

**PROJECT NO. 24626**

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

**ORDER ADOPTING AN AMENDMENT TO §26.130,  
AS APPROVED AT THE MAY 23, 2002 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §26.130 relating to Selection of Telecommunications Utilities with changes to the proposed text as published in the February 15, 2002 *Texas Register* (27 TexReg 1062). This rulemaking is required by the commission's Order in Project Number 23375, *Petition of Texas Statewide Telephone Cooperative, Inc. to Amend Substantive Rule §26.130(f) Regarding Inconsistencies Between Federal and State Rules*, issued on February 8, 2001. The amendment is necessary to implement additional requirements adopted by the Federal Communications Commission (FCC) after the current §26.130 was adopted, to enhance consistency with FCC requirements, and to make administrative corrections. This amendment was adopted under Project Number 24626.

The amendment:

- (1) updates references to FCC regulations;
- (2) adds electronically signed letter of agency (LOA) as a verification method;
- (3) requires that customers be provided the option of using another authorization method in lieu of an electronically signed authorization;
- (4) requires that a telecommunications utility submit a change order within no more than 60 days after obtaining verification from the customer;

- (5) adds FCC provisions to the minimum requirements for third party verification;
- (6) adds FCC requirements related to the notification of an alleged unauthorized change;
- (7) adds FCC requirements related to customer notice involving transferring customers; and
- (8) adds a requirement to provide FCC slamming reports containing only Texas-specific data.

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

The commission received comments on the proposed amendment from MCI Telecommunications, Inc. (MCI), AT&T Communications of Texas, L.P. (AT&T), Texas Statewide Telephone Cooperative, Inc. (TSTCI), Southwestern Bell Telephone, L.P., doing business as Southwestern Bell Telephone Company (SWBT), Verizon Southwest (Verizon), and the Office of the Attorney General of Texas (OAG). The commission also received reply comments from MCI, AT&T, SWBT, Verizon, OAG, and Consumers Union.

A public hearing on the proposed amendment was held at the commission offices on April 17, 2002, at 9:30 a.m. Representatives from MCI, AT&T, SWBT, OAG, TSTCI, Verizon, Sprint Communications Company L.P., and John Staurulakis Incorporated participated in the public hearing.

*General Comments*

TSTCI expressed its appreciation of the commission's efforts to amend its rules to mirror the FCC's rules and supported the proposed amendment as published. TSTCI indicated that the new rule is a very positive development for Texas telecommunications consumers and providers. OAG commended the commission for making its slamming rule even more generally protective of customers and provided specific support for several proposed changes to the current rule related to naming the telecommunications utilities affected, removing all unpaid charges, submitting change orders within 60 days after verification, and requiring that the LOA be located on a separate screen or webpage. Consumers Union supported the amended rule as published and the comments of the OAG. Consumers Union further commented that slamming continues to be a problem in our state and that the commission should adopt and enforce a rule that is in the best interest of Texas consumers, rather than limit itself to the terms of the federal rule.

AT&T commended the commission for some laudable attempts to harmonize the Texas rules with the FCC's rules and expressed appreciation for including a number of its recommendations in the commission's proposed amendment. However, AT&T pointed out that certain inconsistencies with the FCC's rules still exist and proposed several changes to the proposed amendment designed to produce rules that would be consistent with the FCC's rules — reasonable, efficient, and strike the right balance between benefits and burdens. Similarly, SWBT stated that the commission incorporated several suggestions in the proposed amendment bringing the rule more in line with federal rules, but indicated that further changes were required

to provide more consistency. MCI stated its appreciation for the consideration given to its previous suggested revisions but reiterated several concerns with the proposed amendment.

The commission appreciates the inputs to this rulemaking process from all of the parties at the workshop in November 2001, after publication of the proposed amendment, and at the public hearing in April 2002. The commission included several recommendations in developing the proposed amendment and adopts additional recommendations as indicated later in this preamble. The adopted amendment is based on the following considerations: ensuring customer protection while fostering competition in providing telecommunications services; minimizing administrative requirements and cost; ensuring compliance with all requirements of the Public Utility Regulatory Act (PURA); and enhancing consistency with current applicable FCC rules.

As the commission indicated in Project Number 23375, 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 and has stated that they will not interfere with the state's ability to adopt more stringent regulations, that they must work hand-in-hand with the states to combat slamming, and that states have valuable insight into slamming problems in their respective locales.

*Subsection (b), Definitions*

AT&T, SWBT, MCI, and Verizon recommended revising the definition of "customer" in proposed subsection (b)(2) to more closely mirror the FCC's definition of "subscriber" to

recognize that the customer may authorize someone to act on his/her behalf. The parties indicated that the current Texas rule limits the definition of a person who may authorize a change in residential carrier selection to either the account holder or the account holder's spouse, that the proposed expansion of the definition would promote customer choice and competition without increasing slamming, and that their proposal is consistent with the FCC definition and rationale.

AT&T stated that it appears that the commission's definition for "customer" in this rule was taken from PURA §64.002(4), which explicitly relates to Chapter 64, Customer Protection, only, and most specifically to the anti-cramming measures that the Legislature placed in that chapter. AT&T disagreed that the definition in Chapter 64 is also appropriate in the slamming context. AT&T pointed out that Chapter 64 was added during the 1999 legislative session, and Chapter 55, Subchapter K (regarding Selection of Telecommunications Utilities) was also amended during that session, yet the Legislature did not adopt a definition of "customer" for slamming.

The commission does not agree with expanding the definition of "customer." The commission considered this issue during the previous amendment to this rule in Project Number 21419, *Amendments to §26.130 Regarding Customer's Right to Choice (Slamming) (PURA Section 17.004(a)(5) – SB 86)*. The definition in subsection (b)(2) already includes a spouse, is consistent with the definition used by the commission since it was granted jurisdiction over slamming in 1997, and is consistent with the definition used for cramming in §26.32, Protection Against Unauthorized Billing Charges ("Cramming"). The commission believes that expanding the current definition would result in reduced carrier safeguards and lead to an increase in

slamming. Expansion of the definition would not promote greater customer choice because it would result in additional switches in a customer's service caused by unauthorized persons.

MCI recommended adding language used in the FCC definition to the definition of "executing telecommunications utility" in proposed subsection (b)(3).

The commission agrees with MCI and adds the language to proposed subsection (b)(3).

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

AT&T opposed the requirement in proposed subsection (c)(1) that makes it mandatory for a submitting telecommunications utility to submit a change order within 60 days after obtaining verification from the customer. AT&T commented that a utility may not submit an order because service cannot otherwise be provided (*e.g.*, no facilities in the area at the time, customer fails to submit the required deposit, etc.). AT&T stated that because it appears that the commission's proposed requirement is based on a similar requirement in the FCC's rules, at a minimum the Texas requirement should also be limited to written or electronic verifications, as the FCC's rule is so limited. AT&T further indicated that there is no need for such a restriction on authorizations verified by third party verification (TPV) or other forms of verification and that this requirement should not be applied to business customers. AT&T proposed that, at a minimum, the proposed rule should be modified to reflect that an initial, or blanket, authorization may be extended by the customer to cover a period beyond the 60 days contemplated by the rule.

MCI agreed with AT&T's comments and recommended that the requirement to submit a change order within 60 days be limited to written or electronic verifications and to residential customers.

OAG supported proposed subsection (c)(1). In its reply comments, SWBT agreed with the commission and OAG that carriers should submit change orders within 60 days. SWBT stated that having a definite and limited time period will protect consumers by preventing problems with "stale" orders that may no longer be active and urged the commission to keep the 60-day period intact.

The commission agrees with OAG and SWBT and makes no changes to proposed subsection (c)(1). The commission recognizes that the FCC's 60-day limitation is included only in the section for letters of agency. However, the underlying purpose of this requirement, timely submission of change orders, applies regardless of the verification method used by a carrier to confirm a switch in service provider.

AT&T supported the commission's proposed subsection (c)(1)(C)(ii) to allow recorded verifications to be provided via a wave sound file. AT&T also recommended that the rule permit the use of CD ROMs or other similar technically compatible devices. AT&T stated that if the commission has the technical capability to access the data, then the rule should permit flexibility in the carrier's use of recording medium. Verizon indicated that it did not oppose AT&T's proposal as long as the recording medium does not burden the carrier receiving the TPV. Carriers receiving the TPV should not be forced to purchase additional equipment as a result of the recording medium used in the TPV process.

The commission finds merit in AT&T's recommendation to allow other devices to record third party verifications. The commission shares Verizon's concern about requiring carriers to purchase additional equipment. The commission does not wish to require specific devices or hinder the use of advanced technological recording devices used to record TPVs. However, TPV recordings submitted to the commission as part of a complaint investigation must be in a recorded medium that is compatible with the commission's equipment. Accordingly, the commission revises proposed subsection (c)(1)(C)(ii) to allow other recording devices that are compatible with the commission's equipment.

AT&T opposed the requirement in proposed subsection (c)(1)(C)(iv) and in proposed subsection (d)(3)(B), to elicit the names of the telecommunications utilities affected by the change. This was not previously a TPV requirement and AT&T saw no reason to add it now. AT&T stated it believes that the process of changing carriers should be easy and convenient for customers. Customers should not be subjected to a rejection of their attempt to switch carriers merely because they do not recall the name of the carrier at the time the TPV call is made. Further, the requirement to elicit this information does nothing to improve the verification process since neither the submitting carrier nor the TPV agent has access to information that would indicate whether or not the customer has correctly identified the "current telecommunications utility." It should be sufficient that the customer indicates an affirmative decision to choose the new carrier and not have to also indicate a decision to reject the previous carrier.

MCI stated that a customer or customer's spouse may not be aware of the name of the current provider and recommended qualifying proposed subsection (c)(1)(C)(iv) to require the naming of the telecommunications utilities affected "if available." Verizon did not agree with MCI's recommended qualification and instead proposed the requirement be eliminated. Verizon also stated that the FCC does not require that a customer provide the name of the current provider. OAG supported the requirement in proposed subsection (c)(1)(C)(iv) that the third party verifier elicit the names of the telecommunications utilities affected.

The commission adopts proposed subsection (c)(1)(C)(iv) without changes. The requirement to identify the customer's current carrier provides an additional protection against unauthorized switches in service. The commission points out that this is also an FCC third party verification requirement in 47 Code of Federal Regulations (C.F.R.) §64.1120(c)(3)(iii).

AT&T opposed the provision in proposed subsection (c)(1)(C)(vii) requiring the sales representative to drop off the TPV call once the three-way connection has been established. AT&T commented that the FCC adopted a similar rule in its Third Report and Order. However, petitions for reconsideration have been filed with the FCC noting the lack of record support for the rule, the FCC's failure to consider comments opposed to the rule, and the significant free-speech issues raised by the rule. AT&T stated that the sales representative often can play an important part in the call by answering any questions about the service that might arise during the verification process. In AT&T's view, rather than outlawing all speech by the sales representative, a more reasoned and reasonable approach would be to limit the sales

representative's participation to answering questions in a neutral manner or other narrowly tailored limits.

The commission disagrees with AT&T's suggestion and adopts proposed subsection (c)(1)(C)(vii) without changes. The requirement is necessary to ensure the third party verification process is neutral and independent in obtaining clear and conspicuous consent from the customer. This is also, as AT&T recognized, a current FCC requirement in 47 C.F.R. §64.1120(c)(3)(ii).

*Subsection (d), Letters of Agency (LOA)*

For the same reasons described in the comments on proposed subsection (c)(1)(C)(iv) above, AT&T and Verizon opposed the requirement in proposed subsection (d)(3)(A)(ii) to verify the customer's current utility. Similarly, AT&T suggested modifying the "sample" LOA language under proposed subsection (d)(3)(B) to make it clear that the customer is authorizing a change from the current utility, without the requirement that the current utility be named.

The commission adopts proposed subsection (d)(3)(A)(ii) and (d)(3)(B) without changes. As indicated previously, the requirement to identify the customer's current carrier provides an additional protection against unauthorized switches in service. The FCC does not include this requirement for LOA verification, but it does for third party verification. The commission can find no reason why this requirement should apply to one verification method but not the other. The commission believes that the customer protection benefit of this provision should apply to both verification methods.

AT&T opposed the requirement in proposed subsection (d)(3)(A)(v) that the LOA must contain a separate statement that the customer may consult with the carrier as to whether a fee applies to the change. AT&T stated that the rule already requires that the customer be informed that a charge may apply and that even the most unsophisticated customer should be expected to know that they may inquire of the utility whether a change charge will be imposed. AT&T further stated that its LOA is already straining with the amount of text that must be provided to a customer, and this particular requirement seems especially unnecessary.

The commission adopts proposed subsection (d)(3)(A)(v) without changes. The commission views the required statement as informative to the customer and does not consider it burdensome to carriers. Furthermore, this statement is an FCC LOA verification requirement in 47 C.F.R. §64.1130(e)(5).

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

AT&T, SWBT, and MCI opposed the requirement in proposed subsection (e)(3) that the alleged unauthorized telecommunications utility remove all unpaid charges pending a determination of whether an unauthorized change occurred. The parties recommended limiting the removal of charges to the first 30 days after the alleged slam and pointed out that this limitation is consistent with the federal rules on slamming in 47 C.F.R. §64.1160(b). They further commented that this limitation encourages consumers to become more vigilant in detecting slamming by giving them incentive to review their telephone bills carefully. AT&T cited backbilling and uncollectible

problems as a result of the proposed rule. SWBT commented that the FCC reconsidered the time period for absolution of charges in 2000 and declined to extend the absolution period beyond 30 days.

In its comments, OAG supported the requirement in proposed subsection (e)(3) to remove all unpaid charges. In its reply comments, OAG reaffirmed its support for the published rule and indicated that limitations on removal of charges would not be ultimately protective of customers and that should the allegation prove incorrect, the carrier would, of course, be entitled to payment of all legally incurred obligations.

The commission adopts proposed subsection (e)(3) without changes. The rule is consistent with the policy of removing any profit from slamming by preventing an alleged unauthorized carrier from requiring any payment from a customer after an alleged slam is reported. If it is subsequently determined that there was no slam, the alleged unauthorized carrier is entitled to full payment of all charges. If there was a slam, the customer is absolved of charges for the first 30 days, the authorized carrier is entitled to all charges after the first 30 days based on its rates, and the unauthorized carrier must make refunds to the customer and the authorized carrier in accordance with subsection (f).

Proposed subsection (e)(4) states that the alleged unauthorized telecommunications utility may challenge a complainant's allegation of an unauthorized change by notifying the complainant to file a complaint with the Public Utility Commission of Texas within 30 days and that if the complainant does not file a complaint within 30 days, the unpaid charges may be reinstated.

AT&T commented that on the surface this provision looks beneficial to utilities; however, AT&T has been unable to assess how practical it would be to both track its compliance with the requirement to inform the customer and to track whether the customer subsequently files a complaint with the commission within 30 days. Consequently, at this point AT&T indicated it could not agree that this provision would provide a practical benefit to utilities. AT&T stated that, more importantly, it is concerned that proposed subsection (e)(4) might be viewed by the commission as some sort of mitigation of the objectionable requirement to remove all unpaid charges in proposed subsection (e)(3). AT&T further commented that if a timely complaint is filed, proposed subsection (e)(4) does not limit the removal of unpaid charges during the pendency of a complaint, so it does not address the concern raised by AT&T that proposed subsection (e)(3) would permit a customer to continue to receive service without paying for an extended period of time. Consequently, AT&T recommended proposed subsection (e)(3) be modified to reflect that only 30 days of unpaid charges should be removed.

MCI commented that proposed subsection (e)(4) is a beneficial addition if clarified as recommended by AT&T. MCI suggested revising proposed subsection (e)(4) to add clarifying language and the requirement for the commission to provide the unauthorized carrier a copy of the complaint during the same 30-day period.

The commission adopts proposed subsection (e)(4) without changes. The commission believes the rule is clear and that MCI's suggested clarifying language is unnecessary. Nevertheless, the commission is sensitive to AT&T's and MCI's concerns and is committed to ensuring slamming complaints are forwarded to carriers promptly and resolved in a timely manner.

Proposed subsection (e)(5) requires that the alleged unauthorized telecommunications utility take all actions within its control to facilitate the customer's prompt return to the original telecommunication utility within three business days of the customer's request. SWBT commented that in the event of an alleged dial tone slam, however, an additional requirement is necessary to ensure that a customer is returned to his authorized utility within three business days. SWBT suggested adding language to proposed subsection (e)(5) requiring an alleged unauthorized dial tone provider to respond to the authorized dial tone provider with a Firm Order Confirmation (FOC) within one business day if the authorized carrier clearly indicates that the request is the result of an alleged slam. In addition, if the alleged unauthorized utility cannot meet the three business day interval, the unauthorized utility should inform the commission, the customer, and the authorized utility that this customer will experience a delayed return and inform them as to when the return will occur. SWBT indicated that this proposed provision is necessary so that customers can learn of their return date.

AT&T strongly opposed SWBT's proposal indicating it would result in the micro-managing of local slams and would introduce specialized treatment (which may be contrary to interconnection agreements) for handling local service customers merely on the basis of an alleged slam. AT&T commented that the commission is aware of the difficulty in switching local service customers and that returning the customer within three business days is ambitious enough. AT&T also expressed concern that SWBT's recommended change could cause customers or carriers to allege a slam in order to switch service faster. AT&T further stated that it would be unfair and inequitable to require an alleged unauthorized carrier to incur the additional costs of providing

notices. AT&T concluded that the commission's proposed rule is sufficient and should not be revised.

MCI also disagreed with SWBT indicating that the proposed requirement for a one-business day turnaround for alleged local slams is unworkable. Verizon agreed with the intent of SWBT's proposal, but indicated that the commission should not prescribe the response time for an alleged unauthorized carrier until the commission completes Project Number 24389, *CLEC-to-CLEC Conversion Guidelines*.

The commission adopts proposed subsection (e)(5) without changes. While the commission agrees with the intent of SWBT's recommendation, it would not be appropriate at this time to require a one-day turnaround. Nevertheless, the commission expects all carriers to take all necessary actions to ensure customers are returned to their preferred carrier promptly after there is an alleged slam.

SWBT suggested a new subsection (e)(6), which makes the alleged unauthorized telecommunications utility liable for any charges required to change the customer from his or her authorized utility to the alleged unauthorized utility, in addition to charges assessed for returning the customer to his or her properly authorized telecommunications utility. SWBT indicated that this change ensures that neither the authorized telecommunications utility nor the customer incurs any expense as a result of the actions of an unauthorized utility. SWBT further commented that making the unauthorized telecommunications utility liable for these charges acts as a further deterrent to slamming and is consistent with FCC rules.

MCI stated that it does not oppose SWBT's proposal, but does oppose any charges that permit a carrier to disguise administrative penalties as unauthorized change charges. At the public hearing, AT&T voiced similar concerns. MCI recommended that if the commission determines that such charges are proper, then the charges should be uniform and reasonable and apply to all carriers.

Verizon supported SWBT's recommendation indicating that it puts the cost on the cost causer, the unauthorized carrier, and not the customer or the authorized carrier. Verizon further commented that it would serve as a further deterrent to slamming and complies with the federal rules.

The commission agrees with SWBT's recommendation and adds subsection (e)(6), accordingly. The commission clarifies that this new provision applies to standard switching charges and in no way authorizes local exchange companies to levy any additional charges or penalties as a result of an alleged slam.

Verizon recommended adding a provision in subsection (e) that authorizes an alleged unauthorized carrier to invoke self-help in situations where it prefers not to challenge a specific unauthorized change allegation. Under this proposal any carrier selecting this option would be required to provide the customer all of the remedies of a valid slam and to advise the customer to file a complaint with the commission if not satisfied with the remedies offered. Verizon pointed

out that the FCC has approved this means to resolve slamming complaints because it expedites delivery of relief and eases administrative burdens on governmental agencies.

The commission agrees with the self-help option described by Verizon and encourages carriers to provide prompt relief to customers alleging a slam. However, the commission does not believe a rule is needed for carriers to use the approach recommended by Verizon. The commission points out that many carriers, as a matter of standard practice, do not challenge any slamming complaint and provide the complainant with appropriate refunds. Neither the current or adopted rules discourage carriers from using this approach. The commission's approach is consistent with the FCC, which also encourages self-help, but did not deem it necessary to have a rule prescribing it.

*Subsection (f), Unauthorized changes*

AT&T recommended that a change similar to the one proposed for subsection (e)(3) be made to subsection (f)(1)(F) to clarify that unpaid charges need to be removed for only the first 30 days after a slamming allegation is made. In addition, AT&T recommended that subsection (f)(1) be clarified to indicate that the prescribed actions only apply in cases where a violation is found. MCI and Verizon agreed that the required actions in proposed subsection (f)(1) apply only if the commission finds a violation.

SWBT and Verizon proposed changing proposed subsection (f)(1) and (2) to comport with the absolute procedures set forth in 47 C.F.R. §64.1160 and §64.1170. The parties indicated that

this change will ensure that the Texas absolution process is consistent with the FCC process and eliminate customer and utility confusion that could result from having different procedures in place in different jurisdictions.

OAG supported the decision of the commission to maintain its procedure in which the unauthorized carrier makes a direct refund to the customer. OAG pointed out that absolute consistency with the federal rules is not required and that the State did a better job of protecting the consumer than the federal rules. OAG stated that the commission's procedure is more directly responsive to the consumer's needs and more efficient since it does not unnecessarily involve the authorized carrier.

The commission adopts proposed subsection (f)(1) and (2) without changes. As stated in the commission's Order in Project Number 23375, 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 CC Docket No. 94-129 FCC 00-135, footnote 105. Also, in paragraph 87 of CC Docket No. 94-129 FCC 00-255, the FCC states that they will not interfere with the state's ability to adopt more stringent regulations, that they must work hand-in-hand with the states to combat slamming, and that states have valuable insight into slamming problems in their respective locales.

Subsection (f)(1) requires the unauthorized carrier to make a direct refund to the customer based on all charges for the first 30 days after a slam and a re-rating of charges after the first 30 days. The unauthorized carrier is also required to pay the authorized carrier any amount paid to it by

the customer that would have been paid to the authorized carrier if the slam had not occurred. The FCC rules require the unauthorized carrier to pay the authorized carrier 150% of the amount paid by the customer and the authorized carrier to refund the customer 50% of the amount paid by the customer. While the commission's approach does not duplicate the FCC's procedures, it is consistent with the FCC's objectives and purpose.

The FCC requires the unauthorized carrier to pay the authorized carrier and then the authorized carrier makes the refund to the customer. If, however, the authorized carrier does not receive payment from the unauthorized carrier, the authorized carrier must inform the customer of this and the customer's right to pursue a claim against the unauthorized carrier. This refunding process was based on the original FCC approach, which required the authorized carrier to resolve slamming complaints. Under the new approach where either the FCC or the states that opt-in will resolve the complaints, it is more efficient and effective to have the unauthorized carrier make a direct refund to the customer.

AT&T recommended a new provision for proposed subsection (f) that would prohibit carriers from attempting to levy additional charges or "penalties" on an alleged unauthorized carrier. AT&T stated that it has encountered attempts to add such provisions in Texas as well as in other jurisdictions and that attempts to add such provisions in Texas and other jurisdictions have been previously rejected. AT&T requested the addition of appropriate language so that it does not have to devote the time and resources to constantly guard against such proposals and contest them in tariff filings.

SWBT and Verizon opposed AT&T's proposal stating that the proposed language is not consistent with federal and state slamming rules, which provide that the customer has a right to be made whole at the allegation of a slam. SWBT further noted that the alleged unauthorized carrier may re-bill the customer if the customer does not file a complaint or if the FCC or commission determine that an unauthorized switch did not occur. Verizon stated that the executing carrier should not be required to bear the burden of recovering the switchback charge and that, instead, the alleged unauthorized carrier is in the best position to incur the charge.

The commission does not agree with AT&T's recommended additional provision. The commission points out that there is nothing in these adopted rules that permits executing carriers to levy any penalty for alleged slamming.

*Subsection (g), Notice of customer rights*

SWBT proposed changing the notification requirement in proposed subsection (g) to reflect SWBT's recommended changes to proposed subsection (f)(1) and (2), above.

The commission makes no changes to subsection (g) since SWBT's recommended changes to proposed subsection (f)(1) and (2) were not adopted.

*Subsection (h), Compliance and enforcement*

AT&T recommended that subsection (h)(1) be clarified to indicate that the telecommunications utility has no obligation to provide copies of records after the 24-month record retention period (as required under proposed subsection (c)(1)) has expired. AT&T commented that based on the commission's orders in Project Number 20934, *Office of Customer Protection (OCP) Investigation of Axces, Inc. for Continued Violations of P.U.C. SUBST. R. 26.130, Selection of Telecommunications Utilities, Pursuant to Procedural Rules 22.246, Administrative Penalties*, it seems almost inescapable that a carrier would be unable to meet its burden in the case of an alleged "regulatory slam." At a minimum, AT&T stated that a telecommunications utility should not be subject to sanctions under proposed subsection (h)(1) for failure to maintain records after the record retention period in proposed subsection (c)(1) has expired.

Additionally, AT&T proposed that a new subsection (h)(5) be added to specifically prohibit any enforcement action against the telecommunications utility after 24 months has elapsed from the date of an alleged slam. AT&T commented that a telecommunications utility should not be penalized for the customer's delay and lack of diligence, particularly since every bill the customer received during that 24-month period would have listed the customer's preferred telecommunications utility, as required by subsection (i). AT&T stated that a complaint received after the 24-month record retention period should simply be treated as a request to change to a different carrier (presumably back to the customer's previous carrier), and the allegedly unauthorized carrier should be required to facilitate the return to the previous carrier, but it should not be treated as an unauthorized telecommunications utility under the rule and should not be subject to any penalties or refund requirement.

Verizon agreed with AT&T's recommendations and further proposed that the commission adopt the federal two-year statute of limitations on slamming complaints so that the record retention requirement is coextensive with the customer's right to maintain a slamming complaint.

OAG opposed AT&T's recommendations. OAG commented that the records retention requirement should not serve as a shield to the customer's right to complain and recover or the commission's right to take action if any party has maintained records or is otherwise able to prove through other means that a violation occurred more than two years prior to the present date. OAG further stated that to allow carriers to restrict enforcement action and consumer recovery on the basis of their own records retention policies is an unconscionable restriction on consumer rights.

The commission adopts proposed subsection (h) without changes. The commission agrees with OAG that record retention requirements should not limit the consumer's or the commission's rights. While filing a complaint two years or more after a slam is very rare, the commission has never limited the time period for a complaint and to do so now would dilute current customer protection.

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

Proposed subsection (i)(4) would change the bill notice provision to refer to the "Customer Protection Division" instead of the "Office of Customer Protection". AT&T commented that, although this appears to be a minor change, it would result in additional cost to telecommunications

utilities to make this change in their billing system. AT&T proposed that all references to CPD or OCP simply be deleted so that carriers do not have to change their billing systems each time the commission reorganizes or renames its divisions. AT&T further indicated that this approach was adopted in the cramming rule, §26.32(g)(4), so that the notice required in that section does not specifically refer to any division of the commission. AT&T recommended that a similar change be adopted here.

The commission agrees with AT&T's recommendation and revises proposed subsection (i)(4) accordingly.

*Subsection (j), Preferred telecommunications utility freezes*

SWBT recommended revising proposed subsection (j)(8), (4)(D), (6)(G)(iv), (12), (13), and (14) to permit a local exchange company (LEC) to charge the customer for imposing or lifting a freeze. SWBT pointed out that the FCC allows these charges, but the Texas rule does not. SWBT commented that LECs should be permitted to recover costs for providing freeze protection service to customers since LECs incur significant costs associated with administering freeze protection services - services that both customers and telecommunications utilities recognize to be a valuable deterrent against unauthorized changes. SWBT further pointed out that both the Texas and FCC slamming rules make offering freeze protection services discretionary with the LEC and that allowing LECs to recover costs associated with these services will encourage LECs to continue to offer these services and assist in the deterrence of slamming.

AT&T opposed SWBT's recommendation. AT&T commented that allowing LECs to charge for freezes would undermine the benefits of freezes, that the prohibition on charges for freezes does not appear to have deterred LECs from offering freezes, and that imposing charges would deter some customers from requesting freeze protection. AT&T also expressed concern that SWBT would be able to charge any rate it chose and indicated that if the commission were to allow freeze charges, existing customers should be grandfathered from any charges and the LEC rates should be cost-based.

Consumers Union and OAG recommended that SWBT's proposal be rejected. The parties stated the proposal would erode customer protection and that consumers should not be required to pay a premium in order to protect their legal right to be served by the company of their own choosing.

The commission considered the issue of allowing charges for freezes when it adopted the current rule in Project Number 21419. The commission remains convinced that a freeze is a basic customer protection that should be made available to customers at no charge. The commission believes that this prohibition is not in conflict with FCC rules, which allow a charge, but do not require it. Therefore, the commission adopts proposed subsection (j) without changes.

AT&T proposed a new provision to proposed subsection (j), which would allow a customer to change carriers by directly contacting the LEC during a three-way call to lift a freeze. AT&T commented that under the current rule, to accomplish a change when there is a freeze on the line, the customer must make two separate calls to the LEC. First, the customer contacts the new

preferred carrier and selects the appropriate services. However, if there is a freeze on the line, the customer and preferred carrier must make a three-way call to notify the LEC to lift the freeze so the customer may change the preferred interexchange carrier (PIC) selection. AT&T stated that under subsection (c)(2) of the proposed rules the customer can change the PIC selection by contacting the LEC, but some LECs have refused to accept such a change order from the customer as part of the three-way call. As a result, the customer must make another call to the LEC to make the change or must go through some other form of verification. AT&T indicated that there is no need for this two-step process.

Verizon disagreed with AT&T's proposal. Verizon pointed out under the proposal, submitting carriers could circumvent the TPV process and may lead to "finger-pointing" in the event of an unauthorized change. Verizon also indicated that this proposal was specifically rejected by the FCC.

The commission does not adopt AT&T's proposal to require a LEC to accept the customer's oral request to change a preferred carrier as part of a three-way call to lift a freeze. The FCC requires three-way calling only for the purpose of lifting freezes. There are separate, explicit FCC rules for verification of carrier changes and for verification of freezes that clearly distinguish the role of each carrier. The FCC has stated that the three-way call merely lifts the freeze and that the submitting carrier must follow the federal commission's verification rules before submitting a carrier change.

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

Verizon recommended that proposed subsection (k) be modified to track with the corresponding federal rule, 47 C.F.R. §64.1200(e)(3). Verizon believes that consistency in state and federal rules reduces administrative burdens on utilities and eliminates customer confusion.

The commission believes proposed subsection (k) is consistent with the FCC rule and adopts it without changes. The commission's rule prescribing notice requirements related to the transfer of customers, preceded the FCC's rule. Proposed subsection (k) added FCC requirements that were not already in the current rule.

*Subsection (l), Complaints to the commission*

Consistent with AT&T's proposed revisions to subsection (h) discussed above, AT&T also proposed that subsection (l) be revised to limit the obligations of utilities when a complaint is filed after the record retention period in the rules has expired. AT&T claimed that it is not unreasonable for consumers to be obligated to bring a complaint of slamming within two years of the time that they were first provided service by a new utility.

As previously discussed, the commission does not agree with AT&T's proposal.

SWBT proposed increasing the time for a telecommunications utility to respond to the Customer Protection Division (CPD) on a complaint from 21 to 30 days. SWBT indicated that this period is consistent with 47 C.F.R. §64.1150(d), which allows 30 days for a telecommunications

utility's response to an alleged slamming violation. SWBT maintained that the additional time is needed to allow a utility to adequately research a complaint and compile a response that will contain the necessary information about the change request and the verification for that customer's change request. MCI agreed with SWBT's recommendation.

OAG and Consumers Union stated that proposals to extend the time for responding to complaints should be rejected. They pointed out that extending the timeline is contrary to the clear directive of the legislators and the commissioners to streamline the consumer complaint process and that the focus should be on reducing everyone's response time.

At the public hearing Sprint, MCI, and AT&T expressed concerns about shortening the response time for complaints, responding to a batch of complaints simultaneously, and receiving complaints lacking adequate information to investigate.

The commission does not agree with the recommendation to increase the time required to respond to a complaint. Instead, the commission is focused on reducing response time without sacrificing complaint investigation quality.

AT&T expressed concern at the public hearing that proposed subsection (l)(1) replaced a list of specific items that should be in a complaint with language indicating that a complaint should include appropriate information. AT&T stated that specific information about the complaint is essential and that for business complaints additional information is necessary such as the name of the business, main billing number, and contact person and number. Commission staff explained

that the intent of the proposed change to subsection (l)(1) was to indicate that some complaints forwarded to the telecommunications utility may not contain all of the listed information. CPD would continue to request all of the information listed in current subsection (l)(1). However, if the complainant failed to provide all of the items required in current subsection (l)(1), *i.e.*, a copy of the bill, but provided sufficient information to investigate the complaint, then the complaint would be forwarded to the telecommunications utility. To address the concerns about proposed subsection (l)(1), OAG recommended changing the focus slightly by having the rule say: "CPD shall request the following information." AT&T concurred with OAG's recommendation.

The commission revises proposed subsection (l)(1) to adopt the language recommended by OAG.

#### *Penalty Matrix*

AT&T recommended that the proposed rule be amended to include a penalty matrix to indicate the range of administrative penalties that would be proposed in the event of a violation of the rule. AT&T stated that the criteria for assessing an administrative penalty under PURA §15.023(c) make it clear that not all incidents of slamming should be subject to the same penalty. AT&T commented that the commission's recent Order Remanding for Further Consideration in Project Number 20934 indicates that the commission recognizes that not all slamming violations are automatically deserving the maximum penalty of \$5,000 per day, and that the amount of the penalty should vary with the seriousness of the violation, including whether the violation is "administrative in nature." AT&T strongly encouraged the commission to develop a matrix of

recommended penalties based on the seriousness of the alleged violation, to do so with the input of all stakeholders, and to formally adopt such a matrix. AT&T stated that this would provide predictability for carriers and staff, and should result in more efficient settlement of notices of apparent violation.

MCI supported AT&T's request to include a penalty matrix indicating that it will serve to ensure consistency and even-handedness in the commission's enforcement and imposition of administrative penalties.

Consumers Union advocated that the penalty matrix be rejected, pointing out that inclusion is beyond the scope of this rulemaking and would require republication. Furthermore, the commission already has flexibility to propose penalties based on the nature and severity of the rules violation. For example, slamming enforcement cases generally result in settlements where the commission has the flexibility to consider various factors, such as culpability and the carrier's pattern of behavior, before reaching an agreement on the settlement amount. The commission's own review and analysis of each enforcement action should not be replaced with a standardized penalty matrix. Consumers Union indicated that a penalty matrix is likely to become a "price list" for telecommunication utilities, so they know the potential financial implication of cutting corners on strict adherence to the rules.

OAG indicated that this rulemaking was not properly noticed for the adoption of a penalty matrix. OAG commented that while there may be some potential benefit to a matrix, there are drawbacks as well in creating a system where potential violators can calculate, in advance, the

exact cost of regulatory violations and plan a business strategy around them. OAG further stated that all of these factors and their implications for all aspects of the commission's rules, not just slamming, should be considered in a properly noticed rulemaking on the subject of a penalty matrix.

The commission agrees that including a penalty matrix would be beyond the scope of this rulemaking and has not yet decided whether a penalty matrix should be developed. The commission acknowledges the view of some carriers that a penalty matrix would promote consistent and fair enforcement. However, the commission also recognizes the potential disadvantages of a penalty matrix such as a loss of flexibility, perception of diminished resolve to combat slamming, and reduced efforts by carriers to prevent unauthorized switches in service.

Since the commission was granted jurisdiction over slamming in September 1997, it has taken a strong stance against slamming in this state and Texas has been recognized as one of the leading states in combating slamming. In keeping with a "zero tolerance for slamming" policy, the strict liability requirement on carriers to obtain customer consent, and consideration of all of the pertinent factors in P.U.C. Procedural Rule §22.246(c), Administrative Penalties, commission staff has consistently recommended a penalty of \$5,000 per violation in its administrative penalty notices for slamming violations. Upon receiving a notice, in accordance with §22.246, alleged violators are given three options: pay the penalty, request a hearing, or request a settlement conference to discuss the occurrence of the violation and/or the amount of the penalty. In every case, the alleged violator has responded to a notice by requesting a settlement conference. At the settlement conference the carrier is able to present any information to address the nature of the

violation and the appropriateness of the penalty amount. With the exception of Project Number 20934 and Docket Number 24673, *Notice of Intent to Assess an Administrative Penalty and Revoke Registration of Axces, Inc. for Repeated and Reckless Violations of PUC SUBST. R. §26.130, Selection of Telecommunications Utilities*, commission staff has reached settlement agreements with carriers who were issued a notice for slamming violations and the commission has approved these agreements. The final settlement amount was based on a consideration of the information provided by the carrier and often was less than \$5,000 per violation. There has never been an automatic \$5,000 penalty for every slamming violation. The commission believes that its approach has been consistent, fair, and reasonable.

In the Order Remanding for Further Consideration in Project Number 20934, the commission stated it does not favor automatically imposing a \$5,000 administrative penalty for each violation, noting that certain violations are administrative in nature and may warrant an administrative penalty of less than \$5,000.

The commission reaffirms its policy of "zero tolerance for slamming." Slamming harms not only the customers that are slammed, but also the carriers who have implemented effective policies and procedures to ensure customer consent before switching service. The commission states that administrative penalties shall be consistent with that policy and must not be viewed as a cost of doing business, but instead serve as a deterrent.

In summary, the commission believes that its anti-slamming policy and enforcement approach have served the public interest well without denying carriers their due process. Nevertheless, the

commission will reexamine its process to determine if development of a penalty matrix or any other changes will enhance the current process.

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

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically PURA §55.302 which grants the commission authority to adopt and enforce rules to implement the provisions of PURA Chapter 55, Subchapter K, Selection of Telecommunications Utilities.

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

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

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

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

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

- (3) **Executing telecommunications utility** — Any telecommunications utility that effects a request that a customer's preferred telecommunications utility be changed. 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.** Before a change order is processed, the submitting telecommunications utility must obtain verification from the customer that such change is desired for each affected telephone line(s) and ensure that such verification is obtained in accordance with 47 C.F.R. §64.1120. In the case of a change by written solicitation, the submitting telecommunications utility must obtain verification as specified in 47 C.F.R. §64.1130, and subsection (d) of this section, relating to Letters of Agency. The submitting telecommunications utility shall submit a change order within 60 days after

obtaining verification from the customer. The submitting telecommunications utility must maintain records of all changes, including verifications, for a period of 24 months and shall provide such records to the customer, if the customer challenges the change, and to the Public Utility Commission (commission) staff upon request. A change order must be verified by one of the following methods:

- (A) Written or electronically signed authorization from the customer in a form that meets the requirements of subsection (d) of this section. A customer shall be provided the option of using another authorization method in lieu of an electronically signed authorization.
- (B) Electronic authorization placed from the telephone number which is the subject of the change order except in exchanges where automatic recording of the automatic number identification (ANI) from the local switching system is not technically possible. The submitting telecommunications utility must:
  - (i) ensure that the electronic authorization confirms the information described in subsection (d)(3) of this section; and
  - (ii) establish one or more toll-free telephone numbers exclusively for the purpose of verifying the change so that a customer calling toll-free number(s) will reach a voice response unit or similar mechanism that records the required information regarding the change and automatically records the ANI from the local switching system.

- (C) Oral authorization by the customer for the change that meets the following requirements:
- (i) The customer's authorization shall be given to an appropriately qualified and independent third party that confirms appropriate verification data such as the customer's date of birth or mother's maiden name.
  - (ii) The verification must be electronically recorded in its entirety on audio tape, a wave sound file, or other recording device that is compatible with the commission's equipment.
  - (iii) The recording shall include clear and conspicuous confirmation that the customer authorized the change in telephone service provider.
  - (iv) The third party verification shall elicit, at minimum, the identity of the customer, confirmation that the person on the call is authorized to make the change in service, the names of the telecommunications utilities affected by the change, the telephone number(s) to be switched, and the type of service involved.
  - (v) The third party verification shall be conducted in the same language used in the sales transaction.
  - (vi) Automated systems shall provide customers the option of speaking with a live person at any time during the call.
  - (vii) A telecommunications utility or its sales representative initiating a three-way call or a call through an automated verification system

shall drop off the call once a three-way connection has been established.

(viii) The independent third party shall:

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

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

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

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

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

(1) The LOA shall be a separate or easily separable document or located on a separate screen or webpage containing only the authorizing language described in paragraph (3) of this subsection for the sole purpose of authorizing the

telecommunications utility to initiate a telecommunications utility change. The LOA must be signed and dated by the customer requesting the telecommunications utility change. An LOA submitted with an electronically signed authorization shall include the consumer disclosures required by the *Electronic Signatures in Global and National Commerce Act* §101(c).

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

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

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

(3) **LOA language.**

(A) At a minimum, the LOA shall be printed with sufficient size and readable type to be clearly legible and shall contain clear and unambiguous language that confirms:

- (i) the customer's billing name and address and each telephone number to be covered by the preferred telecommunications utility change order;
  - (ii) the decision to change preferred carrier from the current telecommunications utility to the new telecommunications utility and identifies each;
  - (iii) that the customer designates (name of the new telecommunications utility) to act as the customer's agent for the preferred carrier change;
  - (iv) that the customer understands that only one preferred telecommunications utility may be designated for each type of service (local, intraLATA, and interLATA) for each telephone number. The LOA shall contain separate statements regarding those choices, although a separate LOA for each service is not required; and
  - (v) that the customer understands that any preferred carrier selection the customer chooses may involve a one-time charge to the customer for changing the customer's preferred telecommunications utility and that the customer may consult with the carrier as to whether a fee applies to the change.
- (B) The following LOA form meets the requirements of this subsection. Other versions may be used, but shall comply with all of the requirements of this subsection.

Customer billing name: \_\_\_\_\_

Customer billing address: \_\_\_\_\_

Customer street address: \_\_\_\_\_

City, state, zip code: \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

Relationship to customer: \_\_\_\_\_

Telephone number of individual authorized to act for customer:

\_\_\_\_\_  
\_\_\_\_\_

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

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

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

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

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

Telephone number(s) to be changed: \_\_\_\_\_

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

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

Signed: \_\_\_\_\_ Date \_\_\_\_\_

- (4) The LOA shall not require that a customer take some action in order to retain the customer's current telecommunications utility.
  - (5) If any portion of an LOA is translated into another language, then all portions must be translated. The LOA must be translated into the same language as promotional materials, oral descriptions or instructions provided with the LOA.
- (e) **Notification of alleged unauthorized change.**
- (1) When a customer informs an executing telecommunications utility of an alleged unauthorized telecommunications utility change, the executing telecommunications utility shall immediately notify both the authorized and alleged unauthorized telecommunications utility of the incident.

- (2) Any telecommunications utility, executing, authorized, or alleged unauthorized, that is informed of an alleged unauthorized telecommunications utility change shall direct the customer to contact the Public Utility Commission of Texas.
  - (3) The alleged unauthorized telecommunications utility shall remove all unpaid charges pending a determination of whether an unauthorized change occurred.
  - (4) The alleged unauthorized telecommunications utility may challenge a complainant's allegation of an unauthorized change by notifying the complainant to file a complaint with the Public Utility Commission of Texas within 30 days. If the complainant does not file a complaint within 30 days, the unpaid charges may be reinstated.
  - (5) The alleged unauthorized telecommunications utility shall take all actions within its control to facilitate the customer's prompt return to the original telecommunication utility within three business days of the customer's request.
  - (6) The alleged unauthorized telecommunications utility shall also be liable to the customer for any charges assessed to change the customer from the authorized telecommunications utility to the alleged unauthorized telecommunications utility in addition to charges assessed for returning the customer to the authorized telecommunications utility.
- (f) **Unauthorized changes.**
- (1) **Responsibilities of the telecommunications utility that initiated the change.** If a customer's telecommunications utility is changed without verification consistent

with this section, the telecommunications utility that initiated the unauthorized change shall:

- (A) take all actions within its control to facilitate the customer's prompt return to the original telecommunication utility within three business days of the customer's request;
- (B) pay all charges associated with returning the customer to the original telecommunications utility within five business days of the customer's request;
- (C) provide all billing records to the original telecommunications utility related to the unauthorized change of services within ten business days of the customer's request;
- (D) pay the original telecommunications utility any amount paid to it by the customer that would have been paid to the original telecommunications utility if the unauthorized change had not occurred, within 30 business days of the customer's request;
- (E) return to the customer within 30 business days of the customer's request:
  - (i) any amount paid by the customer for charges incurred during the first 30 days after the date of an unauthorized change; and
  - (ii) any amount paid by the customer after the first 30 days in excess of the charges that would have been charged if the unauthorized change had not occurred; and
- (F) remove all unpaid charges.

- (2) **Responsibilities of the original telecommunications utility.** The original telecommunications utility shall:
- (A) inform the telecommunications utility that initiated the unauthorized change of the amount that would have been charged for identical services if the unauthorized change had not occurred, within ten business days of the receipt of the billing records required under paragraph (1)(C) of this subsection;
  - (B) 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 all charges associated with returning you to your original telephone company within five business days of your request.
2. Provide all billing records to your original telephone company within ten business days of your request.
3. Pay your original telephone company the amount you would have paid if you had not been slammed.

4. Refund to you within 30 business days any amount you paid for charges during the first 30 days after the slam and any amount more than what you would have paid your original telephone company for charges after the first 30 days following the slam.

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

If you have been slammed, you can change your service immediately back to your original provider by calling your local telephone company. You should also report the slam by writing or calling the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1 (888) 782-8477, fax: (512) 936-7003, e-mail address: [customer@puc.state.tx.us](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 local telephone company. With a freeze in place, you must give formal consent to "lift" the freeze before your phone service can be changed. A freeze may apply to local toll service, long distance service, or both. The Public Utility Commission of Texas can give you more information about freezes and your rights as a customer.

- (4) The customer notice requirements in paragraph (3) of this subsection may be combined with the notice requirements of §26.32(g)(1) and (2) of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")) if all of the information required by each is in the combined notice.
- (5) **Language, distribution and timing of notice.**
- (A) Telecommunications utilities shall send the notice to new customers at the time service is initiated, and upon customer request.
- (B) Each telecommunications utility shall print the notice in the white pages of its telephone directories, beginning with any directories published 30 days after the effective date of this section and thereafter. The notice that appears in the directory is not required to list the information contained in paragraph (2) of this subsection.
- (C) The notice shall be in both English and Spanish as necessary to adequately inform the customer. The commission may exempt a telecommunications utility from the Spanish requirement if the telecommunications utility shows that 10% or fewer of its customers are exclusively Spanish-speaking, and that the telecommunications utility will notify all customers through a statement in both English and Spanish that the information is available in Spanish by mail from the telecommunications utility or at the utility's offices.

(h) **Compliance and enforcement.**

- (1) **Records of customer verifications and unauthorized changes.** A telecommunications utility shall provide a copy of records maintained under the requirements of subsections (c), (d), and (f)(2)(C) of this section to the commission staff upon request.
- (2) **Administrative penalties.** If the commission finds that a telecommunications utility is in violation of this section, the commission shall order the utility to take corrective action as necessary, and the utility may be subject to administrative penalties pursuant to the Public Utility Regulatory Act (PURA) §15.023 and §15.024.
- (3) **Certificate revocation.** If the commission finds that a telecommunications utility is repeatedly and recklessly in violation of this section, and if consistent with the public interest, the commission may suspend, restrict, deny, or revoke the registration or certificate, including an amended certificate, of the telecommunications utility, thereby denying the telecommunications utility the right to provide service in this state.
- (4) **Coordination with the office of the attorney general.** The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, deceptive, and anticompetitive business practices with the office of the attorney general in order to ensure consistent treatment of specific alleged violations.

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

- (1) The name and telephone number of the telecommunications utility providing local exchange service if the bill is for local exchange service.
- (2) The name and telephone number of the primary interexchange carrier if the bill is for interexchange service.
- (3) The name and telephone number of the local exchange and interexchange providers if the local exchange provider is billing for the interexchange carrier.  
The commission may, for good cause, waive this requirement in exchanges served by incumbent local exchange companies serving 31,000 access lines or less.
- (4) A statement that customers who believe they have been slammed may contact the Public Utility Commission of Texas, 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; 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 such as the customer's date of birth or mother's maiden name and the information required in paragraph (6)(G) of this subsection. The local exchange company shall establish one or more toll-free telephone numbers exclusively for this purpose. Calls to the number(s) will connect the customer to a voice response unit or similar mechanism that records the information including the originating ANI.
  - (C) An appropriately qualified independent third party obtains the customer's oral authorization to submit the freeze and confirms appropriate verification data such as the customer's date of birth or mother's maiden name and the information required in paragraph (6)(G) of this subsection. This shall include clear and conspicuous confirmation that the customer authorized a freeze. The independent third party shall:

- (i) not be owned, managed, or directly controlled by the local exchange company or the local exchange company's marketing agent;
  - (ii) not have financial incentive to confirm freeze requests; and
  - (iii) operate in a location physically separate from the local exchange company or its marketing agent.
- (D) Any other method approved by Federal Communications Commission rule or order granting a waiver.
- (6) **Written authorization.** A written freeze authorization shall:
  - (A) be a separate or easily separable document with the sole purpose of imposing a freeze;
  - (B) be signed and dated by the customer;
  - (C) not be combined with inducements of any kind;
  - (D) be completely translated into another language if any portion is translated;
  - (E) be translated into the same language as any educational materials, oral descriptions, or instructions provided with the written freeze authorization;
  - (F) be printed with readable type of sufficient size to be clearly legible; and
  - (G) contain clear and unambiguous language that confirms:
    - (i) the customer's name, address, and telephone number(s) to be covered by the freeze;
    - (ii) the decision to impose a freeze on the telephone number(s) and the particular service with a separate statement for each service to be frozen;

- (iii) that the customer understands that a change in telecommunications utility cannot be made unless the customer lifts the freeze; and
  - (iv) that the customer understands that there is no charge for imposing or lifting a freeze.
- (7) **Lifting freezes.** A local exchange company that executes a freeze request shall allow customers to lift a freeze by:
  - (A) written and signed or electronically signed authorization stating the customer's intent to lift a freeze;
  - (B) oral authorization stating an intent to lift a freeze confirmed by the local exchange company with appropriate confirmation verification data such as the customer's date of birth or mother's maiden name;
  - (C) a three-way conference call with the local exchange company, the telecommunications utility that will provide the service, and the customer;  
or
  - (D) any other method approved by Federal Communications Commission rule or order granting a waiver.
- (8) **No customer charge.** The customer shall not be charged for imposing or lifting a freeze.
- (9) **Local service freeze prohibition.** A local exchange company shall not impose a freeze on local telephone service.
- (10) **Marketing prohibition.** A local exchange company shall not initiate any marketing of its services during the process of implementing or lifting a freeze.

- (11) **Freeze records retention.** A local exchange company shall maintain records of all freezes and verifications for a period of 24 months and shall provide these records to customers and to the commission staff upon request.
- (12) **Suggested freeze information language.** Telecommunications utilities that inform customers about freezes may use the following language. Other versions may be used, but shall comply with all of the requirements of paragraph (4) of this subsection.

#### **Preferred Telephone Company Freeze**

A preferred telephone company freeze ("freeze") prevents a change in a customer's telephone provider unless you consent by contacting the local telephone company. A freeze can protect you against "slamming" (switching your telephone service without your permission). You can impose a freeze on your local toll, long distance service, or both. To impose a freeze, contact your local telephone company. The local telephone company must verify your freeze request by getting your written and signed authorization, electronic authorization, or through an independent third party verification. You will not be able to change your telephone provider without lifting the freeze. You may lift a freeze by giving your local telephone company a written and signed request or by calling your local telephone company with your request. You must do this in addition to providing the verification information that your new telephone provider will request. There is no charge to the customer for imposing or lifting a freeze.

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

**Freeze Authorization Form**

Customer billing name: \_\_\_\_\_

Customer service address: \_\_\_\_\_

City, state, zip code: \_\_\_\_\_

Customer mailing address: \_\_\_\_\_

City, state, zip code: \_\_\_\_\_

Telephone number (1): \_\_\_\_\_

Telephone number (2): \_\_\_\_\_

Telephone number (3): \_\_\_\_\_

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

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

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

Current preferred local toll company: \_\_\_\_\_

Customer's signature: \_\_\_\_\_

Date: \_\_\_\_\_

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

Current preferred long distance company: \_\_\_\_\_

Customer's signature: \_\_\_\_\_

Date: \_\_\_\_\_

Mail this form to:

(Name of local telephone company)

(Address)

Or FAX to: (FAX number)

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

**Freeze Lift Form**

Customer billing name: \_\_\_\_\_

Customer service address: \_\_\_\_\_

City, state, zip code: \_\_\_\_\_

Customer mailing address: \_\_\_\_\_

City, state, zip code: \_\_\_\_\_

Telephone number (1): \_\_\_\_\_

Telephone number (2): \_\_\_\_\_

Telephone number (3): \_\_\_\_\_

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

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

Current preferred local toll company: \_\_\_\_\_

Customer's signature: \_\_\_\_\_

Date: \_\_\_\_\_

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

Current preferred long distance company: \_\_\_\_\_

Customer's signature: \_\_\_\_\_

Date: \_\_\_\_\_

Mail this form to:

(Name of local telephone company)

(Address)

Or FAX to: (FAX number)

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

(1) Any telecommunications utility that will acquire customers from another telecommunications utility that will no longer provide service due to acquisition, merger, bankruptcy or any other reason, shall provide notice to every affected customer. The notice shall be in a billing insert or separate mailing at least 30 days prior to the transfer of any customer. If legal or regulatory constraints prevent sending the notice at least 30 days prior to the transfer, the notice shall be sent promptly after all legal and regulatory conditions are met. The notice shall:

- (A) identify the current and acquiring telecommunications utilities;
- (B) explain why the customer will not be able to remain with the current telecommunications utility;
- (C) explain that the customer has a choice of selecting a service provider and may select the acquiring telecommunications utility or any other telecommunications utility and that the customer may incur a charge if the customer selects another telecommunications utility;
- (D) explain that if the customer wants another telecommunications utility, the customer should contact that telecommunication utility or the local telephone company;

- (E) explain the time frame for the customer to make a selection and what will happen if the customer makes no selection;
  - (F) identify the effective date that customers will be transferred to the acquiring telecommunications utility;
  - (G) provide the rates and conditions of service of the acquiring telecommunications utility and how the customer will be notified of any changes;
  - (H) explain that the customer will not incur any charges associated with the transfer;
  - (I) explain whether the acquiring carrier will be responsible for handling complaints against the transferring carrier; and
  - (J) provide a toll-free telephone number for a customer to call for additional information.
- (2) The acquiring telecommunications utility shall provide the Customer Protection Division (CPD) with a copy of the notice when it is sent to customers.
- (l) **Complaints to the commission.** A customer may file a complaint with the commission's Customer Protection Division against a telecommunications utility for any reasons related to the provisions of this section.
- (1) **Customer complaint information.** CPD shall request 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 the authorized telecommunications utility if there was an unauthorized change in service.
- (m) **Reporting requirement.** Each telecommunications utility shall file a semiannual slamming report with the commission's Central Records in the assigned project number

as required by paragraphs (1) and (2) of this subsection. A project number will be assigned each calendar year for this report.

- (1) The report shall use the format and information required by 47 C.F.R. §64.1180 containing only Texas-specific data.
- (2) Reports shall be submitted on August 31 (covering January 1 through June 30) and February 28 (covering July 1 through December 31).

This agency hereby certifies that the 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 6th DAY OF JUNE 2002.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**Rebecca Klein, Chairman**

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**Brett A. Perlman, Commissioner**