

**PROJECT NO. 24626**

<b>RULEMAKING TO AMEND</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>SUBST. R. §26.130, SELECTION OF</b>	<b>§</b>	
<b>TELECOMMUNICATIONS</b>	<b>§</b>	
<b>UTILITIES</b>	<b>§</b>	<b>OF TEXAS</b>

**PROPOSAL FOR PUBLICATION AS APPROVED AT THE  
JANUARY 23, 2002 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §26.130 relating to Selection of Telecommunications Utilities. The proposed amendment will include additional requirements adopted by the Federal Communications Commission (FCC) after the current §26.130 was adopted and will make administrative corrections. Project Number 24626 is assigned to this proceeding.

This rulemaking is required by the commission's Order in Docket Number 23375, *Petition of Texas Statewide Telephone Cooperative, Inc. to Amend Substantive Rule §26.130(f) Regarding Inconsistencies Between Federal and State Rules*, issued on February 8, 2001. Texas Statewide Telephone Cooperative, Inc. (TSTCI) filed a Petition on December 1, 2000 to amend Substantive Rule §26.130(f) to make state rules consistent with federal law. TSTCI stated that Substantive Rule §26.130(f) differs from the federal rules in two respects: (1) under federal rules, the authorized carrier is required to make refunds to customers while under the commission rule the unauthorized carrier has this responsibility; and (2) the federal and state rules calculate refunds differently. TSTCI stated that the current two tiered approach unnecessarily complicates the reimbursement process by requiring carriers to separate intrastate and interstate charges and calculate refunds using applicable federal or state procedures.

The commission denied the Petition to amend Substantive Rule §26.130(f). The commission found that the consistency provision in the Public Utility Regulatory Act (PURA) §55.308 does not require that the commission rules duplicate those of the FCC. The FCC allows flexibility to the states with regard to remedies as indicated in CC Docket No. 94-129 FCC 00-135, footnote 105. Also, in Paragraph 87 of CC Docket No. 94-129 FCC 00-255, the FCC states that they will not interfere with the state's ability to adopt more stringent regulations, that they must work hand-in-hand with the states to combat slamming, and that states have valuable insight into slamming problems in their respective locales.

Substantive Rule §26.130 requires the unauthorized carrier to make a direct refund to the customer based on all charges for the first 30 days after a slam and a re-rating of charges after the first 30 days. The unauthorized carrier is also required to pay the authorized carrier any amount paid to it by the customer that would have been paid to the authorized carrier if the slam had not occurred. The FCC rules require the unauthorized carrier to pay the authorized carrier 150% of the amount paid by the customer and the authorized carrier to refund the customer 50% of the amount paid by the customer. The commission indicated that while the commission's approach does not duplicate the FCC's procedures, it is consistent with the FCC's objectives and purpose.

The FCC requires the unauthorized carrier to pay the authorized carrier and then the authorized carrier makes the refund to the customer. If, however, the authorized carrier does not receive payment from the unauthorized carrier, the authorized carrier must inform the customer of this

and the customer's right to pursue a claim against the unauthorized carrier. This refunding process was based on the original FCC approach, which required the authorized carrier to resolve slamming complaints. Under the new approach where either the FCC or the states that opt-in will resolve the complaints, the commission indicated that it is more efficient and effective to have the unauthorized carrier make a direct refund to the customer.

The commission did not agree that the current reimbursement process is a two-tiered approach, one for intrastate charges and another for interstate charges. The reimbursement process in the current §26.130 applies equally to intrastate and interstate charges, as well as local charges when there is a local service slam.

The commission did require a rulemaking to amend §26.130 to include electronic letters of agency (LOA) that meet FCC requirements as a verification method for switching telecommunications service and to make any other appropriate changes to the current rule.

To assist in this rulemaking, the commission held a workshop with interested parties on November 26, 2001. Also, interested parties filed written comments subsequent to the workshop. The commission considered all workshop and written comments in developing this proposed amendment. The proposed amendment includes several recommendations that enhanced consistency with FCC rules, improved clarity, and minimized administrative burdens without diluting customer protections.

The proposed amendment:

- (1) updates references to FCC regulations;
- (2) adds electronically signed letter of agency (LOA) as a verification method;
- (3) requires that customers be provided the option of using another authorization method in lieu of an electronically signed authorization;
- (4) requires that a telecommunications utility submit a change order within no more than 60 days after obtaining verification from the customer;
- (5) adds FCC provisions to the minimum requirements for third party verification;
- (6) adds FCC requirements related to the notification of an alleged unauthorized change;
- (7) adds FCC requirements related to customer notice involving transferring customers; and
- (8) adds a requirement to provide FCC slamming reports containing only Texas-specific data.

The proposed amendment includes additional requirements based on additional provisions adopted by the FCC (CC Docket No. 94-129, Third Report and Order on Second Reconsideration, FCC 00-255) after adoption of the current §26.130. The reporting requirement in proposed §26.130(m) is based on an FCC reporting requirement and establishes the same reporting format and period used by the FCC.

Mr. John S. Capitano, Jr., Senior Investigator, Customer Protection 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.

Mr. Capitano has 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 the establishment of rights and responsibilities for both telecommunications utilities and customers regarding customer choice in the selection of local and long distance telecommunications providers. There will be no effect on small businesses or micro-businesses as a result of enforcing this section. There may be anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Capitano 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 §2001.022.

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Wednesday, April 17, 2002, at 9:30 a.m. in the Commissioners' Hearing Room.

Comments on the proposed amendment (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. Commission Staff also requests that electronic copies of the comments and reply comments be e-mailed to [john.capitano@puc.state.tx.us](mailto:john.capitano@puc.state.tx.us). Comments should be organized in a manner consistent with the organization of the proposed rule. The commission

invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendment. The commission will consider the costs and benefits in deciding whether to adopt the proposed amendment. All comments should refer to Project Number 24626.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (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 authority to adopt and enforce rules to implement the provisions of PURA Chapter 55, Subchapter K, Selection of Telecommunications Utilities.

Cross Index to Statutes: Public Utility Regulatory Act §§14.002 and 55.301 — 55.308.

**§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)(b) Application.** This section, including any references in this section to requirements in 47 Code of Federal Regulations (C.F.R.) §64.1120~~§64.1100~~ and §64.1130~~§64.1150~~ (changing long distance service~~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")).

**(b)(e) Definitions**~~Definition~~. 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 that is in accordance with the requirements of this section.

**(2) Customer** — Any~~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.

- (3) Executing telecommunications utility — Any telecommunications utility that effects a request that a customer's preferred telecommunications utility be changed.
- (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)(d)~~ **Changes in preferred telecommunications utility.**

- (1) **Changes by a telecommunications utility.** Before a change order is processed, the submitting 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 C.F.R. §64.1120~~Code of Federal Regulations §64.1100~~. In the case of a change by written solicitation, the submitting~~prospective~~ telecommunications utility must obtain verification as specified in 47 C.F.R. §64.1130~~Code of Federal Regulations §64.1150~~, and subsection ~~(d)(e)~~ 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~~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 [Public Utility Commission](#) (commission) staff ~~upon request~~~~if it so requests~~. 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)(e)~~ 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 prospective~~ telecommunications utility must:
  - (i) ensure that the electronic authorization confirms the information described in subsection ~~(d)(3)(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 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 confirms appropriate verification data such as the customer's date of birth or mother's maiden name.
- (ii) The verification must be electronically recorded in its entirety on audio tape or a wave sound file.
- (iii) The recording shall include clear and conspicuous confirmation that the customer authorized the change in telephone service provider.
- (iv) The third party verification shall elicit, at minimum, the identity of the customer, confirmation that the person on the call is authorized to make the change in service, the names of the telecommunications utilities affected by the change, the telephone number(s) to be switched, and the type of service involved.
- (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 has been established.
- (viii) The independent third party shall:

~~(I)(i)~~ not be owned, managed, or directly controlled by the telecommunications utility or the telecommunications utility's marketing agent;

~~(II)(ii)~~ not have financial incentive to confirm change orders; and

~~(III)(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 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.

~~(d)(e)~~ **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 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. 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 ~~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 and identifies each;
- (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 and that the customer may consult with the carrier as to whether a fee applies to the change.

(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 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 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.

**(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](#).
- (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 to file a complaint with the Public Utility Commission of Texas within 30 days. 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 to the original telecommunication utility within three business days of the customer's request.

(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) — (F) (No change.)

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

(A) (No change.)

(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) — (D) (No change.)

(g) (No change.)

(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 (c), (d), ~~(e)~~, and (f)(2)(C) of this section to the commission staff upon request.

(2) — (4) (No change.)

(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) — (3) (No change.)

(4) A statement that customers who believe they have been slammed may contact the Public Utility Commission of Texas, ~~Office of~~ Customer Protection Division, 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) — (4) (No change.)

(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) — (D) (No changes.)

(6) (No change.)

(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) — (D) (No change.)

(8) — (14) (No change)

(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) — (F) (No change.)

(G) provide the rates and conditions of service of the acquiring telecommunications utility and how the customer will be notified of any

changes; ~~and~~

(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)(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 Division (CPD) with a copy of the notice when it is sent to customers.

(1) **Complaints to the commission.** A customer may file a complaint with the commission's Customer Protection Division ~~commission~~ against a telecommunications utility for any reasons related to the provisions of this section.

- (1) **Customer complaint information.** The complainant should include appropriate the following information regarding the complaint.:
  - ~~(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~~~~the commission's Office of Customer Protection (OCP)~~ shall forward the complaint to the telecommunications utility. The telecommunications utility shall respond to ~~CPD~~~~OCP~~ within 21 calendar days after ~~CPD~~~~OCP~~ forwards the complaint. The telecommunications utility's response shall include the following:
  - (A) (No change.)
  - (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) ~~and (e)~~ of this section.
- (3) **~~CPD~~~~OCP~~ investigation.** ~~CPD~~~~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. ~~CPD~~~~OCP~~ 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 the

authorized telecommunications utility if there was an unauthorized change in service.

(m) **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 1st DAY OF FEBRUARY 2002 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
RHONDA G. DEMPSEY**