

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter B. CUSTOMER SERVICE AND PROTECTION.

§26.32. Protection Against Unauthorized Billing Charges ("Cramming").

- (a) **Purpose.** The provisions of this section are intended to ensure that all customers in this state are protected from unauthorized charges on a customer's telecommunications utility bill. This section establishes the requirements necessary to obtain and verify customer consent for charges for any product or service before the associated charges appear on the customer's telephone bill.
- (b) **Application.** This section applies to all "billing agents," "billing telecommunications utilities," and "service providers" as those terms are defined in §26.5 of this title (relating to Definitions) or the Public Utility Regulatory Act (PURA). This section does not apply to:
- (1) an unauthorized change in a customer's local or long distance service provider, which is addressed in §26.130 of this title (relating to Selection of Telecommunications Utilities);
 - (2) message telecommunications charges that are initiated by dialing 1+, 0+, 0-, 1010XXX, or collect calls and charges for video services, if the service provider has the necessary call record detail to establish the billing for the call or service; and
 - (3) a provider of commercial mobile radio service as defined in PURA §51.003(5).
- (c) **Definition.** The term "customer," when used in this section, shall mean the account holder, including the account holder's spouse, in whose name telephone service is billed, including individuals, governmental units at all levels of government, corporate entities, and any other entity or person with legal capacity to request to be billed for telephone service.
- (d) **Requirements for billing authorized charges.** No service provider or billing agent shall submit charges for any product or service for billing on a customer's telephone bill before complying with all of the following requirements:
- (1) **Inform the customer.** The service provider offering the product or service shall thoroughly inform the customer of the product or service being offered, including all associated charges for the product or service, and shall inform the customer that the associated charges for the product or service will appear on the customer's telephone bill.
 - (2) **Obtain customer consent.** The service provider shall obtain clear and explicit consent, verified pursuant to subsection (f) of this section, from the customer to obtain the product or service being offered and to have the associated charges appear on the customer's telephone bill. A record of the customer's verified consent shall be maintained by the service provider offering the product or service for at least 24 months immediately after the verified consent was obtained.
 - (3) **Provide contact information.** The service provider offering the product or service, and any billing agent for the service, shall provide the customer with a toll-free telephone number that the customer may call, and an address to which the customer may write, to resolve any billing dispute and to obtain answers to any questions.
 - (4) **Provide business information.** The service provider (other than the billing telecommunications utility) and its billing agent shall provide the billing telecommunications utility with its name, business address, and business telephone number.
 - (5) **Obtain billing telecommunications utility authorization.** The service provider and its billing agent shall execute a written agreement with the billing telecommunications utility to bill for products or services on the billing telecommunications utility's telephone bill. Record of this agreement shall be maintained by:
 - (A) the service provider;
 - (B) any billing agent for the service provider; and
 - (C) the billing telecommunications utility for as long as the billing for the product or service continues and for the 24 months immediately following the permanent discontinuation of the billing.

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- (e) **Post-termination billing.** A service provider shall not bill a customer for a product or service after the termination or cancellation date for that product or service unless the bill is for a product or service provided prior to the termination or cancellation date; or the service provider subsequently obtains customer consent and verification of that consent pursuant to this section.
- (f) **Verification requirements.**
 - (1) Verification of a customer's consent for an order of a product or service must include:
 - (A) the date of customer consent;
 - (B) the date of customer verification of consent;
 - (C) the name and telephone number of the customer; and
 - (D) the exact name of the service provider as it will appear on the customer's bill.
 - (2) Verification of a customer's consent for an order of a product or service may not include discussion of any incentives that were or may have been offered by the service provider and shall be limited, without explanation, to the identification of:
 - (A) each offered product or service;
 - (B) applicable charges;
 - (C) how a product or service can be cancelled, including any charges associated with terminating the product or service; and
 - (D) how the charge will appear on the customer's telephone bill.
 - (3) During any communication with a customer to verify that customer's consent for a product or service, the independent third-party verifier or the sales representative, shall, after sufficient inquiry to ensure that the customer is authorized to order the product or service, obtain the explicit customer acknowledgment that charges for the product or service ordered by the customer will be assessed on the customer's telephone bill.
 - (4) Except in customer-initiated transactions with a certificated telecommunications utility for which the service provider has the appropriate documentation obtained pursuant to section (d), verification of customer consent to an order for a product or service shall be verified by one or more of the following methods:
 - (A) Written or electronically signed documentation.
 - (i) Written or electronically signed verification of consent shall be a separate document containing only the information required by paragraphs (1) and (2) of this subsection for the sole purpose of verifying the consent for a product or service on the customer's telephone bill. A customer shall be provided the option of using another form of verification in lieu of an electronically signed verification.
 - (ii) The document shall be signed and dated by the customer. Any electronically signed verification shall include the customer disclosures required by the *Electronic Signatures in Global and National Commerce Act* §101(c).
 - (iii) The document shall not be combined with inducements of any kind on the same document, screen or webpage.
 - (iv) If any portion of the document, screen or webpage is translated into another language, then all portions of the document shall be translated into that language. Every document shall be translated into the same language as any promotional materials, oral descriptions, or instructions provided with the document, screen or webpage.

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- (B) Toll-free electronic verification placed from the telephone number that is the subject of the product or service, except in exchanges where automatic number identification (ANI) from the local switching system is not technically possible. The service provider must:
 - (i) ensure that the electronic verification confirms the information required by paragraphs (1) and (2) of this subsection for the sole purpose of verifying the customer's consent for a product or service on the customer's telephone bill; and
 - (ii) establish one or more toll-free telephone numbers exclusively for the purpose of verifying the customer consent of charges for the product(s) or service(s) so that the customer calling the toll-free number(s) will reach a voice response unit or similar mechanism regarding the customer consent for the product(s) or service(s) and automatically records the ANI from the local switching system.
 - (iii) Automated systems shall provide customers the option of speaking with a live person at any time during the call.
- (C) Voice recording by service provider.
 - (i) The recorded conversation with a customer shall be in a clear, easy-to-understand, slow, and deliberate manner and shall contain the information required by paragraphs (1) and (2) of this subsection.
 - (ii) The recording shall be clearly audible.
 - (iii) The recording shall include the entire and actual conversation with the customer on audio tape, a wave sound file, or other recording device that is compatible with the commission's equipment.
 - (iv) The recording shall be dated and include clear and conspicuous confirmation that the customer consented to recording the conversation and authorized the charges for a product or service on the customer's telephone bill.
- (D) Independent Third Party Verification. Independent third party verification of consent shall meet the following requirements:
 - (i) Verification shall be given to an independent and appropriately qualified third party with no participation by a service provider, except as provided in clause (vii) of this subparagraph.
 - (ii) Verification shall be recorded.
 - (iii) The recorded conversation with a customer shall contain explicit customer consent to record the conversation, be in a clear, easy-to-understand, slow, and deliberate manner and shall comply with each of the requirements of paragraphs (1) and (2) of this subsection for the sole purpose of verifying the customer's consent of the charges for a product or service on the customer's telephone bill.
 - (iv) The recording shall be clearly audible.
 - (v) The independent 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 service provider or its sales representative initiating a three-way call or a call through an automated verification system shall disconnect from the call once a three-way connection with the third party verifier has been established unless the service provider meets the following requirements:

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- (I) the service provider files sworn written certification with the commission that the sales representative is unable to disconnect from the sales call after initiating third party verification. Such certification should provide sufficient information describing the reason(s) for the inability of the sales agent to disconnect from the line after the third party verification is initiated. The service provider shall be exempt from this requirement for a period of two years from the date the certification was filed with the commission;
 - (II) the service provider seeking to extend its exemption from this clause must, before the end of the two-year period, and every two years thereafter, recertify to the commission its continued inability to comply with this clause.
 - (III) The independent third party verification shall immediately terminate if the sales agent of an exempt service provider, pursuant to sub clause (I) of this clause, responds to a customer inquiry, speaks after third party verification has begun, or in any manner prompts one or more of the customer's responses.
 - (viii) The independent third party shall:
 - (I) not be owned, managed, directed or directly controlled by the service provider or the service provider's marketing agent;
 - (II) not have financial incentive to verify the consent to charges; and
 - (III) operate in a location physically separate from the service provider or the service provider's marketing agent.
 - (ix) The recording shall include the entire and actual conversation with the customer on audio tape, a wave sound file, or other recording device that is compatible with the commission's equipment.
 - (x) The recording shall be dated and include clear and conspicuous confirmation that the customer authorized the charges for a product or service on the customer's telephone bill.
- (5) Any other verification method approved by the FCC.
- (6) A record of the verification required by subsection (f) of this section shall be maintained by the service provider offering the product or service for at least 24 months immediately after the verification was obtained from the customer.
- (g) **Expiration of consent and verification.**
- (1) If a customer consents to obtain a product or service but that product or service is not provisioned within 60 calendar days from the date of customer consent:
 - (A) The customer's consent is null and void, and
 - (B) Before the charge may appear on the customer's bill, the service provider must obtain new consent and verification of that new consent in accordance with this section.
 - (2) Paragraphs (1)(A) and (B) of this subsection do not apply to verification of consent relating to multi-line and/or multi-location business customers that have entered into negotiated agreements with a service provider for a product or service provisioned under and during the term specified in the agreement. The verified consent shall be valid for the period specified in the agreement.

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(h) Unauthorized charges.

(1) **Responsibilities of the billing telecommunications utility for unauthorized charges.** If a customer's telephone bill is charged for any product or service without proper customer verified consent in compliance with this section, the telecommunications utility that billed the customer, on its knowledge or notification of any unauthorized charge, shall promptly, but not later than 45 calendar days after the date of the knowledge or notification of an unauthorized charge meet the following requirements:

(A) A billing utility shall:

- (i) notify the service provider to immediately cease charging the customer for the unauthorized product or service;
- (ii) remove the unauthorized charge from the customer's bill;
- (iii) refund or credit to the customer all money that has been paid by the customer for any unauthorized charge, and if any unauthorized charge that has been paid is not refunded or credited within three billing cycles, shall pay interest at an annual rate established by the commission pursuant to §26.27 of this title (relating to Bill Payment and Adjustments) on the amount of any unauthorized charge until it is refunded or credited;
- (iv) on the customer's request, provide the customer with all billing records under its control related to any unauthorized charge within 15 business days after the date of the removal from the customer's telephone bill;
- (v) provide the service provider with the date the customer requested that the unauthorized charge be removed from the customer's bill and the dates of the actions required by clauses (ii) and (iii) of this subparagraph, and
- (vi) maintain for at least 24 months a record of every customer who has experienced any unauthorized charge for a product or service on the customer's telephone bill and has notified the billing telecommunications utility of the unauthorized charge. The record shall contain for each alleged unauthorized charge:
 - (I) the name of the service provider that offered the product or service;
 - (II) the affected telephone number(s) and addresses;
 - (III) the date each customer requested that the billing telecommunications utility remove the unauthorized charge from the customer's telephone bill;
 - (IV) the date the unauthorized charge was removed from the customer's telephone bill; and
 - (V) the date the customer was refunded or credited any money that the customer paid for the unauthorized charges.

(B) A billing telecommunications utility shall not:

- (i) suspend or disconnect telecommunications service to any customer for nonpayment of an unauthorized charge; or
- (ii) file an unfavorable credit report against a customer who has not paid charges that the customer has alleged were unauthorized unless the dispute regarding the unauthorized charges is ultimately resolved against the customer. The customer shall remain obligated to pay any charges that are not in dispute, and this paragraph does not apply to those undisputed charges.

(2) **Responsibilities of the service provider for unauthorized charges.** The service provider responsible for placing any unauthorized charge on a customer's telephone bill shall:

(A) immediately cease billing upon notice from the customer or the billing telecommunications utility for a product or service that a charge for such product or service has not been authorized by the customer;

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- (B) for at least 24 months following the completion of all of the steps required by paragraph (1)(A) of this subsection, maintain a record for every disputed charge for a product or service on the customer's telephone bill. Each record shall contain:
 - (i) the affected telephone number(s) and addresses;
 - (ii) the date the customer requested that the billing telecommunications utility remove the unauthorized charge from the customer's telephone bill;
 - (iii) the date the unauthorized charge was removed from the customer's telephone bill; and
 - (iv) the date that action was taken to refund or credit to the customer any money that the customer paid for the unauthorized charges; and
- (C) not resubmit any unauthorized charge to the billing telecommunications utility for any past or future period.

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

- (1) Each notice provided as set out in paragraph (2) of this subsection shall also contain the billing telecommunications utility's name, address, and a working, toll-free telephone number for customer contacts.
- (2) Every billing telecommunications utility shall provide the following notice, verbatim, to each of the utility's customers:

Charges on Your Telephone Bill
Your Rights as a Customer

Placing charges on your phone bill for products or services without your consent is known as "cramming" and is prohibited by law. Your telephone company may be providing billing services for other companies, so other companies' charges may appear on your telephone bill.

If you believe you were "crammed," you should contact the telephone company that bills you for your telephone service, (insert name of company), at (insert company's toll-free telephone number) and request that it take corrective action. The Public Utility Commission of Texas requires the billing telephone company to do the following within 45 calendar days of when it learns of the unauthorized charge:

- Notify the service provider to cease charging you for the unauthorized product or service;
- remove any unauthorized charge from your bill;
- refund or credit all money to you that you have paid for an unauthorized charge; and
- on your request, provide you with all billing records related to any unauthorized charge within 15 business days after the charge is removed from your telephone bill.

If the company fails to resolve your request, or if you would like to file a complaint, please write or call the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Your phone service cannot be disconnected for disputing or refusing to pay unauthorized charges.

You may have additional rights under state and federal law. Please contact the Federal Communications Commission, the Attorney General of Texas, or the Public Utility Commission of Texas if you would like further information about possible additional rights.

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- (3) **Distribution and timing of notice.**
- (A) Each billing telecommunications utility shall mail the notice as set out in paragraph (2) of this subsection to each of its residential and business customers within 60 calendar days after the effective date of this section, or by inclusion in the next publication of the utility's telephone directory following 60 calendar days after the effective date of this section. In addition, each billing telecommunications utility shall send the notice to new customers at the time service is initiated and on any customer's request.
- (B) Every telecommunications utility that prints its own telephone directories shall print the notice in the white pages of such directories, in nine point print or larger, beginning with the first publication of the directories after 60 calendar days following the effective date of this section; thereafter, the notice must appear in the white pages of each telephone directory published by or for the telecommunications utility.
- (4) Any bill sent to a customer from a telecommunications utility must include a statement, prominently located in the bill, that if the customer believes the bill includes unauthorized charges, the customer may contact: Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.
- (5) Each billing telecommunications utility shall make available to its customers the notice as set out in paragraph (2) of this subsection in both English and Spanish as necessary to adequately inform the customer; however, the commission may exempt a billing telecommunications utility from the requirement that the information be provided in Spanish upon application and a showing that 10% or fewer of its customers are exclusively Spanish-speaking, and that the billing telecommunications utility will notify all customers through a statement in both English and Spanish, as an addendum to the notice, that the information is available in Spanish from the telecommunications utility, both by mail and at the utility's offices.
- (6) The customer notice requirements in paragraphs (1) and (2) of this subsection may be combined with the notice requirements of §26.130(g)(3) of this title if all of the information required by each is in the combined notice.
- (7) The customer notice requirements in paragraph (4) of this subsection may be combined with the notice requirements of §26.130(i)(4) of this title if all of the information required by each is in the combined notice.
- (j) **Complaints to the commission.** A customer may file a complaint with the commission's Customer Protection Division (CPD) against a service provider, billing agent or billing 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 alleged unauthorized product or service.

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- (2) **Service provider's, billing agent's or billing utility's response to complaint.** After review of a customer's complaint, CPD shall forward the complaint to the service provider, billing agent or billing telecommunications utility named in that complaint. The service provider, billing agent or telecommunications utility shall respond to CPD within 21 calendar days after CPD forwards the complaint. The response shall include, to the extent it is within the custody or control of the service provider, billing agent or billing telecommunications utility, the following:
- (A) all documentation related to verification of customer consent used to charge the customer for the product or service; and
 - (B) all corrective actions taken as required by subsection (h) of this section, if the customer's consent for the charge for the product or service was not verified in accordance with subsection (f) of this section.
- (k) **Compliance and enforcement.**
- (1) **Records of customer verifications.** A service provider, billing agent or billing telecommunications utility shall provide a copy of records maintained under the requirements of subsections (d) and (f) of this section to the commission staff within 21 calendar days of a request for such records.
 - (2) **Records of disputed charges.** A billing telecommunications utility or a service provider shall provide a copy of records maintained under the requirements of subsection (h) of this section to the commission staff within 21 calendar days of a request for such records.
 - (3) **Failure to provide thorough response.** The proof of verified consent as required pursuant to subsection (j)(2)(A) of this section must establish a valid authorized charge as defined by subsection (f) of this section. Failure to timely submit a response that addresses the complainant's assertions within the time specified in subsections (j)(2), (k)(1), and (k)(2) of this section establishes a violation of this section.
 - (4) **Administrative penalties.** If the commission finds that a billing telecommunications utility has violated any provision of this section, the commission shall order the utility to take corrective action, as necessary, and the utility may be subject to administrative penalties and other enforcement actions pursuant to PURA, Chapter 15 and §22.246 of this title (relating to Administrative Penalties).
 - (5) **Evidence.** Evidence provided 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 charge, is admissible in a proceeding to enforce the provisions of this section.
 - (6) **Additional Corrective Action.** If the commission finds that any other service provider or billing agent subject to PURA, Chapter 17, Subchapter D, or Chapter 64, Subchapter D, has violated any provision of this section or has knowingly provided false information to the commission on matters subject to PURA, Chapter 17, Subchapter D, or Chapter 64, Subchapter D, the commission shall order the service provider or billing agent to take corrective action, as appropriate, and the commission may enforce the provisions of PURA, Chapter 15 and §22.246 of this title, against the service provider or billing agent as if the service provider or billing agent were regulated by the commission.

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- (7) **Certificate suspension, restriction or revocation.** If the commission finds that a billing telecommunications utility or a service provider has repeatedly violated this section, and if consistent with the public interest, the commission may suspend, restrict, or revoke the registration or certificate of the telecommunications service provider, thereby denying the service provider the right to provide service in this state. The commission may not revoke a certificate of convenience and necessity of a telecommunications utility except as provided by PURA §54.008.
- (8) **Termination of billing and collection services.** If the commission finds that a service provider or billing agent has repeatedly violated any provision of PURA, Chapter 17, Subchapter D, or Chapter 64, Subchapter D, the commission may order the billing utility to terminate billing and collection services for that service provider or billing agent.
- (9) **Coordination with Office of 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.