**PROJECT NO. 28324**

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

**ORDER ADOPTING AMENDMENTS TO §26.130**
**AS APPROVED AT THE APRIL 15, 2004 OPEN MEETING**

The Public Utility Commission of Texas ("commission") adopts amendments to §26.130 (relating to Selection of Telecommunications Utilities) with changes to the proposed text as published in the November 7, 2003 issue of the *Texas Register* (28 TexReg 9657). These amendments are necessary to: (1) update references to Federal Communications Commission ("FCC") rules; (2) eliminate, consistent with the FCC's rules, the requirement that telecommunications utilities file a semiannual slamming report; (3) reflect the commission's experience with slamming complaints; and (4) ensure that all customers in this state are protected from an unauthorized change in a customer's local or long-distance telecommunications utility. These amendments were adopted under Project Number 28324.

The commission received comments on the proposed amendments from: AT&T Communications of Texas, L.P., TCG Dallas and Teleport Communications Houston, Inc. (collectively "AT&T"), MCImetro Access Transmission Services LLC ("MCI"), Office of the Attorney General of the State of Texas ("OAG"), Southwestern Bell Telephone, L.P. d/b/a SBC Texas ("SBC Texas"), Sprint Corporation ("Sprint"), Texas Statewide Telephone Cooperative, Inc. ("TSTCI"), and Verizon Southwest ("Verizon"). The commission also received reply comments from: AT&T, MCI, OAG, and TSTCI.

A public hearing on the proposed amendments was held at the commission's offices on February 17, 2004, at 1:30 p.m. Representatives from AT&T, MCI, OAG, SBC Texas, TSTCI, and Verizon participated in the hearing in person and by telephone.

Subsequent to the public hearing, MCI submitted additional information in response to three issues it believed were raised during the public hearing. The additional information submitted by MCI related to the: (1) ability for companies to request an extension for good cause in responding to customer complaints; (2) consistency with competitive local exchange company ("CLEC") migration guidelines; and (3) definition of "customer."

*Subsection (a), Purpose and Application*

The OAG supported the proposed changes and no other party specifically commented on this subsection.

**The commission believes the proposed changes appropriately update references to FCC rule citations, and accordingly, adopts this subsection as proposed.**

*Subsection (b), Definitions*

AT&T, MCI, SBC Texas, and Verizon recommended the commission adopt the FCC's definition of "subscriber" as found in 47 C.F.R. §64.1100(h) instead of the proposed definition of "customer." AT&T asserted that, at a minimum, the commission should add language to clarify that certain individuals have the legal capacity (or apparent authority) to request a change in providers on behalf of someone else. AT&T suggested this modification would more explicitly recognize that other individuals may have a power of attorney,

guardianship or contract for such authority. SBC Texas suggested that expanding the proposed definition would "protect consumers' interest in an efficient carrier selection process, ensure convenient processes for consumers and reduce the burden on carriers to adjust practices to meet the current definition of 'consumer' set forth in §26.130(b)(2)." SBC Texas concluded that a definition other than that of the FCC would create an administrative burden on carriers that provide service in Texas as well as other states and limit options that would be available to the consumer when making an authorized change in providers. Verizon stated the commission should adopt the FCC's definition of "subscriber" *verbatim* because the FCC adopted that definition after concluding that it would not impose unreasonable burdens on executing carriers and would promote consumer convenience and competition in telecommunications services without an increase in slamming.

The OAG supported the proposed definition of "customer."

In its reply comments, TSTCI agreed with AT&T, MCI, SBC Texas, and Verizon that the definition of "customer" should be the same as or similar to the FCC's definition of customer. TSTCI asserted that using this definition would eliminate possible industry confusion and ensure agreement with federal standards.

**The commission declines to adopt the definition of "customer" as requested by AT&T and other commenters. PURA §55.303 requires carriers to obtain authorization from the "customer." The term "customer" is defined in PURA §17.002 as "any person 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." The commission has consistently interpreted these provisions to**

**require carriers to obtain actual authorization for a change in service provider, whether from the individual in whose name service is billed or from an individual or entity with legal capacity to act on behalf of that customer. Therefore, the commission's rules and current practice already provide carriers and customers the same flexibility provided by the FCC's definition of "subscriber." Accordingly, the commission declines to change the proposed rule as requested by some of the commenters.**

**The commission notes, however, that the proposed rule omits the word "service" after the word "local" in the following phrase: "capacity to request a change in local and/or telecommunications utilities." Although the commission received no comments on this issue, the commission notes that the phrase clearly applies to changes in local service in addition to changes in telecommunications utilities. Therefore, the commission modifies subsection (b)(2) to reflect this clarification.**

*Subsection (c), Changes in preferred telecommunications utility*

Verizon proposed a change to subsection (c)(1) that would clarify that it is the responsibility of the submitting telecommunications utility to obtain the customer authorization before submitting to the executing telecommunications utility a change order for processing. Verizon argued that its proposed change would place the responsibility of change order verification prior to submission of the order to the executing utility and contended that its clarification reduced unnecessary work by the executing telecommunications utility.

**The commission adopts proposed subsection (c)(1) without changes. The proposed subsection clearly indicates that the submitting telecommunications utility must obtain**

**customer authorization and verification of that authorization prior to the submission of a change order to the executing telecommunications utility. Therefore, the commission believes further clarification is not necessary.**

SBC Texas and AT&T alleged that the requirements of subsection (c)(1)(C) would be onerous and overly restrictive for customers such as corporations or partnerships. This subsection would require carriers to record a customer's authorization and verification of a change in carriers. Under the rule as proposed, verification data would, at a minimum, include the customer's month and year of birth, mother's maiden name or the last four digits of the customer's social security number. SBC Texas and AT&T requested that this subsection be revised to either eliminate the verification data requirement or clarify that it applies only to customers who are natural persons, but not to entities such as corporations or partnerships. Since it may be impossible for corporations or partnerships to provide information such as a date of birth or mother's maiden name, SBC Texas contended that this rule should be revised. AT&T further opined that the proposed additional verification elements for oral authorizations in the proposed subsection (c)(1)(C)(i) were of extremely doubtful benefit.

**The commission finds merit in SBC Texas's and AT&T's arguments related to proposed subsection (c)(1)(C)(i) regarding its applicability to certain types of customers such as corporations or partnerships. The commission recognizes that it may be difficult for a corporation or partnership to provide some of the authorization and verification information to a submitting telecommunications utility and third party verifier (TPV). Consistent with the recommendations proposed by SBC Texas and AT&T, the commission modifies the proposed rule to require corporations or partnerships to provide their federal**

**Employer Identification Number or the last six digits thereof. The commission notes that this type of data is or should be readily available to the person or persons authorized to switch carriers for corporations or partnerships. The commission further notes that the submitting telecommunications utility must obtain information sufficient from the authorized representative of the corporation or partnership entity that indicates the identity of the representative and the position that the individual holds within the business entity that is requesting the change in local and/or long distance provider. The commission finds that such additional information allows the submitting telecommunications utility and third party verifier to identify the representative seeking the change and determine his or her actual or apparent authority to request such a change, in the event the commission or the submitting telecommunications utility receives a customer complaint from the business entity.**

The OAG supported the restriction on marketing activity by third party verifiers in proposed subsection (c)(1)(C)(iv). MCI supported the proposed revision of subsection (c)(1)(C)(iv) that deletes the name of the displaced carrier during a third party verification call.

**The commission adopts subsection (c)(1)(C)(iv) as proposed without changes. The commission agrees with the OAG's comments and notes that the requirement that the TPV not market or advertise the submitting telecommunications utility's services, including information about carrier freeze procedures, is consistent with 47 C.F.R. §64.1120(c)(3)(iii).**

The OAG opposed the proposed change to subsection (c)(1)(C)(vii). This subsection clarified that this section provides the only approved method for changing carriers and requiring

additional data to verify the customer's authorization. The OAG opposed the proposed amendments to subsection (c)(1)(C)(vii) that allows a process whereby, under certain circumstances, sales representatives may remain on the call during the third party verification process. The OAG stated that there is no compelling reason or need for this new exemption. The OAG opined that unless the commission has actual knowledge of situations in which insurmountable technical issues exist resulting in an inability to comply with the requirement that the sales representative drop off the line after the call is transferred for third party verification, there is no reason to grant such an exemption based upon a written statement alone. The OAG also noted the proposed requirement that the verification terminate if the sales agent speaks would be difficult, if not impossible, to enforce. The OAG recommended that if technical limitations existed for some carriers, then a limited waiver of the rule granting a short time to allow that specific carrier to achieve technical compliance would be the more appropriate response to this issue. The OAG commented that an exemption for up to two years does not provide any incentive for the carrier to comply with the rule. The OAG stated that it would be appropriate for the commission to conduct some investigation of a carrier's technical inability to comply and not simply take the proposed certification at face value. The OAG stated that the proposed exemption is ill-advised and should not be adopted.

**The commission adopts subsection (c)(1)(C)(vii) as proposed without changes. The commission disagrees with the OAG's opposition to proposed subsection (c)(1)(C)(vii). The exemption given to telecommunication utilities that do not possess the current technology to drop off or hand off the sales call to the third party verifier (TPV) is derived from the FCC's *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*, CC Docket No. 94-129, Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 18 FCC Record 5099 (rel. March 17, 2003) (Third Order on Reconsideration). The FCC, at paragraph 35 of that Order, while not eliminating the drop-off requirement by a sales agent once the sales call is transferred to a TPV, determined that in certain specific situations, it may be infeasible for the submitting telecommunications utility to "drop-off" the line without losing the prospective customer. Thus, the FCC adopted an exemption to the general "drop-off" requirement under 47 C.F.R. §64.1120(c)(3)(ii). While the commission is not obligated to adopt the FCC's exception, the commission believes it is reasonable in this instance to do so. The commission believes that, in adopting language consistent with recent FCC orders, it is recognizing such diversity in technology and is not imposing technological uniformity that some carriers may not be able to afford or that is inconsistent with the carrier's current sales network and procedures. Notwithstanding the limited drop-off exemption, the commission notes that this rule still requires carriers electing to use TPV to recognize that the TPV portion of the customer call is beyond the influence of the sales representative and that no interference from the sales representative with the verification process is permitted.**

MCI did not oppose the clarifying changes proposed for subsection (c)(2), but recommended that language referencing §26.133(c)(2) that prohibits the local exchange company (LEC) contacted by the customer from using the call to promote its products to the caller be added to this subsection. MCI contended that this reference would serve as a reminder that employees of the LEC or affiliate that is not the chosen carrier conduct communications with competitors' end-user customers with the same degree of professionalism, courtesy, and efficiency as performed

on behalf of their employer and end-user customers and not make statements regarding the service of any competitor or not promote any of the certificated telecommunications utility's ("CTU's") services to the competitors' end-user customers.

TSTCI contended that the changes to subsection (c)(2), as recommended by MCI, are not necessary. MCI recommended that LECs be reminded of the commission's Code of Conduct rules when changing a customer's preferred service provider. TSTCI stated that there was no need to include a reference to §26.133(c), the commission's Code of Conduct rule, in this proposed rule. The Code of Conduct Rule applies to all CTUs and includes specific references to a number of commission rules, including §26.130. TSTCI opined that the Code of Conduct rule also specifically required that all CTU employees and authorized agents be trained to comply with the Code of Conduct rules that affect their employment responsibilities. As a result, TSTCI asserted that MCI's proposed change to subsection (c)(2) would be unnecessary and superfluous. Further, TSTCI stated that MCI referred to the Code of Conduct rule with respect to the activities of the local exchange company or its affiliate; however, the Code of Conduct rule is applicable to all CTUs. TSTCI further argued that MCI provided no support to justify this change, nor did MCI allege that such a problem existed. TSTCI contended that subsection (c)(2) should remain unchanged.

**The commission adopts proposed subsection (c)(2) without changes. The commission agrees with TSTCI in that it is unnecessary to include a reference to §26.133(c) in this proposed rule. The Code of Conduct Rule applies to all CTUs and includes specific references to a number of commission rules including §26.130. Another reference to the Code of Conduct Rule in this section would be superfluous.**

*Subsection (d), Letters of Agency*

Most commenters disagreed with three proposed changes being made to the Letters of Agency (LOA) in this proposed subsection. Verizon, MCI, AT&T, and SBC Texas opposed the proposed language in subsection (d)(1) that requires that there be no unanswered questions on the LOA for it to be deemed complete. Verizon proposed modifying the rule to require completion of only the relevant portions of the LOA. Verizon contended that no such requirement is found in the FCC's rules and that it is not uncommon for customers to only complete the relevant portions of the LOA. To comply with the proposed rule, Verizon explained that it would have to develop a separate LOA just for its Texas customers, or to revise its forms to include instructions to the customer to complete each section of the LOA, even if just marking it as "N/A." SBC Texas requested that the proposed rule be clarified to indicate that a response stating that the question is not applicable to the customer is an acceptable answer and that an LOA containing such a response would not constitute an "unanswered question" under this subsection. Verizon argued that this proposed rule change would create more work for customers and would likely result in additional customer dissatisfaction in the event LOAs were rejected because customers had refused or failed to complete the form in its entirety. AT&T opined that as long as the necessary anti-slamming verification elements are completed by the customer, then it should be immaterial whether other parts of the LOA are completed.

**The commission adopts subsection (d)(1) as proposed without changes. The commission finds that the information provided on the LOA form is of significant importance to commission investigators. The commission believes that all of the information requested on the LOA is useful to a carrier when conducting its own internal investigations of customer**

**complaints. The commission does not believe that requiring the submitting telecommunications utility to provide a completed LOA constitutes an undue hardship on the prospective customer or the carrier. If a specific section is not applicable to the specific customer, the customer may simply indicate that by writing "not applicable," "N/A" or something similar. The information provided on an LOA serves as a security measure for the protection of customers and carriers alike and discourages the proliferation of fraudulent LOAs. The commission disagrees with Verizon's argument that commission adoption of this proposed subsection should be rejected since FCC rules do not have this requirement. The commission does not believe that the consistency provision in PURA §55.308 requires that the commission rules duplicate those of the FCC. The FCC allows flexibility to the states with regard to remedies as indicated in the *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*, CC Docket No. 94-129, First Order on Reconsideration at fn. 105, 15 FCC Record 8158 (rel. May 3, 2000). Moreover, in its *Third Report and Order* at Paragraph 87, the FCC states that it will not interfere with the state's ability to adopt more stringent regulations.**

Verizon, AT&T, MCI, Sprint, SBC Texas, and TSTCI disagreed with proposed subsection (d)(3) defining the font type (Arial) to be used in printing the LOA. These commenters suggested that the reference to the Arial font in the proposed rule should be eliminated. Verizon Sprint, SBC Texas, TSTCI, and AT&T argued that the FCC declined to establish a specific type for printing an LOA, but rather set a minimum requirement under 47 C.F.R. §64.1130 that the LOA be printed with a type of sufficient size and readable. Verizon stated that its current LOA issued in Times New Roman 12 point type font meets the requirements of all states and the FCC. A

change to the font, Verizon and Sprint argued, would increase the size of the LOA and require a state specific LOA for Texas. Verizon stated that it is unaware of any other state (or any other Texas rule) that requires Arial font to be the standard for customer notices. AT&T further stated that there is no indication that there are any Texas slamming complaints that are attributable to consumer complaints about lack of clarity or legibility due the font used or the type size. MCI argued that the current rule provided the commission with more than adequate authorization to seek enforcement if the text font size is not sufficient to be clearly legible. MCI concluded that the proposed language constituted unnecessary micromanagement of carriers' communications with customers.

The OAG, in its initial comments, supported the proposed changes to this subsection. The OAG argued that the changes provide an enforceable type size, additional verification data, and a provision addressing the special needs of multi-line business customers.

**The commission adopts proposed subsection (d)(3)(A) with modifications. The commission rejects the arguments raised by Verizon, AT&T, MCI, Sprint, SBC Texas, and TSTCI in opposition to this portion of the rule. In adopting this rule, the commission is not requiring the use of a specific font style. This subsection allows flexibility to a carrier to use whatever font style it wishes in printing its LOA forms. The commission clarifies by adoption of this specific rule subsection that the size of the font used by the submitting telecommunications utility may not be smaller than 12-point font for ease of readability. The commission believes that it is in the interest of Texas consumers to make informed choices in their telecommunications provider. In order to make such a choice, the prospective customer should be able to easily read the LOA to discern what information is being requested and**

**what terms and conditions are associated with the prospective customer's change in service provider. The commission notes that 47 C.F.R. §64.1130(e) states that the type used on the LOA should be "…of a sufficient size and readable type…". However, the FCC has not prohibited the states from establishing what size type is to be deemed sufficient and readable. The commission notes that in the FCC's *Third Order on Reconsideration* at paragraph 106, the FCC ruled that "…in the areas in which the states have jurisdiction, federal verification procedures constitute a floor, and the states may choose to impose more stringent requirements, so long as they are consistent with the federal requirements." The commission finds that this proposed subsection, while more stringent, is consistent with the federal requirement that the font type be of sufficient size and readable. This rule provides the carriers with sufficient flexibility in the type employed on its LOAs and simultaneously provides Texas consumers with a fair opportunity to make an informed choice in local and long-distance service provider. Accordingly, the proposed rule is revised to require that the font be legible and readable and no smaller than 12 point type.**

Verizon, MCI, TSTCI, SBC Texas, and AT&T also disagreed with proposed subsection (d)(3)(A)(vi) which would require LOA verification information to include at a minimum the customer's month and year of birth, mother's maiden name or the last four digits of the customer's social security number. AT&T and SBC Texas noted that business customers, such as certain corporations or partnerships, may not be able to answer all of the verification questions on the LOA if the proposed additional verification elements (e.g., inclusion of one of the following: customer's month and year of birth, mother's maiden name or last four digits of customer's social security number) in subsection (c)(1)(C)(i) are also applied to LOAs through proposed subsection (d)(3)(A)(vi). Verizon and SBC Texas contended that the proposed

language was inconsistent with FCC rules, which do not require that such information be provided. Verizon, TSTCI, and MCI opined that the end user's signature on the LOA is sufficient verification under applicable FCC rule and that the additional verification information required by the commission's rule would be unnecessary. These commenters also contended that the commission has failed to articulate the need for this additional information. TSTCI further stated that this change would also impinge on customer privacy. Including the proposed verification data, Verizon contended, would require the development of a state specific LOA for Texas since no other state has such requirements. SBC Texas suggested modifying the rule to state that a carrier's use of the FCC-approved form is an acceptable LOA under this rule.

**The commission agrees with the arguments raised by AT&T and SBC Texas that corporations and partnerships may not be able to comply with the verification data required by proposed subsection (d)(3)(A)(vi). Therefore, the commission has revised proposed subsection (d)(3)(A)(vi) consistent with the recommendations of SBC Texas and AT&T by requiring such business entities to provide their federal Employer Identification Number as verification information. The commission further notes that the submitting telecommunications utility must obtain information sufficient from the authorized representative of the corporation or partnership entity that indicates the identity of the representative and the position that the individual holds within the business entity that is requesting the change in local and/or long distance provider. The commission finds that such additional information allows the submitting telecommunications utility and third party verifier to more easily identify the representative seeking the change and determine his or her actual or apparent authority to request such a change, in the event the**

**commission or the submitting telecommunications utility receives a customer complaint from the business entity.**

**The commission disagrees with TSTCI's contention that the proposed subsection invades customer privacy concerns. The information requested by this proposed subsection is not unduly intrusive and is designed to provide greater protection to Texas customers from unauthorized changes in their local or long distance providers. The commission notes that this is the type of verifying data requested by most banking and financial institutions, and which consumers have become accustomed to providing. Further, such additional verification information provides the commission with specific data by which it can conduct investigations and determine the veracity of a customer complaint. The commission disagrees with Verizon's opposition to this subsection founded on the premise that it would necessitate the creation of a state-specific LOA for Texas. The commission finds that the benefits and protections of the additional verification information for Texas consumers outweigh the possible inconvenience to carriers that would result from the creation of a state specific LOA for Texas.**

*Subsection (e), Notification of alleged unauthorized change*

MCI, AT&T, TSTCI, Verizon, and SBC Texas requested that proposed subsection (e)(5) not be adopted and that the current subsection remain in effect. These commenters contended that a carrier accused of slamming is not legally authorized to return a customer back to his or her preferred local or toll carrier. These commenters argued that only the local exchange carrier or the customer's preferred carrier could lawfully affect a change away from the alleged unauthorized telecommunications utility. These commenters further noted that it may not be

possible for a customer to be returned to the preferred carrier within three business days. These commenters believed that the current rule, that allows three business days to switch the customer back to his or her preferred provider, was more reasonable than the proposed rule.

The OAG supported the proposed change to this subsection stating that it clarified the obligations of the alleged unauthorized telecommunications utility in returning the customer to the customer's preferred carrier.

**The commission finds merit in the arguments raised by the parties related to proposed subsection (e)(5). The commission agrees that only the local exchange company or the customer's preferred carrier could effect a change from the alleged unauthorized telecommunications utility. Accordingly, the commission declines to adopt the changes it proposed to subsection (e)(5) and retains, instead, that subsection's existing language.**

*Subsection (f), Unauthorized changes*

The OAG supported proposed subsection (f)(1)(G) as written. Sprint and Verizon stated that the proposed subsection should be re-written to adopt the FCC's remedy procedures set forth under 47 C.F.R. §64.1160 and §64.1170. Under 47 C.F.R. §64.1160, the customer that has not paid charges is absolved from paying those charges to the alleged unauthorized utility for the first 30 days after the unauthorized change is made. Under 47 C.F.R. §64.1170, if the customer has paid charges, the FCC's refund regime, after a finding of an unauthorized change, requires the unauthorized telecommunications utility to refund 150% of the monies paid by the customer to the authorized telecommunications utility. In turn, the authorized telecommunications utility would forward 50% of the monies recovered from the unauthorized utility to the customer.

Sprint advocated the adoption of the FCC's refund structure to reduce the chances for consumer fraud. Sprint further argued that the subsection as proposed would have an adverse effect on Sprint's ability to collect valid customer charges. Verizon clarified that it preferred the FCC's refund procedures in 47 C.F.R. §64.1160 and §64.1170, but also stated that the proposed rule should be clarified to apply in those instances where the commission has received a formal slamming complaint and a finding that a slam has occurred.

**The commission adopts proposed subsection (f)(1)(G) without changes. The consistency provision in 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 the *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*, CC Docket No. 94-129, First Order on Reconsideration at fn. 105, 15 FCC Record 8158 (rel. May 3, 2000). Moreover, in its *Third Report and Order* at Paragraph 87, the FCC states that it will not interfere with the state's ability to adopt more stringent regulations. The FCC recognized that it must work hand-in-hand with the states to combat slamming and that states have valuable insight into slamming problems in their respective locales.**

**The commission notes that proposed subsection (f) requires the unauthorized carrier to make a direct refund to the customer based on all charges for the first 30 days after an unauthorized change is made and a re-rating of charges after the first 30 days after the change. Under proposed subsection (f), 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 for the authorized carrier to refund the customer 50% of the amount paid by the customer. While the commission's approach does not duplicate the FCC's procedures, the commission finds that it is consistent with the FCC's objectives and purpose. The unauthorized carrier, under the approach in this subsection, will not profit from the illegal behavior as it must return all monies to the preferred carrier and directly refund any amounts above what the customer would have paid to the preferred carrier if the slam had not occurred. Further, subsection (f)(1)(G) as proposed, requires that the unauthorized carrier compensate the preferred carrier for any billing and collection expenses incurred for the collection of charges from the unauthorized carrier. Thus, the unauthorized carrier will, under this procedure, incur financial losses for each infraction and, accordingly, be discouraged from the practice of slamming. This result is consistent with the policy objectives underlying the FCC's refund procedures.**

*Subsection (g), Notice of customer rights*

MCI stated that carriers other than the Incumbent Local Exchange Company ("ILEC") do not have the ability to change a customer to another carrier. Thus, MCI stated, were an end-user to request the unauthorized carrier to return that end-user to its original carrier, the unauthorized carrier has no ability to comply with that request. MCI urged the commission to retain the current language in the customer notice in proposed subsection (g)(3), but to modify that notice to direct the customer to contact their preferred carrier or the ILEC, instead of the unauthorized

carrier, to be returned to their original carrier. Verizon's comments broadly urged the commission to adopt §64.1160 and §64.1170 of the FCC's rules.

SBC Texas stated, at the public meeting, that it opposed MCI's suggestion to add language that requires the ILEC to be involved in the transfer back to the customer's original carrier. SBC Texas said that the CLEC-to-CLEC migration guidelines provide for migrations back and forth with customers, so it would not necessarily require the ILEC to be involved.

**The commission is not persuaded to change the proposed rule as urged by MCI and, to the extent its comments were applicable to subsection (g)(3), Verizon. First, the FCC's rules (47 C.F.R. §64.1160(g) and §64.1170(g)) require the unauthorized carrier to return the customer to the desired carrier at no cost to the customer. The proposed rule, therefore, is consistent with the FCC's rules. Second, the commission finds that if an unauthorized carrier is contacted by the customer, then, since that carrier billed the customer, it should have sufficient information about that customer to enable that carrier to investigate the purported slam. Subsequently, the unauthorized carrier should be able to demonstrate it had authorization and verification of that authorization, or be in a position to acknowledge it lacked such authorization and verification and take all appropriate measures, whether by contacting the customer's original carrier by telephone or initiating a request to return that customer, to effect the return of the improperly switched customer to its original carrier. The commission finds that the proposed rule, therefore, properly places the burden of correcting the problem on the party responsible for creating that problem. Accordingly, the commission adopts proposed subsection (g)(3) without the modifications urged by some of the commenters.**

*Subsection (h), Compliance and enforcement*

The OAG concurred with the proposed changes to subsection (h) and asserted that the most important and effective change proposed is the allowance of customer affidavits as evidence of a violation. The OAG stated that, because the Administrative Procedure Act, specifically Administrative Procedure Act, Texas Government Code §2001.081 (Vernon 2000 and Supplement 2004) (APA), allows for a more expansive approach to evidentiary issues, it should not be necessary to have customers present at hearing, or in deposition, to prove violations of the commission's anti-slamming provisions. Such a requirement, the OAG noted, seems counter-productive because few customers would take on the burden and time required to provide testimony for such a proceeding.

In its reply comments, the OAG opined that the ability of the commission to meet the standard of "ascertaining facts not reasonably susceptible to proof" under APA §2001.081 is precisely the reason for the proposed changes in subsection (h). The OAG noted that it is possible, but not reasonable, to expect live witness testimony from consumers on alleged slamming violations. Moreover, the OAG recognized that except in very rare instances, the loss of time and inconvenience involved in providing live testimony is simply not justified for an individual consumer, as the monetary losses to such a consumer will only be exacerbated through additional time and effort, which will not be justified by any recovery they might receive. Finally, the OAG stated that, contrary to assertions by other commenters, consumer affidavits must not be rejected on the basis of hearsay issues on a wholesale basis because a more relaxed approach, as contemplated by APA §2001.081, will promote effective enforcement efforts.

AT&T stated that explicitly allowing for the admission of affidavits usurps the authority of the Administrative Law Judge ("ALJ") to make findings required by APA §2001.081 and denies procedural due process to a carrier accused of slamming. AT&T stated that it is inappropriate for the commission to presume in advance that all affidavits satisfy the standards in APA §2001.081 because not all affidavits are the same and a determination about a particular affidavit's admissibility should be made on a case-by-case basis by the ALJ. Moreover, AT&T stated, a consumer's allegation of a slam is reasonably susceptible to proof by that person's live testimony. Accordingly, AT&T concluded that carriers accused of slamming should be afforded the right to cross-examine opposing witnesses in enforcement proceedings relating to slamming.

MCI, citing PURA §11.007, stated that APA Chapter 2001, applies to enforcement proceedings unless it is inconsistent with PURA. MCI asserted that, because APA §2001.087 requires that alleged violators be permitted to cross examine complainants is not inconsistent with PURA, the proposed amendment to subsection (h)(3) is an impermissible "end run" around the hearing procedures in the APA. MCI stated further that the commission, by rule, and the State Office of Administrative Hearings ("SOAH"), by statute, apply the rules of evidence used in nonjury civil trials to contested cases. MCI asserted that an affidavit alone would not be sufficient to establish a slamming violation. MCI also contended that affidavits are hearsay and that admitting affidavits would deny Respondents due process (including the rights to cross examine witnesses and to present and rebut evidence). Finally, MCI argued that affidavits cannot overcome a single prong of the three-prong test in APA §2001.081 because: (1) consumers could be deposed or appear at the hearing, (2) PURA doesn't permit the use of hearsay, and a rule without specific or implied statutory authority is void, and (3) a prudent person would not rely on the affidavit

without a review of the facts in the conduct of their affairs. Accordingly, MCI concluded that each slamming complaint must be reviewed along with the actions taken by the company.

Verizon requested that this subsection be rewritten in its entirety to more closely follow the FCC's remedial scheme set forth at 47 C.F.R. §64.1160 and §64.1170.

**The commission disagrees that proposed subsection (h)(3) predetermines the admissibility of a customer affidavit in a proceeding to enforce the commission's slamming rules. Because a customer affidavit is not presumptively admitted into evidence against a carrier accused of slamming, the proposed rule does not infringe upon such a carrier's due process rights.**

**Customer affidavits are not presumptively admitted into evidence against a carrier in a proceeding to enforce the commission's slamming rules. As noted by the OAG, subsection (h)(3) specifically identifies customer affidavits as information the commission believes *may* be admissible pursuant to the more expansive approach to evidentiary issues allowed by APA §2001.081. Pursuant to this proposed rule, a customer affidavit, to be admitted into evidence in the absence at hearing of the customer who made the affidavit, must meet the requirements set out in APA §2001.081. Accordingly, the proponent seeking to admit the customer affidavit must demonstrate that it is: (1) necessary to ascertain facts not reasonably susceptible to proof under the rules of evidence as applied in a nonjury civil case in a district court of Texas; (2) not precluded by statute; and (3) of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs. Any party opposing admission of the customer affidavit may argue that one or more of these**

**elements have not been satisfied by the proponent and, if successful, prevent admission of the affidavit.**

**However, as explained below in more detail, the commission finds that a customer affidavit is the type of evidence that is appropriate for admission pursuant to APA §2001.081 in a proceeding to enforce the commission's slamming rules.**

**First, the information described by proposed subsection (h)(3) is necessary to ascertain facts that are not likely reasonably susceptible to proof because it is generally too costly for customers and the commission to require attendance by the customer at an enforcement proceeding related to slamming. The commission interprets the phrase "not reasonably susceptible to proof" as a reference to the ease with which the facts may be proved under the rules of evidence. How long it would take and how much it would cost to prove an issue are, therefore, relevant factors in determining whether some fact at issue is "reasonably susceptible of proof." In most slamming cases, the economic harm to the customer caused by the slam will be far outweighed by the cost of attending a hearing in Austin. Attendance at a hearing in Austin would, in most instances, require the customer to incur unreimbursed expenses, including, but not necessarily limited to, lodging, meals, and travel. In addition, attending a hearing in Austin would require customers with daytime jobs to take time off from work. The commission has no budgeted funds to pay witnesses' expenses. Under these circumstances, the commission believes a customer will rarely choose to come to Austin to testify in a slamming case.**

**Next, the commission is not aware of any statute that specifically precludes admitting customer affidavits in slamming cases.**

**Finally, the customer affidavits contemplated in the proposed rule are the type on which staff experts who testify about slamming complaints at this commission rely. Staff experts commonly rely on a variety of information to determine whether a slam occurred, including the customer's complaint, whether affirmed or not, and the carrier's response to that complaint. Therefore, the commission finds that a customer affidavit is the type of evidence that should be admissible as contemplated by APA §2001.081.**

**Some commenters also suggested that customer affidavits were not admissible pursuant to APA §2001.081 because the affiant could easily be deposed by the commission or ordered to appear at the hearing by telephone. The commission disagrees. Slamming enforcement proceedings share many characteristics of mass litigation (the complainant usually suffers only minor monetary losses and temporary service interruptions, but the complainant may be one of hundreds or thousands of similarly situated customers). The commission does not have the budget or manpower necessary to attend and conduct depositions of so many complainants, many of whom may live great distances from Austin. Also, telephonic participation may be reasonable for one or two witnesses, but since slamming proceedings can involve hundreds of customers, telephonic participation potentially presents substantial and unreasonable logistical difficulties, for the customers, the commission, the carrier and the ALJ, relating to scheduling an order of presentation for each customer, their appropriate contact telephone number and the specific time each customer will appear. Therefore, the costs to the customer and to the commission of pursuing such alternatives to attendance at a slamming enforcement proceeding will generally far outweigh any benefit they may provide. Accordingly, the commission disagrees that either**

**of these methods of customer attendance will be reasonable in all enforcement proceedings related to slamming.**

**Moreover, carriers' due process concerns are not infringed by proposed subsection (h)(3). First, carriers may object and assert that one or more of the elements of APA §2001.081 have not been demonstrated by commission staff. Second, nothing in the proposed rule eliminates a carrier's ability to depose a customer who has submitted an affidavit or to seek compulsory attendance at the proceeding by that customer. Finally, a carrier may conduct discovery, depose, and cross-examine the commission's testifying expert about the basis for that expert's opinion, including the customer affidavits if such were relied upon by the expert.**

**The commission also notes that the content of customer affidavits is admissible through the testimony of the commission's staff expert. Pursuant to Texas Rules of Evidence 703 and 705, the staff expert may rely on customer affidavits as the basis for his or her testimony and may disclose on direct, or must disclose on cross, the facts or data, including those affidavits, that form the basis of the commission staff's opinion. Therefore, even if the customer affidavits are not admitted pursuant to APA §2001.081, those affidavits are properly the subject of the staff expert's testimony.**

**Based upon the comments, the commission modifies proposed subsection (h)(3) to eliminate the redundant reference relating to the applicability of the Texas Rules of Evidence to slamming proceedings. The commission adopts the proposed subsection with amendments appropriate to the elimination of that reference.**

AT&T also argued that the proposed modification to subsection (h)(4), deleting the "reckless" finding in certificate revocation proceedings, would create an invalid rule. AT&T stated that, pursuant to PURA §55.306, the commission must find that a telecommunications utility has both "repeatedly and recklessly" violated the commission's telecommunications utility selection rules to suspend, restrict, deny, or revoke a telecommunications utility's certificate. Reading "recklessly" out of the statutory requirements, AT&T asserted, would make the "proposed paragraph invalid." MCI concurred with these statements. During the public hearing, AT&T acknowledged that it had not considered this provision in the context of PURA §17.052. During the public hearing, AT&T and MCI suggested that PURA §55.306 controls in all prosecutions of alleged slamming events instead of PURA Chapter 17.

**The commission concludes that PURA, Chapters 17 and 55, provide alternative methods to prosecute telecommunications utilities for slamming and adds to the authority it specified for adopting the proposed amendments to this rule accordingly. Chapter 17 was added to the Texas Utilities Code as a new statute. Chapter 55 was added to the Texas Utilities Code from existing, but not codified, civil statutes. The Legislature added both statutes in the same legislation during the 76th Legislative Session in 1999. Therefore, giving both statutes the effect of their plain meaning, the commission concludes that both statutory provisions can be given their full meaning, but that existing subsection (h)(4) requires modification in order to do so. Therefore, the proposed rule is modified to clarify that a proceeding initiated pursuant to subsection (h)(4) may proceed under either Chapter 17 or Chapter 55, as appropriate. Therefore, proceedings through which the commission seeks to suspend or revoke a telecommunications utility's certificate may be brought under either Chapter 17 or Chapter 55, but proceedings through which the commission seeks to restrict**

**or deny a telecommunications utility's certificate may only be brought under Chapter 55. Accordingly, in actions brought pursuant to Chapter 17, the commission must demonstrate that a utility repeatedly violated statutory customer protections or commission rules, and in actions brought under Chapter 55 the commission must demonstrate that a utility has repeatedly and recklessly violated the commission's telecommunications utility selection rules.**

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

MCI recommended that the statement in subsection (i)(4), instructing customers to contact the commission if they believe that they were slammed, should only be provided to customers in the Welcome Package and on their first bill, but not on an ongoing basis. MCI also asserted that such notices serve no useful purpose and that the space on the bills could be used for more timely and useful customer information.

Verizon asserted that the customer rights notice in subsection (i)(3) is confusing and potentially misleading in that it fails to distinguish between a pre-slamming complaint and post-slamming determination remedies. Verizon suggested amending the customer rights notice to instruct a customer about how to file a formal slamming complaint, and about the remedies to which the customer is entitled when a slamming allegation is made, and that either the executing utility or the authorized utility can implement a carrier change to return the customer to its prior carrier; Verizon also stated that 47 C.F.R. §64.1190 does not require specific verification data, but instead allows the LEC to confirm appropriate verification data.

**The commission appreciates these comments, but notes that it did not propose any changes to this subsection. Accordingly, the commission declines to adopt any changes to subsection (i) at this time.**

*Subsection (j), Preferred telecommunications utility freezes*

SBC Texas requested revision of all rules that contain the commission's verification data requirement because such data may be inapplicable to certain business customers such as corporations or partnerships. SBC Texas contended that this comment applied to proposed rule subsections (j)(5)(B) and (C), (j)(7)(B) and (C), (j)(l3) and (14).

The OAG supported the proposed changes in this subsection requiring additional verification data.

Verizon disagreed with the proposed requirement to verify a customer's request to implement or lift a freeze using the customer's month and year of birth, mother's maiden name, or the last four digits of the customer's social security number. Verizon proposed that no changes be made to the existing rule regarding freeze verification. It argued that the FCC's rules do not require specific verification data, but 47 C.F.R. §64.1190 allows the local exchange company to confirm appropriate verification data. Further, Verizon stated that customers are already required to state their intent to lift a freeze during a three-way conference call (the customer, local exchange company and servicing telecommunications utility) just as they are required to do under the written and oral authorization options provided under subparagraphs (7)(A) and (B).

**The commission finds merit in the arguments raised by the commenters related to proposed subsection (j)(5)(B). Accordingly, the commission revises proposed subsection**

**(j)(5)(B) to specify that corporations and partnerships can provide their federal Employer Identification Number, or the last six digits thereof, and the name and job title of the authorized representative of the corporation or partnership as appropriate verification data. In making this modification to proposed subsection (j)(5)(B), the commenters' concerns related to proposed subsections (j)(5)(C), (j)(7)(B) and (j)(7)(C) should be rendered moot.**

**This revision continues to require specific verification information from residential customers. The commission determines that this information is designed to provide increased protection for Texas customers. The commission recognizes that this specific type of information may be difficult for submitting telecommunications utilities to obtain from certain customers such as corporations or partnerships, however, utilities are not absolved from obtaining and providing appropriate verification data from these customers. Appropriate verification data from such customers should allow the commission, in the event it receives a customer complaint, to ascertain that a duly authorized representative requested the carrier change and that the change was appropriately verified.**

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

The OAG supported the clarification in the proposed amendment to subsection (k)(1) relating to the notification process during customer acquisition through a sale or transfer of companies.

**The commission adopts the proposed amendment to subsection (k)(1) without modification.**

*Subsection (l), Complaints to the commission*

The OAG supported the proposed changes to subsection (l).

AT&T, SBC Texas, and Sprint asserted that to the extent subsection (l)(3) is intended to mimic the FCC's process, it should be amended to permit 30 days to respond. In their reply comments, MCI and TSTCI echoed the initial comments of Sprint, SBC Texas, and AT&T, relating to subsection (l), and stated that the proposed rule should permit carriers 30 calendar days to respond to a customer complaint submitted to the commission.

**The commission declines to change the deadline within which the company must respond to the commission about a customer complaint from 21 days to 30 days. This requirement has been in effect at the commission since October 2002, and was not proposed to be changed by the proposed rule. Moreover, FCC rules provide for a 30 day response, but those same rules permit states to impose more stringent requirements. Specifically, the FCC's rules (47 C.F.R. §64.1150(d)) require a telecommunications utility to provide proof of verification "not more than 30 days after notification of the complaint, *or such lesser time as is required by the state commission* if a matter is brought before a state commission…" (emphasis added). Also, pursuant to the commission's existing rules, §22.242(d), commission staff are required to attempt to resolve all complaints within 35 days of the date of receipt of the complaint. Unless carriers provide the required information significantly before the 30th day after the request, commission staff would not have sufficient time to resolve all complaints within the 35 day goal established by commission rule. Accordingly, the commission declines to modify the existing rule as proposed by some of the commenters.**

AT&T, MCI, SBC Texas, and Verizon urged the commission to create an exception to the 21-day requirement in order to avoid an automatic violation. These commenters stated that the combination of a deadline that may not be met due to "operational difficulties" and the imposition of an irrefutable presumption that an unauthorized change occurred would have the effect of denying carriers the ability to provide a defense in a significant percentage of informal complaints. Some commenters suggested that it *could* be possible to have valid authorization and verification, but be unable to obtain it from a third-party contractor, such as a third-party verifier, within the 21-day deadline. Accordingly, these commenters suggested the commission should adopt language that would provide carriers the ability to seek an extension of the 21-day requirement.

MCI and AT&T stated, at the public hearing, that the need to request such an extension would be rare. MCI did not specify how many slamming complaints it may not be able to respond to with appropriate authorization and verification data within the 21-day deadline, but stated that such occurrences currently "are very few and far between." Similarly, AT&T stated that it estimated such occurrences to be "in the single digits."

**The commission declines to create an exception to the proposed rule as suggested by some commenters. The commission did not recommend any changes to the existing 21-day deadline set forth in subsection (l)(2) and this subsection has been in effect since October 2002. As current commission practice, therefore, the commenters' anecdotal examples of various "hardships" that theoretically support their suggestion, which, if adopted, would only apply in rare instances, do not outweigh the public benefit of the current deadline.**

AT&T also argued that if subsection (l)(3) is intended to establish the occurrence of a violation for administrative penalties, and not merely intended to establish a violation of the 21-day rule itself, it exceeds the commission's authority under Texas Utilities Code, Subchapter K, Chapter 55, specifically §55.305. Section 55.305, AT&T notes, refers to Texas Utilities Code, Chapter 15, which sets forth a process through which a notice of violation ("NOV" also referred to as a Notice of Intent "NOI") is issued to a Respondent and which also describes the Respondent's alternatives to respond to, and address, the allegations in the NOV. Such alternatives, AT&T asserted, include a Respondent's opportunity to respond to the NOV, remedy the alleged violations, or request a hearing about the occurrence of the violation and/or the amount of the recommended penalty. Accordingly, AT&T concluded, the commission cannot make "findings" without an evidentiary hearing. In other words, AT&T asserted, there can be no ministerial "finding" of a violation for a Respondent's failure to produce proof of authorization and verification of that authorization within 21 days of the commission's request. AT&T stated that the commission cannot leap frog procedural and evidentiary requirements to find a carrier in violation of the verification requirements because to do so would deny Respondent's procedural due process rights. AT&T noted, however, that summary disposition pursuant to §22.182 may be an appropriate remedy to address a company's failure to produce evidence of authorization and verification within 21 days.

**The commission clarifies that a company's failure to respond within the time specified by this subsection establishes a violation of subsection (l)(2) (this section's "21-day rule") and also establishes a slam.**

**The intent of this portion of the proposed rule includes establishing the occurrence of a slam in the event a carrier fails or refuses to provide evidence of a valid switch within 21 days of the commission's request. In the commission's experience, utilities that have evidence of a valid service provider change can, and generally do, provide such information to the commission within 21 days. However, as the commission decided in Docket 20934, at some point it must be presumed that a company, who fails or refuses to provide evidence of a valid switch, must not have such evidence. In its comments during the public hearing, AT&T acknowledged that it likely did not have such information if it had failed to provide it within 30 days. Moreover, since this evidence is required to be maintained by the company in the regular course of business, and consists simply of a LOA or voice recording, it can be provided to the commission without imposing an unreasonable burden on the company.**

**Since the only two relevant issues in an enforcement hearing are (1) the occurrence of the violation, and (2) the appropriate amount of monetary penalties, the proposed rule effectively establishes the occurrence of the violation, *unless* the company presents, during the hearing, evidence that it did, in fact, provide evidence of a valid switch to the commission within the 21-day deadline. If the company did provide proof of a valid switch within the deadline, then the issue turns to the validity of the switch. To establish the occurrence of the violation, the commission frequently must rely upon evidence provided by the carrier during the commission's investigation into alleged slamming events. An unscrupulous carrier can hide behind a cloak of secrecy and, by failing to provide the documentation, thwart meaningful enforcement actions and obscure the extent of its culpable actions. The intent of this subsection, therefore, is to discourage unscrupulous**

**carriers from withholding relevant information from the commission. Accordingly, this subsection, combined with PURA §15.024(c), establishes the occurrence of violation.**

AT&T also stated that a Respondent's failure to provide the requested data within 21 days is, simply, a violation of the requirement to provide that data within 21 days and the commission "should not be spending the time and resources of itself or the industry in pursuing penalties if a carrier does not respond to a complaint within 21 days."

**The commission disagrees with AT&T's assertion that 21-day violations relating to company responses to customer complaints are not a worthwhile endeavor. On the contrary, it is through its enforcement of 21-day violations that the commission can ensure that companies provide timely responses to informal customer complaints. Accordingly, the commission declines to modify this 21-day requirement in this subsection.**

MCI suggested the proposed 21-day deadline should be changed to 30 days because verification information is typically kept by the third-party verifier, who is under a contractual obligation to provide the information. Occasionally, MCI stated, there is a glitch that prevents the transmission of that information to the carrier in a timely manner

**The commission is not persuaded that the 21-day deadline imposes an unreasonable burden on the utilities. Information relating to the company's authorization and verification of that authorization must be kept in the regular course of business, by either the company or an entity, such as an independent third-party verifier, that is subject to contractual obligations with the company. The commission disagrees, therefore, that production of such information would impose an unreasonable burden on the company.**

**The company can produce its own records and take appropriate actions to ensure it obtains information from third-party entities. Accordingly, the commission finds the 21-day deadline is consistent with the FCC's rules, other commission rules including §25.485(d) and §26.30(b) (both relating to the informal complaint process) and appropriately balances the commission's interest in protecting the public interest with the burden imposed on the utilities.**

**Based upon the comments to, and discussion about, subsection (l), the commission moves subsection (l)(3) to subsection (h)(1) as new subparagraph (h)(1)(C). The commission also modifies the text of that subsection to refer to the appropriate subsections of this rule necessitated by that move.**

*Subsection (m), Additional requirements for changes involving certain telecommunications utilities*

MCI stated that a change to subsection (m)(4)(A) (notification requirements for change in LSP) is necessary to reflect in the UNE-P environment, the current, accurate, and only technical means of achieving the notification.

**The commission appreciates these comments, but notes that it did not propose any changes to this subsection. Accordingly, the commission declines to adopt any changes to subsection (m) at this time.**

*Subsection (n), Reporting requirement*

MCI, TSTCI, and the OAG each supported the commission's elimination of the requirement to file semiannual slamming reports with the commission. Each of these parties noted that this proposed change is consistent with changes in federal regulations.

**The commission agrees with these comments and adopts the proposed amendment to this subsection without modification.**

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

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998 and Supplement 2004) (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 §§17.001-.102, which grants the commission with the authority to make and enforce rules relating to protecting customers from the unauthorized switching of their telecommunications provider, PURA §55.302 which grants the commission the authority to adopt and enforce rules to implement the provisions of PURA Chapter 55, Subchapter K, Selection of Telecommunications Utilities; and PURA §64.001 which confers on the commission authority to adopt and enforce rules to protect customers from fraudulent, unfair, misleading, deceptive, or anticompetitive practices.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.001-.102, 55.301-.308 and 64.001-.004.

**§26.130. Selection of Telecommunications Utilities.**

(a) **Purpose and Application.**

(1) **Purpose.** The provisions of this section are intended to ensure that all customers in this state are protected from an unauthorized change in a customer's local or long-distance telecommunications utility.

(2) **Application.** This section, including any references in this section to requirements in 47 Code of Federal Regulations (C.F.R.) Subpart K (entitled "Changing Long Distance Service"), applies to all "telecommunications utilities," as that term is defined in §26.5 of this title (relating to Definitions). This section does not apply to an unauthorized charge unrelated to a change in preferred telecommunications utility which is addressed in §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")).

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

(1) **Authorized telecommunications utility** — Any telecommunications utility that submits a change request, after obtaining customer authorization with verification, in accordance with the requirements of this section.

(2) **Customer** — Any person, including the person's spouse, in whose name telephone service is billed, including individuals, governmental units at all levels of government, corporate entities, and any other entity with legal capacity to request a change in local service and/or telecommunications utilities.

(3) **Executing telecommunications utility** — Any telecommunications utility that effects a request that a customer's preferred telecommunications utility be changed. A telecommunications utility may be treated as an executing telecommunications utility, however, if it is responsible for any unreasonable delays in the execution of telecommunications utility changes or for the execution of unauthorized telecommunications utility changes, including fraudulent authorizations.

(4) **Submitting telecommunications utility** — Any telecommunications utility that requests on behalf of a customer that the customer's preferred telecommunications utility be changed.

(5) **Unauthorized telecommunications utility** — Any telecommunications utility that submits a change request that is not in accordance with the requirements of this section.

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

(1) **Changes by a telecommunications utility.** No telecommunications utility shall submit or execute a change on the behalf of a customer in the customer's selection of a provider of telecommunications service except in accordance with this section. Before a change order is processed by the executing telecommunications utility, the submitting telecommunications utility must obtain authorization from the customer that such change is desired for each affected telephone line(s) and ensure that verification of the authorization is obtained in accordance with 47 C.F.R. Subpart K. In the case of a change by written solicitation, the submitting telecommunications utility must obtain verification as specified in 47 C.F.R.

Subpart K, and subsection (d) of this section, relating to "Letters of Agency." A change order must be verified by one of the following methods:

(A) Written or electronically signed authorization from the customer in a form that meets the requirements of subsection (d) of this section. A customer shall be provided the option of using another authorization method in lieu of an electronically signed authorization.

(B) Electronic authorization placed from the telephone number which is the subject of the change order except in exchanges where automatic recording of the automatic number identification (ANI) from the local switching system is not technically possible. The submitting telecommunications utility must:

(i) ensure that the electronic authorization confirms the information described in subsection (d)(3) of this section; and

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

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

(i) The customer's authorization shall be given to an appropriately qualified and independent third party that obtains appropriate verification data including at a minimum, but not limited to, the customer's month and year of birth, mother's maiden name, or the last four digits of the

customer's social security number. A corporation or partnership may provide its federal Employer Identification Number, or last six digits thereof, and the name and job title of the authorized representative for the corporation or partnership to satisfy this subparagraph.

(ii) The customer's authorization and the customer's verification of authorization shall be electronically recorded in their entirety on audio tape, a wave sound file, or other recording device that is compatible with the commission's equipment.

(iii) The recordings shall be dated and include clear and conspicuous confirmation that the customer authorized the change in telephone service provider.

(iv) The third party verification shall elicit, at a minimum, the identity of the customer, confirmation that the person on the call is authorized to make the change in service, the name(s) of the telecommunications utilities affected by the change (not including the name of the displaced carrier), the telephone number(s) to be switched, and the type of service involved. The third party verifier shall not market or advertise the telecommunications utility's services by providing additional information, including information regarding preferred carrier freeze procedures.

(v) The third party verification shall be conducted in the same language used in the sales transaction.

(vi) Automated systems shall provide customers the option of speaking with a live person at any time during the call.

(vii) A telecommunications utility or its sales representative initiating a three-way call or a call through an automated verification system shall drop off the call once a three-way connection with the third party verifier has been established unless:

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

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

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

(ix) The independent third party shall:

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

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

(III) operate in a location physically separate from the telecommunications utility and the telecommunications utility's marketing agent.

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

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

(1) The LOA shall be a separate or easily separable document or located on a separate screen or webpage containing only the authorization and verification 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 fully completed, signed and dated by the customer requesting the

telecommunications utility change. An LOA submitted with an electronically signed authorization shall include the consumer disclosures required by the *Electronic Signatures in Global and National Commerce Act* §101(c).

(2) The LOA shall not be combined with inducements of any kind on the same document, screen, or webpage except that the LOA may be combined with a check as specified in subparagraphs (A) and (B) of this paragraph:

(A) An LOA combined with a check may contain only the language set out in paragraph (3) of this subsection, and the necessary information to make the check a negotiable instrument.

(B) A check combined with an LOA shall not contain any promotional language or material but shall contain on the front and back of the check in easily readable, bold-faced type near the signature line, a notice similar in content to the following: "By signing this check, I am authorizing (name of the telecommunications utility) to be my new telephone service provider for (the type of service that will be provided)."

(3) LOA language.

(A) At a minimum, the LOA shall be clearly legible, printed in a text not smaller than 12-point type, and shall contain clear and unambiguous language that includes and confirms:

(i) the customer's billing name and address and each telephone number to be covered by the preferred telecommunications utility change order;

(ii) the decision to change preferred carrier from the current telecommunications utility to the new telecommunications utility;

(iii) that the customer designates (insert name of the new telecommunications utility) to act as the customer's agent for the preferred carrier change;

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

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

(vi) appropriate verification data, including at a minimum, but not limited to, the customer's month and year of birth, mother's maiden name, or the last four digits of the customer's social security number. A corporation or partnership may provide a federal Employer Identification Number, or last six digits thereof, and the name and job title of the authorized representative of the corporation or partnership to satisfy the requirements of this subparagraph.

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

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

Customer billing name: _____

Customer billing address: _____

Customer street address: _____

City, state, zip code: _____

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

_____

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

_____

Relationship to customer: _____

Telephone number of individual authorized to act for customer:

_____

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

_____ By initialing here and signing below, I am authorizing (insert name of new telecommunications utility) to become my new telephone service provider for **local** telephone service. I authorize (insert name of new

telecommunications utility) to act as my agent to make this change happen, and direct my (current telecommunications utility) to work with the new provider to make the change.

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

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

I understand that I may be required to pay a one-time charge to switch providers and may consult with the carrier as to whether the charge will apply. If I later wish to return to my current telephone company, I may be required to pay a reconnection charge. I also understand that my new telephone company

may have different calling areas, rates, and charges than my current telephone company, and I am willing to be billed accordingly.

Telephone number(s) to be changed: _____

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

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

Signed:_____ Date _____

(4) The LOA shall not require or suggest that a customer take some action in order to retain the customer's current telecommunications utility.

(5) If any portion of an LOA is translated into another language, then all portions of the LOA must be translated into that language. Every LOA must be translated into the same language as promotional materials, oral descriptions or instructions provided with the LOA.

(6) The submitting telecommunications utility shall submit a change order on behalf of a customer within 60 days after obtaining a written or electronically signed LOA from the customer except LOAs relating to multi-line and/or multi-location

business customers that have entered into negotiated agreements with a telecommunications utility to add presubscribed lines to their business locations during the course of a term agreement shall be valid for the period specified in the term agreement.

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

(1) When a customer informs an executing telecommunications utility of an alleged unauthorized telecommunications utility change, the executing telecommunications utility shall immediately notify both the authorized and alleged unauthorized telecommunications utility of the incident.

(2) Any telecommunications utility, executing, authorized, or alleged unauthorized, that is informed of an alleged unauthorized telecommunications utility change shall direct the customer to contact the Public Utility Commission of Texas for resolution of the complaint.

(3) The alleged unauthorized telecommunications utility shall remove all unpaid charges pending a determination of whether an unauthorized change occurred.

(4) The alleged unauthorized telecommunications utility may challenge a complainant's allegation of an unauthorized change by notifying the complainant in writing to file a complaint with the Public Utility Commission of Texas within 30 days after the customer's assertion of an unauthorized switch to the alleged unauthorized telecommunications utility. If the complainant does not file a complaint within 30 days, the unpaid charges may be reinstated.

(5) The alleged unauthorized telecommunications utility shall take all actions within its control to facilitate the customer's prompt return to the original telecommunications utility within three business days of the customer's request.

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

(f) **Unauthorized changes.**

(1) **Responsibilities of the telecommunications utility that initiated the change.** If a customer's telecommunications utility is changed without verification consistent with this section, the telecommunications utility that initiated the unauthorized change shall:

(A) take all actions within its control to facilitate the customer's prompt return to the original telecommunications utility within three business days of the customer's request;

(B) pay all charges associated with returning the customer to the original telecommunications utility within five business days of the customer's request;

(C) provide all billing records to the original telecommunications utility related to the unauthorized change of services within ten business days of the customer's request;

(D) pay, within 30 business days of the customer's request, the original telecommunications utility any amount paid to it by the customer that would

have been paid to the original telecommunications utility if the unauthorized change had not occurred;

(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;

(F) remove all unpaid charges; and

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

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

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

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

(C) maintain a record of customers that experienced an unauthorized change in telecommunications utilities that contains:

(i) the name of the telecommunications utility that initiated the unauthorized change;

(ii) the telephone number(s) affected by the unauthorized change;

(iii) the date the customer asked the telecommunications utility that made the unauthorized change to return the customer to the original telecommunications utility; and

(iv) the date the customer was returned to the original telecommunications utility; and

(D) not bill the customer for any charges incurred during the first 30 days after the unauthorized change, but may bill the customer for unpaid charges incurred after the first 30 days based on what it would have charged if the unauthorized change had not occurred.

(g) **Notice of customer rights.**

(1) Each telecommunications utility shall make available to its customers the notice set out in paragraph (3) of this subsection.

(2) Each notice provided under paragraph (5)(A) of this subsection shall contain the name, address and telephone numbers where a customer can contact the telecommunications utility.

(3) **Customer notice.** The notice shall state:

**Selecting a Telephone Company -- Your Rights as a Customer**

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

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

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

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

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

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

(4) The customer notice requirements in paragraph (3) of this subsection may be combined with the notice requirements of §26.32(g)(1) and (2) of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")) if all of the information required by each is in the combined notice.

(5) **Language, distribution and timing of notice**.

(A) Telecommunications utilities shall send the notice to new customers at the time service is initiated, and upon customer request.

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

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

(h) **Compliance and enforcement.**

(1) **Records of customer verifications and unauthorized changes.**

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

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

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

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

(3) **Evidence.** Evidence supplied by the customer that meets the standards set out in Texas Government Code §2001.081, including, but not limited to, one or more affidavits from a customer challenging the change, is admissible in a proceeding to enforce the provisions of this section.

(4) **Certificate revocation.** The commission may suspend, restrict, deny, or revoke the registration or certificate, including an amended certificate, of a telecommunications utility, thereby denying the telecommunications utility the right

to provide service in this state, pursuant to the provisions of either PURA §17.052 or PURA §55.306.

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

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

(1) The name and telephone number of the telecommunications utility providing local exchange service if the bill is for local exchange service.

(2) The name and telephone number of the primary interexchange carrier if the bill is for interexchange service.

(3) The name and telephone number of the local exchange and interexchange providers if the local exchange provider is billing for the interexchange carrier. The commission may, for good cause, waive this requirement in exchanges served by incumbent local exchange companies serving 31,000 access lines or less.

(4) A statement that customers who believe they have been slammed may contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1 (888) 782-8477, fax: (512) 936-7003, e-

mail address: customer@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. This statement may be combined with the statement requirements of §26.32(g)(4) of this title if all of the information required by each is in the combined statement.

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

(1) **Purpose**. A preferred telecommunications utility freeze ("freeze") prevents a change in a customer's preferred telecommunications utility selection unless the customer gives consent to the local exchange company that implemented the freeze.

(2) **Nondiscrimination.** All local exchange companies that offer freezes shall offer freezes on a nondiscriminatory basis to all customers regardless of the customer's telecommunications utility selection except for local telephone service.

(3) **Type of service**. Customer information on freezes shall clearly distinguish between intraLATA and interLATA telecommunications services. The local exchange company offering a freeze shall obtain separate authorization for each service for which a freeze is requested.

(4) **Freeze information**. All information provided by a telecommunications utility about freezes shall have the sole purpose of educating customers and providing information in a neutral way to allow the customer to make an informed decision, and shall not market or induce the customer to request a freeze. The freeze information provided to customers shall include:

(A) a clear, neutral explanation of what a freeze is and what services are subject to a freeze;

(B) instructions on lifting a freeze that make it clear that these steps are in addition to required verification for a change in preferred telecommunications utility;

(C) an explanation that the customer will be unable to make a change in telecommunications utility selection unless the customer lifts the freeze, including information describing the specific procedures by which the freeze may be lifted; and

(D) a statement that there is no charge to the customer to impose or lift a freeze.

(5) **Freeze verification**. A local exchange company shall not implement a freeze unless the customer's request is verified using one of the following procedures:

(A) A written and signed or electronically signed authorization that meets the requirements of paragraph (6) of this subsection.

(B) An electronic authorization placed from the telephone number on which a freeze is to be imposed. The electronic authorization shall confirm appropriate verification data including, but not limited to, the customer's month and year of birth, mother's maiden name, or the last four digits of the customer's social security number and the information required in paragraph (6)(G) of this subsection. A corporation or partnership may provide a federal Employer Identification Number, or last six digits thereof, and the name and job title of the authorized representative of the corporation or partnership to satisfy the requirements of this subparagraph. The local exchange company shall establish one or more toll-free telephone numbers exclusively for this purpose. Calls to the number(s) will connect the customer to a voice response unit or similar mechanism that records the information including the originating ANI.

(C) An appropriately qualified independent third party obtains the customer's oral authorization to submit the freeze that includes and confirms appropriate verification data as required by subparagraph (B) of this paragraph. This shall include clear and conspicuous confirmation that the customer authorized a freeze. The independent third party shall:

(i) not be owned, managed, or directly controlled by the local exchange company or the local exchange company's marketing agent;

(ii) not have financial incentive to confirm freeze requests; and

(iii) operate in a location physically separate from the local exchange company and its marketing agent.

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

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

(A) be a separate or easily separable document with the sole purpose of imposing a freeze;

(B) be signed and dated by the customer;

(C) not be combined with inducements of any kind;

(D) be completely translated into another language if any portion is translated;

(E) be translated into the same language as any educational materials, oral descriptions, or instructions provided with the written freeze authorization;

(F) be printed with readable type of sufficient size to be clearly legible; and

(G) contain clear and unambiguous language that confirms:

(i) the customer's name, address, and telephone number(s) to be covered by the freeze;

(ii) the decision to impose a freeze on the telephone number(s) and the particular service with a separate statement for each service to be frozen;

(iii) that the customer understands that a change in telecommunications utility cannot be made unless the customer lifts the freeze; and

(iv) that the customer understands that there is no charge for imposing or lifting a freeze.

(7) **Lifting freezes**. A local exchange company that executes a freeze request shall allow customers to lift a freeze by:

(A) written and signed or electronically signed authorization stating the customer's intent to lift a freeze;

(B) oral authorization stating an intent to lift a freeze confirmed by the local exchange company with appropriate confirmation verification data as indicated in paragraph (5)(B) of this subsection;

(C) a three-way conference call with the local exchange company, the telecommunications utility that will provide the service, and the customer with appropriate confirmation verification data from the customer as indicated in paragraph (5)(B) of this subsection; or

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

(8) **No customer charge.** The customer shall not be charged for imposing or lifting a freeze.

(9) **Local service freeze prohibition.** A local exchange company shall not impose a freeze on local telephone service.

(10) **Marketing prohibition.** A local exchange company shall not initiate any marketing of its services during the process of implementing or lifting a freeze.

(11) **Freeze records retention**. A local exchange company shall maintain records of all freezes and verifications for a period of 24 months and shall provide these records to customers and to the commission staff upon request.

(12) **Suggested freeze information language.** Telecommunications utilities that inform customers about freezes may use the following language. Other versions may be used, but shall comply with all of the requirements of paragraph (4) of this subsection.

**Preferred Telephone Company Freeze**

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

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

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

**Freeze Authorization Form**

Customer billing name: _____

Customer service address: _____

City, state, zip code: _____

Customer mailing address: _____

City, state, zip code: _____

Telephone number (1): _____

Telephone number (2): _____

Telephone number (3): _____

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

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

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

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

Current preferred local toll company: _____

Customer's signature: _____

Date: _____

Customer's printed name: _____

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

Current preferred long distance company: _____

Customer's signature: _____

Date: _____

Customer's printed name: _____

Mail this form to:

(Name of local telephone company)

(Address)

Or FAX to: (FAX number)

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

**Freeze Lift Form**

Customer billing name: _____

Customer service address: _____

City, state, zip code: _____

Customer mailing address: _____

City, state, zip code: _____

Telephone number (1): _____

Telephone number (2): _____

Telephone number (3): _____

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

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

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

Current preferred local toll company: _____

Customer's signature: _____

Date: _____

Customer's printed name: _____

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

Current preferred long distance company: _____

Customer's signature: _____

Date: _____

Customer's printed name: _____

Mail this form to:

(Name of local telephone company)

(Address)

Or FAX to: (FAX number)

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

(1) A telecommunications utility may acquire, through a sale or transfer, either part or all of another telecommunications utility's customer base without obtaining each customer's authorization and verification in accordance with subsection (c)(1) of this section, provided that the acquiring utility complies with this section. Any telecommunications utility that will acquire customers from another telecommunications utility that will no longer provide service due to acquisition, merger, bankruptcy or any other reason, shall provide notice to every affected customer. The notice shall be in a billing insert or separate mailing at least 30 days prior to the transfer of any customer. If legal or regulatory constraints prevent sending the notice at least 30 days prior to the transfer, the notice shall be sent promptly after all legal and regulatory conditions are met. The notice shall:

(A) identify the current and acquiring telecommunications utilities;

(B) explain why the customer will not be able to remain with the current telecommunications utility;

(C) explain that the customer has a choice of selecting a service provider and may select the acquiring telecommunications utility or any other telecommunications utility and that the customer may incur a charge if the customer selects another telecommunications utility;

(D) explain that if the customer wants another telecommunications utility, the customer should contact that telecommunications utility or the local telephone company;

(E) explain the time frame for the customer to make a selection and what will happen if the customer makes no selection;

(F) identify the effective date that customers will be transferred to the acquiring telecommunications utility;

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

(H) explain that the customer will not incur any charges associated with the transfer;

(I) explain whether the acquiring carrier will be responsible for handling complaints against the transferring carrier; and

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

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

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

(1) **Customer complaint information.** CPD may request, at a minimum, the following information:

(A) the customer's name, address, and telephone number;

(B) a brief description of the facts of the complaint;

(C) a copy of the customer's and spouse's legal signature; and

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

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

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

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

(3) **CPD investigation.** CPD shall review all of the information related to the complaint and make a determination on whether or not the telecommunications utility complied with the requirements of this section. CPD shall inform the complainant and the alleged unauthorized telecommunications utility of the results of the investigation and identify any additional corrective actions that may be required. CPD shall also inform, if known, the authorized telecommunications utility if there was an unauthorized change in service.

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

(1) **Definitions.** The following words and terms, when used in this subsection, shall have the following meanings unless the context clearly indicates otherwise.

(A) Local service provider (LSP) — the certified telecommunications utility chosen by a customer to provide local exchange service to that customer.

(B) Old local service provider (old LSP) — The local service provider immediately preceding the change to a new local service provider.

(C) New local service provider (new LSP) — The local service provider from which the customer requests new service.

(D) Primary interexchange carrier (PIC) — the provider chosen by a customer to carry that customer's toll calls. For the purposes of this subsection, any reference to primary interexchange carrier refers to both interLATA and intraLATA toll carriers.

(E) Old primary interexchange carrier (old PIC) — The primary interexchange carrier immediately preceding the change to a new primary interexchange carrier.

(F) New primary interexchange carrier (new PIC) — The primary interexchange carrier from which the customer requests new service or continuing service after changing local service providers.

(G) Change execution — means the date the LSP initially has knowledge of the PIC or LSP change in the switch.

(2) **Contents and delivery of notice required by paragraphs (3) and (4) of this subsection.**

(A) Notice shall contain at least:

(i) the effective date of the change in the switch;

(ii) the customer's billing name, address, and number; and

(iii) any other information necessary to implement the change.

(B) If an LSP does not otherwise have the appropriate contact information for notifying a PIC, then the LSP's notification to the PIC shall be deemed complete upon delivery of the notice to the PIC's address, facsimile number or e-mail address listed in the appropriate Utility Directory maintained by the commission.

(3) **Notification requirements for change in PIC only.** The LSP shall notify the old PIC and the new PIC of the PIC change within five business days of the change execution.

(A) The new PIC shall initiate billing the customer for presubscribed services within five business days after receipt of such notice.

(B) The old PIC shall discontinue billing the customer for presubscribed services within five business days after receipt of such notice.

(4) **Notification requirements for change in LSP.**

(A) Requirement of the new LSP to notify the old LSP. Within five business days of the change execution, the new LSP shall notify the old LSP of the change in the customer's LSP.

(B) Requirement of the new LSP to notify the new PIC. Within five business days of the change execution, the new LSP shall notify the new PIC of the customer's selection of such PIC as the customer's PIC.

(C) Requirement of the old LSP to notify the old PIC. Within five business days of the old LSP's receipt of notice pursuant to subparagraph (A) of this paragraph,

the old LSP shall notify the old PIC that the old LSP is no longer the customer's LSP.

(5) **Requirements of the new PIC to initiate billing customer.** If the new PIC receives notice pursuant to paragraph (4)(B) of this subsection, within five business days after receipt of such notice, the new PIC shall initiate billing the customer for presubscribed services.

(6) **Requirements of the old PIC to discontinue billing customer.** If the old PIC receives notice pursuant to paragraph (4)(C) of this subsection that the old LSP is no longer the customer's LSP, the old PIC shall discontinue billing the customer for presubscribed services within seven business days after receipt of such notice, unless the new LSP notifies the old PIC that it is the new PIC pursuant to paragraph (4)(B) of this subsection.

(7) Compliance with this subsection is required by January 1, 2003.

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 _____ DAY OF _____ 2004.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

_____

**JULIE PARSLEY, COMMISSIONER**

_____

**PAUL HUDSON, CHAIRMAN**