of customer rights

Sprint commented that the notice requirement in proposed (g)(1) may need to be clarified to apply only to local exchange companies. Sprint further stated that since local exchange companies already provide this information, it sees no reason to provide direct notice to its long distance customers. BCI supported Sprint's comments.

With regard to the customer notice in proposed (g)(3), Sprint restated that it does not have information on a customer's original carrier and recommended item 2, providing billing records, and item 3, paying the original telephone company, be deleted pending a federal ruling concerning a third party administrator. BCI supported Sprint's comments.

AT&T recommended that as with the LOA form, proposed (g)(3) should be suggested rather than required language. In the event the customer notice remains a required form, AT&T requested it be allowed to use its current supply of the existing form. AT&T also pointed out that §26.32(g)(6) and §26.32(g)(7) provide that the notices required by the cramming rule may be combined with the slamming rule notices and recommended reciprocal language in §26.130 that would clarify this point to anyone reviewing the rules separately and unaware of the connection.

SWBT recommended changes to proposed (g)(3) consistent with the changes recommended for proposed (f)(1)(C) and (f)(1)(D). SWBT also recommended revising proposed (g)(4)(B) to replace

requiring the notice upon the first publication after the effective date of this section with beginning with directories having a publication close date of more than 31 days after the effective date of this section.

The commission disagrees with the Sprint recommendation that the requirement to provide notice of customer rights apply only to LECs. Since the original §26.130 was adopted in 1997, customer notice has been required for all telecommunications utilities.

The commission also disagrees with the recommendations involving the portions of the notice that relate to areas that are pending a federal ruling. The commission's reasons for this were previously stated under subsection (f) above.

The commission agrees with AT&T's suggestion to include in this rule reciprocal language to the provisions in §26.32 that allow combining the slamming and cramming notices. Accordingly, the commission adds a new (g)(4) and revises proposed (i)(4).

The commission also agrees with the proposal by SWBT to allow more time for printing the notice in the telephone directories and revises proposed (g)(4)(B) (now (g)(5)(B)) to require the notice beginning with the first publication 30 days after the effective date of this section.

Subsection (h), Compliance and enforcement

The OAG recommended that the proposed amendment should clarify that the commission will coordinate its enforcement efforts with the OAG with respect to fraudulent, unfair, misleading, deceptive, and anticompetitive business practices. The OAG indicated that the language in §26.32(h)(6) related to "cramming" could be used in §26.130. In its reply comments, GTE stated that while not disputing that there should be cooperation between the agencies, did not believe the OAG's recommendation was necessary.

The commission agrees with the OAG's recommendation and adds (h)(4) with language taken from §26.32(h)(6).

Subsection (i), Notice of identity of a customer's telecommunications utility

Sprint commented that its direct long distance billing does not currently contain the statement required in proposed (i)(4) concerning contacting the commission if customers believe they have been slammed. Sprint recommended deleting proposed (i)(4) indicating that any unique, state-specific statement of this type would result in a significant administrative cost. BCI supported Sprint's comments.

The Associations objected to the proposed (i)(4) statement urging customers to contact the commission. The Associations recommended retaining the language in the current (i)(4), which states that customers may contact the commission.

AT&T requested that it be given 90 days to change its bill statement to comply with the revised language in proposed (i)(4) and continue to use the language in the current (i)(4) in the interim.

The commission disagrees with the Sprint recommendation to delete proposed (i)(4). A slamming statement has been mandatory for any bill for telecommunications services since 1997. Experience with processing slamming complaints since that time indicates that this information on telephone bills has been the primary source of educating customers about unauthorized switches in telephone service.

The commission agrees with the Associations' recommended revision to proposed (i)(4) to change "urge" to "may." The commission also agrees to allow more time to implement the revised statement on the bill by revising proposed (i)(4) to indicate that the statement shall appear on the first telephone bill issued 60 days after the effective date of this section.

Subsection (j), Preferred telecommunications utility freezes

The Associations commended the commission for proposing carrier freeze rules that provide an effective tool for preventing slamming, yet remain competitively neutral. The Associations recommended adding a one sentence provision directing incumbent LECs to tariff their freeze programs by a date certain, such as within 30 days of the effective date of the amended §26.130. GTE and SWBT disagreed with the recommendation to require incumbent LECs to tariff freeze services. These parties indicated that the proposed rule establishes freeze requirements and that requiring the information

in a tariff would be redundant, unnecessary, and an administrative burden without additional consumer benefits.

The commission does not believe it is necessary to require the freeze process to be tarified. The provisions in §26.130(j) provide the necessary guidance to telecommunications utilities on the freeze process and provide the commission a needed tool to promote customer protection while deterring anticompetitive practices.

SWBT recommended a revision to proposed (j)(2) to make clear that no certificated telecommunications utility is required to offer freezes, but that if it does, it must offer them on a nondiscriminatory basis. SWBT stated that this change is necessary for consistency with FCC regulations in 47 C.F.R. §64.1190(b).

The commission agrees with SWBT's recommendation and revises proposed (j)(2) accordingly.

TTA expressed concern that proposed (j)(4) would prevent a utility from providing new customers with information about freezes unless the customers request this information. TTA stated that companies should be allowed to advise customers of the availability of the service and the availability of the educational materials when signing up for service. TTA pointed out that if customers do not know about the service, they would not know to request information. TXU Telephone agreed with TTA's comments.

SWBT commented that the FCC recognized the futility of attempting to draw the line between "solicitation" and "educational materials" and concluded that LECs should not be prohibited from soliciting freezes as long as the information conforms to the standards adopted to protect customers. SWBT recommended removing the distinction between "marketing" and "education" from the preamble and the proposed amendment. SWBT suggested that the restriction in proposed (j)(4) on a utility's ability to inform the customer of the availability of a freeze during the sign up process is inconsistent with the recognized value in providing the customer with information about freezes. SWBT recommended revising proposed (j)(4) based on the above comments.

The commission agrees to delete the restriction in proposed (j)(4) on providing freeze information during the process of signing up a customer.

SWBT also recommended adding two new subparagraphs to proposed (j)(5), Freeze verification, and two new subparagraphs to proposed (j)(7), Lifting freezes, to permit a certificated telecommunications utility to use any form of verification that has been approved by FCC rule or order granting a waiver.

The commission agrees with the recommendation to allow the use of any verification method approved by FCC rule or order and adds (j)(5)(D) and (j)(7)(D), accordingly.

Proposed (j)(7)(C) allows a customer to request the LEC to lift a freeze during a three-way conference call with the customer, the preferred carrier, and the LEC. AT&T stated that it is important that the LEC also be required to accept the customer's oral request to change a preferred carrier as part of the same three-way call and that the rules specifically allow this. SWBT disagreed with AT&T's position. SWBT pointed out that the FCC requires three-way calling only for the purpose of lifting freezes. There are separate, explicit FCC rules for verification of carrier changes and for verification of freezes that clearly distinguish the role of each carrier. SWBT noted that the FCC has stated that the three-way call merely lifts the freeze and that the submitting carrier must follow the federal commission's verification rules before submitting a carrier change.

The commission agrees with SWBT's position on this issue and, therefore, does not adopt AT&T's recommendation to require the LEC to change a customer's preferred carrier as part of a three-way call intended to lift a freeze.

GTE and SWBT recommended deleting proposed (j)(8). The parties stated that while they do not currently charge customers for freeze service, they should not be prohibited from doing so in the future if the cost and administrative burden become significant. They also pointed out that the FCC explicitly recognizes that charges may be appropriate (47 C.F.R. §64.1190(d)(1)(C)) and that it would be inconsistent with FCC rules to prohibit charges.

The commission remains convinced that a freeze is a basic customer protection that should be made available to customers at no charge. The commission believes that this prohibition is not in conflict with FCC rules, which allow a charge, but do not require it.

GTE recommended deleting proposed (j)(10), Marketing prohibition, stating that it would unduly restrict communication without providing an increase in consumer protection. GTE further commented that proposed (j)(10) appears to violate the LEC's protected rights to commercial speech and may actually increase customer frustration and confusion by making contact with the LEC unnaturally constrained and by preventing handling multiple objectives on the same call. GTE and SWBT stated that proposed (j)(10) would require a customer to make separate calls if the customer wanted to make a change in preferred carrier *and* lift or place a freeze. SWBT recommended revising proposed (j)(10) to prohibit only marketing directed at the same type of service affected by the freeze and only if the freeze is related to changing to a competitor's service. In its reply comments, GTE agreed with SWBT's recommended revision. AT&T stated in its reply comments that the restriction on marketing is an important protection against anticompetitive conduct by the LEC and should be retained by the commission. AT&T made the following points: 1) the FCC recognized the potential for anticompetitive conduct inherent in the freeze process; 2) the commission's proposed rule is consistent with the FCC; 3) the restriction prevents the LEC from taking unfair advantage of its role as freeze administrator; 4) the proposed rule does not require a customer to make multiple calls to discuss other matters about the customer's account; and 5) in the case of a three-way call, there should be absolutely no marketing because the LEC should only be on the call as administrator of the freeze.

The commission revises proposed (j)(10) from a prohibition against engaging in marketing to a prohibition against initiating marketing. As revised, the rule does not prohibit a customer from imposing or lifting a freeze and accomplishing all other desired actions with the LEC on one call. The rule recognizes that in the process of implementing or lifting a freeze, a LEC should function solely as a neutral administrator and should not be allowed to take unfair competitive advantage of its role as administrator. While the revised rule prohibits the LEC from initiating marketing, it does not in any way prevent a customer from seeking information or requesting any action from the LEC in conjunction with a customer's request to impose or lift a freeze nor prevent the LEC from fully responding to any customer request.

SWBT also suggested changes to proposed (j)(12) and (j)(13) to indicate that both intraLATA and interLATA services may be subject to a freeze.

Proposed (j)(12) and (j)(13) clearly state that a freeze may be imposed on either or both services. Therefore, the commission makes no changes to these proposed paragraphs.

Subsection (k), Transferring customers from one telecommunications utility to another

TTA indicated that the provisions of proposed (k) do not appear to be applicable to slamming and should be deleted from this rulemaking and addressed in the commission's ongoing telephone customer service standards rulemaking, Project Number 21423. TXU Telephone agreed with TTA's comments.

The commission disagrees with TTA's position that proposed subsection (k) should be addressed in another rulemaking. Since this proposed subsection involves the switching of a customer's preferred telecommunications utility, it is properly placed in §26.130, Selection of Telecommunications Utilities.

SWBT recommended deleting proposed (k) in its entirety. If not deleted, SWBT proposed that the obligation to give at least 30 days notice, be placed on the losing company rather than the gaining company. SWBT further stated that proposed (k) is inconsistent with bankruptcy law and practices, inconsistent with resale agreements previously approved by the commission, and potentially inconsistent with state tort laws, including tortious interference and defamation provisions. SWBT made the following additional points: the Bankruptcy Code gives the Bankruptcy Court sole jurisdiction over the assets of the debtor and the disposition thereof; notice would be viewed by the court as detrimental to the interests of the CLEC debtor's estate because it would tend to decrease the number of customers; it would be a breach of resale agreements for SWBT to notify customers prior to transferring them over to SWBT and prior to an actual disconnection of the CLEC's service; and it would be rare for a target company, prior to an actual closing date, to willingly share customer specific information.

For reasons cited by SWBT, the commission agrees that in some cases the 30 days prior notice requirement cannot be met. While the constraints in some cases may prevent the desired advance notice, the commission, nonetheless, believes it is essential that customers be informed of the transfer to another telecommunications utility as soon as possible after all legal and regulatory requirements are met. Accordingly, the commission revises proposed (k)(1) to indicate that 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.

Proposed (k)(1)(C) requires explaining that the customer has a choice of selecting a service provider and may select the acquiring company or any other company. The Associations believed that such a disclosure is unnecessary and will undermine the value of acquisitions with negligible countervailing public benefit. The Associations further stated that the requirement to inform affected customers of their right to elect other providers becomes an invitation to leave the acquiring carrier.

At the public hearing, Global Crossing stated that proposed (k)(1)(C) requires clarification. Global Crossing made two points. First, in cases where the customer has signed a term contract with the current carrier, the customer may not be able to select another carrier without incurring a penalty. Second, the customer may incur a preferred carrier change charge if the customer selects another carrier.

The commission disagrees with the recommendation to delete proposed (k)(1)(C). The commission believes it is important to inform the customer that the customer has a choice in selecting a preferred carrier. This disclosure does not constitute an invitation to leave the acquiring carrier. In fact, the acquiring carrier certainly has the opportunity to explain the benefits of being its customer.

The commission acknowledges the points made by Global Crossing and revises proposed (k)(1)(C) to add that the customer may incur a charge for switching to another carrier. The commission agrees that the notice may include information regarding contract restrictions that apply to some customers and that (k)(1)(C) does not prohibit including this information.

Subsection (l), Complaints to the commission

The OAG recommended that §26.130 include specific procedures used to process slamming complaints submitted to the commission.

The commission agrees with the OAG's recommendation and adds subsection (l), which reflects the commission's current process for investigating slamming complaints.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this amendment, the commission makes other minor modifications for the purpose of clarifying its intent.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1999 Supp) (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 under PURA §§55.301 – 55.308 which require the commission to adopt and enforce rules to implement the provisions of PURA Chapter 55, Subchapter K, Selection of Telecommunications Utilities.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002 and 55.301 – 55.308.

§26.130. Selection of Telecommunications Utilities.

- (a) **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.
- (b) **Application.** This section, including any references in this section to requirements in 47 Code of Federal Regulations §64.1100 and §64.1150 (changing interexchange carriers), 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")).
- (c) **Definition.** The term "customer" when used in this section, shall mean any person, 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 be billed for telephone service.
- (d) **Changes in preferred telecommunications utility.**
 - (1) **Changes by a telecommunications utility.** Before a change order is processed, the telecommunications utility initiating the change (the prospective telecommunications

utility) must obtain verification from the customer that such change is desired for each affected telephone line(s) and ensure that such verification is obtained in accordance with 47 Code of Federal Regulations §64.1100. In the case of a change by written solicitation, the prospective telecommunications utility must obtain verification as specified in 47 Code of Federal Regulations §64.1150, and subsection (e) of this section, relating to Letters of Agency. The prospective 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 commission staff if it so requests. A change order must be verified by one of the following methods:

- (A) Written authorization from the customer in a form that meets the requirements of subsection (e) of this section.
- (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 prospective telecommunications utility must:
 - (i) ensure that the electronic authorization confirms the information described in subsection (e)(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 the 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, given to an appropriately qualified and independent third party that confirms appropriate verification data such as the customer's date of birth or mother's maiden name. The verification must be electronically recorded on audio tape. The recording shall include clear and conspicuous confirmation that the customer authorized the change in telephone service provider. The independent third party shall:

- (i) not be owned, managed, 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 or the telecommunications utility's marketing agent.

(2) **Changes by customer request directly to the local exchange company.** If a customer requests a change in preferred telecommunications utility by contacting the local exchange company directly and the local exchange company is not the chosen carrier or an affiliate of the chosen carrier, the verification requirements in paragraph (1) of this subsection do not apply. The local exchange company shall maintain a record of the customer's request for 24 months.

- (e) **Letters of Agency (LOA).** A written 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 containing only the authorizing language described in paragraph (3) of this subsection for the sole purpose of authorizing the telecommunications utility to initiate a telecommunications utility change. The LOA must be signed and dated by the customer requesting the telecommunications utility change.
 - (2) The LOA shall not be combined with inducements of any kind on the same document, 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, the following notice: "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 with sufficient size and readable type to be clearly legible and shall contain clear and unambiguous language that 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;
 - (iii) that the customer designates (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.
- (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: _____

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 (new telecommunications utility) to become my new telephone service provider in place of (current telecommunications utility) for **local** telephone service. I authorize (new telecommunications utility) to act as my agent to make this change happen, and direct (current telecommunications utility) to work with the new provider to make the change.

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

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

_____ By initialing here and signing below, I am authorizing (new telecommunications utility) to become my new telephone service provider in place of (current telecommunications utility) for **long distance** telephone service. I authorize (new telecommunications utility) to act as my agent to make this change happen, and direct (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 of approximately \$ (industry average charge) to switch providers. 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 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 must be translated. The LOA must be translated into the same language as promotional materials, oral descriptions or instructions provided with the LOA.
- (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 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 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.
- (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) 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 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 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 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 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 telecommunications utility shall provide a copy of records maintained under the requirements of subsections (d), (e), and (f)(2)(C) of this section to the commission 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) **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.
- (4) **Coordination with the office of the attorney general.** The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, deceptive, and anticompetitive business practices with the 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, Office of Customer Protection, 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. This statement shall appear on the first telephone bill issued 60 days after the effective date of this section.

(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; 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 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 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 and confirms appropriate verification data such as 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 or 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 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 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; 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): _____

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: _____

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

Current preferred long distance company: _____

Customer's signature: _____

Date: _____

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): _____

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: _____

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: _____

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) 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

(H) provide a toll-free telephone number for a customer to call for additional information.

(2) The acquiring telecommunications utility shall provide the Office of Customer Protection with a copy of the notice when it is sent to customers.

(I) **Complaints to the commission.** A customer may file a complaint with the commission against a telecommunications utility for any reasons related to the provisions of this section.

(1) **Customer complaint information.** The complainant should include 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, the commission's Office of Customer Protection (OCP) shall forward the complaint to the telecommunications utility. The telecommunications utility shall respond to OCP within 21 calendar days after OCP 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 (d) and (e) of this section.
- (3) **OCP investigation.** OCP 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. OCP shall inform the complainant and the telecommunications utility of the results of the investigation and identify any additional corrective actions that may be required.

This agency hereby certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §26.130, relating to Selection of Telecommunications Utilities, is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 16th DAY OF JUNE 2000.

PUBLIC UTILITY COMMISSION OF TEXAS

Chairman Pat Wood, III

Commissioner Judy Walsh

Commissioner Brett A. Perlman