

**PROJECT NO. 39840**

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

**ORDER ADOPTING AMENDMENT TO §26.130  
AS APPROVED AT THE JANUARY 26, 2012 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §26.130, relating to Selection of Telecommunications Utilities, with no change to the proposed text as published in the November 25, 2011 issue of the *Texas Register* (36 TexReg 7954). The purpose of the amendment is to clarify how a customer's identity can be verified for purposes of changing telecommunications utility.

The commission received comments from Momentum Telecom, Inc. (Momentum) and Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T Texas).

Momentum and AT&T Texas supported the amendment as proposed. Momentum and AT&T Texas stated that the amendment brings the rule into conformity with rules of the Federal Communications Commission (FCC) and all other states. Momentum commented that it will allow telecommunications service providers to use a single method of customer verification nationwide, and that this uniformity will allow telecommunication service providers to simplify operations and may reduce costs for training and marketing while having no negative impact on Texas consumers. AT&T Texas stated that this method of customer verification is no less accurate than what was required under the old rule, and has not resulted in higher rates of slamming in other states where it is used.

***Commission Response***

The commission adopts the amendment as proposed.

The amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011), which provides authority to the commission to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §§17.102, 55.302, and 64.102, which require the commission to ensure that customers are protected from deceptive practices employed in obtaining authorizations of service and in the verification of change orders.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.102, 55.302, and 64.102.

**§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, the customer's month and day

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, the customer’s month and day 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 year of birth, the customer’s month and day 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 your authorized telecommunications provider (your original provider) and advising the company that you have been switched from its service without appropriate authorization. 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](mailto: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 (1) 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 (1) 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](mailto: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, the customer's month and day 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.

- (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, the customer's month and day 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, the customer's month and day 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.

(1) **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.

This agency hereby certifies that the adoption 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 no changes to the text as proposed.

**SIGNED AT AUSTIN, TEXAS on the \_\_\_\_\_ day of \_\_\_\_\_ 2012.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

\_\_\_\_\_  
**DONNA L. NELSON, CHAIRMAN**

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**KENNETH W. ANDERSON, JR., COMMISSIONER**

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**ROLANDO PABLOS, COMMISSIONER**