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May 15, 2008

*Via Electronic Filing*

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Re: *Ex Parte Notice: Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities – CG Docket No. 03-123*

Dear Ms. Dortch:

The record in the above-captioned proceeding reflects a broad consensus that users of telecommunications relay services (“TRS”) should receive ten-digit geographic North American Numbering Plan (“NANP”) numbers, and, concomitantly, should be afforded robust protections against slamming and the improper use of their customer proprietary network information (“CPNI”). Yesterday, Michael D. Maddix of Sorenson Communications, Inc. (“Sorenson”), and Gil Strobel, Richard Mallen, and the undersigned, counsel for Sorenson, met with Alan Amann, Thomas Chandler, Gregory Hlibok, and Michael Jacobs of the FCC’s Consumer and Governmental Affairs Bureau, Nicholas Alexander of the FCC’s Wireline Competition Bureau, and Richard Hovey of the FCC’s Public Safety and Homeland Security Bureau, to discuss how those protections might best be implemented.

During the meeting, Sorenson distributed the attached materials, which include: (1) proposed amendments to the FCC’s existing CPNI rules to extend those rules to relay services; (2) proposed slamming rules for relay services; (3) Section 222 of the Communications Act; and (4) the FCC’s existing slamming rules, which apply to telecommunications carriers. The proposed CPNI and slamming rules are intended to give TRS users the same protections enjoyed by subscribers of traditional voice telephony services.

## CPNI

The attached redline of the CPNI rules shows the changes needed to extend those rules to protect users of telecommunications relay services, users who make point-to-point calls, and users who receive a ten-digit geographic NANP number from a TRS provider. In addition, the proposed changes include other minor changes, for example, to allow notification or approval via sign language communications, as well as the oral, written, and electronic communications that currently are specified in the rules.

## Slamming

The record reflects a consensus that any uniform numbering plan adopted by the Commission for Internet-based relay services should allow for number portability – that is, the ability of users to keep their telephone numbers while changing relay providers. In order to prevent changes of provider that are not authorized by the user, the record also reflects a consensus that it is necessary to have rules preventing unauthorized changes of provider, often called “slamming” in the voice context. The proposed slamming rules that are attached are stand-alone rules that would apply only to relay providers that assign geographic NANP telephone numbers to users. The existing slamming rules would continue to apply to telecommunications carriers.

While the proposed relay slamming rules are parallel to the carrier slamming rules, there are a number of differences between relay services and wireline (and wireless) telecommunications services that are relevant to the implementation of the prohibition on unauthorized changes of provider. For example, relay users do not pay their relay providers, while customers of telecommunications carriers generally do pay carriers for the services they receive. The proposed slamming rules for relay services follow the same basic structure as the existing carrier slamming rules, including: (1) definitions; (2) a prohibition against unauthorized changes in a user’s selection of a provider; (3) verification procedures to ensure that changes in provider selection are properly authorized; (4) penalties for providers that violate the slamming rules; (5) procedures for resolving complaints regarding unauthorized provider changes; and (6) a mechanism for users to “freeze” their choice of providers.

While the proposed relay slamming rules are intended to achieve the same results as the carrier slamming rules, by necessity the relay rules differ from the carrier rules in several respects. For example, the definitions section defines providers with respect to the telephone numbers they assign to users. The penalty section provides for payments by the unauthorized provider to both the authorized provider and the Interstate TRS Fund, rather than to the authorized carrier and the customer (as is the case for the carrier rules). While the carrier rules provide for customer complaints, the proposed relay slamming rules would permit both providers and users to file complaints. Unlike the telecommunications service customer, who will learn that he or she has been slammed by getting a bill from the new

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(and unauthorized) carrier, the relay user may not be aware that his or her telephone number has been switched to a new provider.

We hope that the attached proposed rules advance the discussion regarding the specific CPNI and slamming rules that should be adopted by the Commission, and that other providers and consumers will review the proposals and suggest any necessary changes.

Pursuant to the Commission's rules, this letter is being submitted for inclusion in the public record of the above-referenced proceeding.

Sincerely,

/s/ Ruth Milkman  
Ruth Milkman

Attachments

cc: Nicholas Alexander  
Alan Amann  
Thomas Chandler  
Gregory Hlibok  
Richard Hovey  
Michael Jacobs

**Attachment 1**

**Proposed Revisions to CPNI Rules**

## SUBPART U – CUSTOMER PROPRIETARY NETWORK INFORMATION

### § 64.2001 Basis and purpose.

(a) Basis. The rules in this subpart are issued pursuant to the Communications Act of 1934, as amended.

(b) Purpose. The purpose of the rules in this subpart is to implement sections 222 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 222 & 225.

### § 64.2003 Definitions.

(a) Account information. "Account information" is information that is specifically connected to the customer's service relationship with the carrier, including such things as an account number or any component thereof, the telephone number associated with the account, or the bill's amount.

(b) Address of record. An "address of record," whether postal or electronic, is an address that the carrier has associated with the customer's account for at least 30 days.

(c) Affiliate. The term "affiliate" has the same meaning given such term in section 3(1) of the Communications Act of 1934, as amended, 47 U.S.C. 153(1).

(d) Call detail information. Any information that pertains to the transmission of specific telephone calls, including, for outbound calls, the number called, and the time, location, or duration of any call and, for inbound calls, the number from which the call was placed, and the time, location, or duration of any call.

(e) Communications-related services. The term "communications-related services" means telecommunications services, information services typically provided by telecommunications carriers, and services related to the provision or maintenance of customer premises equipment.

(f) Customer. A customer of a telecommunications carrier other than a TRS provider is a person or entity to which the telecommunications carrier is currently providing service. A customer of a TRS provider is a person or entity to which the TRS provider (i) is currently providing TRS or point-to-point service, or (ii) has assigned a ten-digit North American Numbering Plan (NANP) telephone number. Any such customer of a TRS provider shall be deemed to have subscribed to that provider for the purposes of this subpart.

(g) Customer proprietary network information (CPNI). The term "customer proprietary network information (CPNI)" has the same meaning given to such term in section 222(h)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 222(h)(1).

(h) Customer premises equipment (CPE). The term "customer premises equipment (CPE)" has the same meaning given to such term in section 3(14) of the Communications Act of 1934, as amended, [47 U.S.C. 153\(14\)](#).

(i) Information services typically provided by telecommunications carriers. The phrase "information services typically provided by telecommunications carriers" means only those information services (as defined in section 3(20) of the Communication Act of 1934, as amended, [47 U.S.C. 153\(20\)](#)) that are typically provided by telecommunications carriers, such as Internet access or voice mail services. Such phrase "information services typically provided by telecommunications carriers," as used in this subpart, shall not include retail consumer services provided using Internet Web sites (such as travel reservation services or mortgage lending services), whether or not such services may otherwise be considered to be information services.

(j) Local exchange carrier (LEC). The term "local exchange carrier (LEC)" has the same meaning given to such term in section 3(26) of the Communications Act of 1934, as amended, [47 U.S.C. 153\(26\)](#).

(k) Opt-in approval. The term "opt-in approval" refers to a method for obtaining customer consent to use, disclose, or permit access to the customer's CPNI. This approval method requires that the carrier obtain from the customer affirmative, express consent allowing the requested CPNI usage, disclosure, or access after the customer is provided appropriate notification of the carrier's request consistent with the requirements set forth in this subpart.

(l) Opt-out approval. The term "opt-out approval" refers to a method for obtaining customer consent to use, disclose, or permit access to the customer's CPNI. Under this approval method, a customer is deemed to have consented to the use, disclosure, or access to the customer's CPNI if the customer has failed to object thereto within the waiting period described in § 64.2008(d)(1) after the customer is provided appropriate notification of the carrier's request for consent consistent with the rules in this subpart.

(m) Point-to-point service or call. The term "point-to-point service" refers to a video service that facilitates the transmission of non-relay calls in which a video end-user device (e.g., a videophone) connects to another such device via a ten-digit NANP number that has been assigned to the called device, allowing deaf, hard-of-hearing, speech-disabled, and other individuals to communicate directly in real-time via sign language without the assistance of an interpreter. The term "point-to-point call" shall refer to a call placed via a point-to-point service.

(n) Readily available biographical information. "Readily available biographical information" is information drawn from the customer's life history and includes such things as the customer's social security number, or the last four digits of that number; mother's maiden name; home address; or date of birth.

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(n) Signed. A "signed" notice, approval, or other communication shall refer to a communication that is conveyed through sign language, including American Sign Language.

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(p) Subscriber list information (SLI). The term "subscriber list information (SLI)" has the same meaning given to such term in section 222(h)(3) of the Communications Act of 1934, as amended, 47 U.S.C. 222(h)(3).

(o) Telecommunications carrier or carrier. The terms "telecommunications carrier" or "carrier" shall have the same meaning as set forth in section 3(44) of the Communications Act of 1934, as amended, 47 U.S.C. 153(44). For the purposes of this subpart, the term "telecommunications carrier" or "carrier" shall include (i) an entity that provides interconnected VoIP service, as that term is defined in section 9.3 of these rules; and (ii) an entity that provides TRS or point-to-point service, as those terms are defined in this section.

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(r) Telecommunications relay service. The term "telecommunications relay service" (TRS) shall have the same meaning given to such term in section 64.2003(m) of these rules.

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(s) Telecommunications service. The term "telecommunications service" has the same meaning given to such term in section 3(46) of the Communications Act of 1934, as amended, 47 U.S.C. 153(46).

(t) Telephone. The term "telephone" shall mean a traditional voice telephone device or, in the case of deaf, hard-of-hearing, or speech-disabled persons, an analogous device (including a videophone, text telephone device, or personal computer) used to place or receive a TRS or point-to-point call.

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(u) Telephone number of record. The telephone number associated with the underlying service, not the telephone number supplied as a customer's "contact information."

(v) Valid photo ID. A "valid photo ID" is a government-issued means of personal identification with a photograph such as a driver's license, passport, or comparable ID that is not expired.

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#### **§ 64.2005 Use of customer proprietary network information without customer approval.**

(a) Any telecommunications carrier may use, disclose, or permit access to CPNI for the purpose of providing or marketing service offerings among the categories of service (*i.e.*, local, interexchange, CMRS, and TRS) to which the customer already subscribes from the same carrier, without customer approval.

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(1) If a telecommunications carrier provides different categories of service, and a

customer subscribes to more than one category of service offered by the carrier, the carrier is permitted to share CPNI among the carrier's affiliated entities that provide a service offering to the customer.

(2) If a telecommunications carrier provides different categories of service, but a customer does not subscribe to more than one offering by the carrier, the carrier is not permitted to share CPNI with its affiliates, except as provided in § 64.2007(b).

(b) A telecommunications carrier may not use, disclose, or permit access to CPNI to market to a customer service offerings that are within a category of service to which the subscriber does not already subscribe from that carrier, unless that carrier has customer approval to do so, except as described in paragraph (c) of this section.

(1) A wireless provider may use, disclose, or permit access to CPNI derived from its provision of CMRS, without customer approval, for the provision of CPE and information service(s). A wireline carrier or TRS provider may use, disclose or permit access to CPNI derived from its provision of local exchange service, interexchange service, or TRS without customer approval, for the provision of CPE and call answering, voice or video mail or messaging, voice or video storage and retrieval services, fax store and forward, and protocol conversion.

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(2) A telecommunications carrier may not use, disclose or permit access to CPNI to identify or track customers that call competing service providers. For example, a local exchange carrier may not use local service CPNI to track all customers that call local service competitors.

(c) A telecommunications carrier may use, disclose, or permit access to CPNI, without customer approval, as described in this paragraph (c).

(1) A telecommunications carrier may use, disclose, or permit access to CPNI, without customer approval, in its provision of inside wiring installation, maintenance, and repair services.

(2) CMRS providers may use, disclose, or permit access to CPNI for the purpose of conducting research on the health effects of CMRS.

(3) LECs, CMRS providers, entities that provide interconnected VoIP service as that term is defined in § 9.3 of this chapter, and entities that provide TRS may use CPNI, without customer approval, to market services formerly known as adjunct-to-basic services, such as, but not limited to, speed dialing, computer-provided directory assistance, call monitoring, call tracing, call blocking, call return, repeat dialing, call tracking, call waiting, caller I.D., call forwarding, and certain centrex features.

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(4) A TRS provider shall use, disclose, or permit access to CPNI to the extent necessary to (i) accept and handle 911/E911 calls; (ii) access, either directly or via a third party, a commercially available database that will allow the provider to determine an appropriate

Public Safety Answering Point, designated statewide default answering point, or appropriate local emergency authority that corresponds to the caller's location; (iii) relay the 911/E911 call to that entity; and (iv) facilitate the dispatch and response of emergency service or law enforcement personnel to the caller's location, in the event that the 911/E911 call is disconnected or the caller becomes incapacitated.

(d) A telecommunications carrier may use, disclose, or permit access to CPNI to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services.

**§ 64.2007 Approval required for use of customer proprietary network information.**

(a) A telecommunications carrier may obtain approval through written, oral or electronic methods. A TRS provider may also obtain approval through a point-to-point call or other methods involving communication via sign language.

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(1) A telecommunications carrier relying on oral or signed approval shall bear the burden of demonstrating that such approval has been given in compliance with the Commission's rules in this part.

(2) Approval or disapproval to use, disclose, or permit access to a customer's CPNI obtained by a telecommunications carrier must remain in effect until the customer revokes or limits such approval or disapproval.

(3) A telecommunications carrier must maintain records of approval, whether oral, written, electronic, or signed, for at least one year.

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(b) Use of Opt-Out and Opt-In Approval Processes. A telecommunications carrier may, subject to opt-out approval or opt-in approval, use its customer's individually identifiable CPNI for the purpose of marketing communications-related services to that customer. A telecommunications carrier may, subject to opt-out approval or opt-in approval, disclose its customer's individually identifiable CPNI, for the purpose of marketing communications-related services to that customer, to its agents and its affiliates that provide communications-related services. A telecommunications carrier may also permit such persons or entities to obtain access to such CPNI for such purposes. Except for use and disclosure of CPNI that is permitted without customer approval under section § 64.2005, or that is described in this paragraph, or as otherwise provided in section 222 of the Communications Act of 1934, as amended, a telecommunications carrier may only use, disclose, or permit access to its customer's individually identifiable CPNI subject to opt-in approval.

**§ 64.2008 Notice required for use of customer proprietary network information.**

(a) Notification, Generally. (1) Prior to any solicitation for customer approval, a telecommunications carrier must provide notification to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI. A TRS provider may provide such notification through a point-to-point call or other methods involving communication via sign language.

(2) A telecommunications carrier must maintain records of notification, whether oral, written, electronic, or signed, for at least one year.

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(b) Individual notice to customers must be provided when soliciting approval to use, disclose, or permit access to customers' CPNI.

(c) Content of Notice. Customer notification must provide sufficient information to enable the customer to make an informed decision as to whether to permit a carrier to use, disclose, or permit access to, the customer's CPNI.

(1) The notification must state that the customer has a right, and the carrier has a duty, under federal law, to protect the confidentiality of CPNI.

(2) The notification must specify the types of information that constitute CPNI and the specific entities that will receive the CPNI, describe the purposes for which CPNI will be used, and inform the customer of his or her right to disapprove those uses, and deny or withdraw access to CPNI at any time.

(3) The notification must advise the customer of the precise steps the customer must take in order to grant or deny access to CPNI, and must clearly state that a denial of approval will not affect the provision of any services to which the customer subscribes. However, carriers may provide a brief statement, in clear and neutral language, describing consequences directly resulting from the lack of access to CPNI.

(4) The notification must be comprehensible and must not be misleading.

(5) If written notification is provided, the notice must be clearly legible, use sufficiently large type, and be placed in an area so as to be readily apparent to a customer.

(6) If any portion of a notification is translated into another language, then all portions of the notification must be translated into that language.

(7) A carrier may state in the notification that the customer's approval to use CPNI may enhance the carrier's ability to offer products and services tailored to the customer's needs. A carrier also may state in the notification that it may be compelled to disclose CPNI to any person upon affirmative written request by the customer.

(8) A carrier may not include in the notification any statement attempting to encourage a

customer to freeze third-party access to CPNI.

(9) The notification must state that any approval, or denial of approval for the use of CPNI outside of the service to which the customer already subscribes from that carrier is valid until the customer affirmatively revokes or limits such approval or denial.

(10) A telecommunications carrier's solicitation for approval must be proximate to the notification of a customer's CPNI rights.

(d) Notice Requirements Specific to Opt-Out. A telecommunications carrier must provide notification to obtain opt-out approval through electronic or written methods, but not by oral or signed communication (except as provided in paragraph (f) of this section). The contents of any such notification must comply with the requirements of paragraph (c) of this section.

(1) Carriers must wait a 30-day minimum period of time after giving customers notice and an opportunity to opt-out before assuming customer approval to use, disclose, or permit access to CPNI. A carrier may, in its discretion, provide for a longer period. Carriers must notify customers as to the applicable waiting period for a response before approval is assumed.

(i) In the case of an electronic form of notification, the waiting period shall begin to run from the date on which the notification was sent; and

(ii) In the case of notification by mail, the waiting period shall begin to run on the third day following the date that the notification was mailed.

(2) Carriers using the opt-out mechanism must provide notices to their customers every two years.

(3) Telecommunications carriers that use e-mail to provide opt-out notices must comply with the following requirements in addition to the requirements generally applicable to notification:

(i) Carriers must obtain express, verifiable, prior approval from consumers to send notices via e-mail regarding their service in general, or CPNI in particular;

(ii) Carriers must allow customers to reply directly to e-mails containing CPNI notices in order to opt-out;

(iii) Opt-out e-mail notices that are returned to the carrier as undeliverable must be sent to the customer in another form before carriers may consider the customer to have received notice;

(iv) Carriers that use e-mail to send CPNI notices must ensure that the subject line of the message clearly and accurately identifies the subject matter of the e-mail; and

(v) Telecommunications carriers must make available to every customer a method to opt-out that is of no additional cost to the customer and that is available 24 hours a day, seven days a week. Carriers may satisfy this requirement through a combination of methods, so long as all customers have the ability to opt-out at no cost and are able to effectuate that choice whenever they choose.

(e) Notice Requirements Specific to Opt-In. A telecommunications carrier may provide notification to obtain opt-in approval through oral, signed, written, or electronic methods. The contents of any such notification must comply with the requirements of paragraph (c) of this section.

(f) Notice Requirements Specific to One-Time Use of CPNI. (1) Carriers may use oral or signed notice to obtain limited, one-time use of CPNI for inbound and outbound customer telephone contacts for the duration of the call, regardless of whether carriers use opt-out or opt-in approval based on the nature of the contact.

(2) The contents of any such notification must comply with the requirements of paragraph (c) of this section, except that telecommunications carriers may omit any of the following notice provisions if not relevant to the limited use for which the carrier seeks CPNI:

(i) Carriers need not advise customers that if they have opted-out previously, no action is needed to maintain the opt-out election;

(ii) Carriers need not advise customers that they may share CPNI with their affiliates or third parties and need not name those entities, if the limited CPNI usage will not result in use by, or disclosure to, an affiliate or third party;

(iii) Carriers need not disclose the means by which a customer can deny or withdraw future access to CPNI, so long as carriers explain to customers that the scope of the approval the carrier seeks is limited to one-time use; and

(iv) Carriers may omit disclosure of the precise steps a customer must take in order to grant or deny access to CPNI, as long as the carrier clearly communicates that the customer can deny access to his CPNI for the call.

**§ 64.2009 Safeguards required for use of customer proprietary network information.**

(a) Telecommunications carriers must implement a system by which the status of a customer's CPNI approval can be clearly established prior to the use of CPNI.

(b) Telecommunications carriers must train their personnel as to when they are and are

not authorized to use CPNI, and carriers must have an express disciplinary process in place.

(c) All carriers shall maintain a record, electronically or in some other manner, of their own and their affiliates' sales and marketing campaigns that use their customers' CPNI. All carriers shall maintain a record of all instances where CPNI was disclosed or provided to third parties, or where third parties were allowed access to CPNI. The record must include a description of each campaign, the specific CPNI that was used in the campaign, and what products and services were offered as a part of the campaign. Carriers shall retain the record for a minimum of one year.

(d) Telecommunications carriers must establish a supervisory review process regarding carrier compliance with the rules in this subpart for outbound marketing situations and maintain records of carrier compliance for a minimum period of one year. Specifically, sales personnel must obtain supervisory approval of any proposed outbound marketing request for customer approval.

(e) A telecommunications carrier must have an officer, as an agent of the carrier, sign and file with the Commission a compliance certificate on an annual basis. The officer must state in the certification that he or she has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the rules in this subpart. The carrier must provide a statement accompanying the certificate explaining how its operating procedures ensure that it is or is not in compliance with the rules in this subpart. In addition, the carrier must include an explanation of any actions taken against data brokers and a summary of all customer complaints received in the past year concerning the unauthorized release of CPNI. This filing must be made annually with the Enforcement Bureau on or before March 1 in EB Docket No. 06-36, for data pertaining to the previous calendar year.

(f) Carriers must provide written notice within five business days to the Commission of any instance where the opt-out mechanisms do not work properly, to such a degree that consumers' inability to opt-out is more than an anomaly.

(1) The notice shall be in the form of a letter, and shall include the carrier's name, a description of the opt-out mechanism(s) used, the problem(s) experienced, the remedy proposed and when it will be/was implemented, whether the relevant state commission(s) has been notified and whether it has taken any action, a copy of the notice provided to customers, and contact information.

(2) Such notice must be submitted even if the carrier offers other methods by which consumers may opt-out.

**§ 64.2010 Safeguards on the disclosure of customer proprietary network information.**

(a) Safeguarding CPNI. Telecommunications carriers must take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI.

Telecommunications carriers must properly authenticate a customer prior to disclosing CPNI based on customer-initiated telephone, TRS, or point-to-point contact, online account access, or an in-store visit.

(b) Telephone access to CPNI. Telecommunications carriers may only disclose call detail information over the telephone, based on customer-initiated telephone contact, if the customer first provides the carrier with a password, as described in paragraph (e) of this section, that is not prompted by the carrier asking for readily available biographical information, or account information. If the customer does not provide a password, the telecommunications carrier may only disclose call detail information by sending it to the customer's address of record, or by calling the customer at the telephone number of record. If the customer is able to provide call detail information to the telecommunications carrier during a customer-initiated call without the telecommunications carrier's assistance, then the telecommunications carrier is permitted to discuss the call detail information provided by the customer.

(c) Online access to CPNI. A telecommunications carrier must authenticate a customer without the use of readily available biographical information, or account information, prior to allowing the customer online access to CPNI related to a telecommunications service account. Once authenticated, the customer may only obtain online access to CPNI related to a telecommunications service account through a password, as described in paragraph (e) of this section, that is not prompted by the carrier asking for readily available biographical information, or account information.

(d) In-store access to CPNI. A telecommunications carrier may disclose CPNI to a customer who, at a carrier's retail location, first presents to the telecommunications carrier or its agent a valid photo ID matching the customer's account information.

(e) Establishment of a Password and Back-up Authentication Methods for Lost or Forgotten Passwords. To establish a password, a telecommunications carrier must authenticate the customer without the use of readily available biographical information, or account information. Telecommunications carriers may create a back-up customer authentication method in the event of a lost or forgotten password, but such back-up customer authentication method may not prompt the customer for readily available biographical information, or account information. If a customer cannot provide the correct password or the correct response for the back-up customer authentication method, the customer must establish a new password as described in this paragraph.

(f) Notification of account changes. Telecommunications carriers must notify customers immediately whenever a password, customer response to a back-up means of authentication for lost or forgotten passwords, online account, or address of record is

created or changed. This notification is not required when the customer initiates service, including the selection of a password at service initiation. This notification may be through a carrier-originated voicemail, text message, or video mail to the telephone number of record, or by mail to the address of record, and must not reveal the changed information or be sent to the new account information.

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(g) Business customer exemption. Telecommunications carriers may bind themselves contractually to authentication regimes other than those described in this section for services they provide to their business customers that have both a dedicated account representative and a contract that specifically addresses the carriers' protection of CPNI.

#### **§ 64.2011 Notification of customer proprietary network information security breaches.**

(a) A telecommunications carrier shall notify law enforcement of a breach of its customers' CPNI as provided in this section. The carrier shall not notify its customers or disclose the breach publicly, whether voluntarily or under state or local law or these rules, until it has completed the process of notifying law enforcement pursuant to paragraph (b) of this section.

(b) As soon as practicable, and in no event later than seven (7) business days, after reasonable determination of the breach, the telecommunications carrier shall electronically notify the United States Secret Service (USSS) and the Federal Bureau of Investigation (FBI) through a central reporting facility. The Commission will maintain a link to the reporting facility at <http://www.fcc.gov/eb/cpni>.

(1) Notwithstanding any state law to the contrary, the carrier shall not notify customers or disclose the breach to the public until 7 full business days have passed after notification to the USSS and the FBI except as provided in paragraphs (b)(2) and (b)(3) of this section.

(2) If the carrier believes that there is an extraordinarily urgent need to notify any class of affected customers sooner than otherwise allowed under paragraph (b)(1) of this section, in order to avoid immediate and irreparable harm, it shall so indicate in its notification and may proceed to immediately notify its affected customers only after consultation with the relevant investigating agency. The carrier shall cooperate with the relevant investigating agency's request to minimize any adverse effects of such customer notification.

(3) If the relevant investigating agency determines that public disclosure or notice to customers would impede or compromise an ongoing or potential criminal investigation or national security, such agency may direct the carrier not to so disclose or notify for an initial period of up to 30 days. Such period may be extended by the agency as reasonably necessary in the judgment of the agency. If such direction is given, the agency shall

notify the carrier when it appears that public disclosure or notice to affected customers will no longer impede or compromise a criminal investigation or national security. The agency shall provide in writing its initial direction to the carrier, any subsequent extension, and any notification that notice will no longer impede or compromise a criminal investigation or national security and such writings shall be contemporaneously logged on the same reporting facility that contains records of notifications filed by carriers.

(c) Customer notification. After a telecommunications carrier has completed the process of notifying law enforcement pursuant to paragraph (b) of this section, it shall notify its customers of a breach of those customers' CPNI.

(d) Recordkeeping. All carriers shall maintain a record, electronically or in some other manner, of any breaches discovered, notifications made to the USSS and the FBI pursuant to paragraph (b) of this section, and notifications made to customers. The record must include, if available, dates of discovery and notification, a detailed description of the CPNI that was the subject of the breach, and the circumstances of the breach. Carriers shall retain the record for a minimum of 2 years.

(e) Definitions. As used in this section, a "breach" has occurred when a person, without authorization or exceeding authorization, has intentionally gained access to, used, or disclosed CPNI.

(f) This section does not supersede any statute, regulation, order, or interpretation in any State, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this section, and then only to the extent of the inconsistency.

**Attachment 2**

**Section 222 of the Communications Act**

From the U.S. Code Online via GPO Access  
[wais.access.gpo.gov]  
[Laws in effect as of January 3, 2006]  
[CITE: 47USC222]

TITLE 47--TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS

CHAPTER 5--WIRE OR RADIO COMMUNICATION

SUBCHAPTER II--COMMON CARRIERS

Part I--Common Carrier Regulation

Sec. 222. Privacy of customer information

(a) In general

Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier.

(b) Confidentiality of carrier information

A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts.

(c) Confidentiality of customer proprietary network information

(1) Privacy requirements for telecommunications carriers

Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.

(2) Disclosure on request by customers

A telecommunications carrier shall disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer.

(3) Aggregate customer information

A telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a

telecommunications service may use, disclose, or permit access to aggregate customer information other than for the purposes described in paragraph (1). A local exchange carrier may use, disclose, or permit access to aggregate customer information other than for purposes described in paragraph (1) only if it provides such aggregate information to other carriers or persons on reasonable and nondiscriminatory terms and conditions upon reasonable request therefor.

(d) Exceptions

Nothing in this section prohibits a telecommunications carrier from using, disclosing, or permitting access to customer proprietary network information obtained from its customers, either directly or indirectly through its agents--

(1) to initiate, render, bill, and collect for telecommunications services;

(2) to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services;

(3) to provide any inbound telemarketing, referral, or administrative services to the customer for the duration of the call, if such call was initiated by the customer and the customer approves of the use of such information to provide such service; and

(4) to provide call location information concerning the user of a commercial mobile service (as such term is defined in section 332(d) of this title)--

(A) to a public safety answering point, emergency medical service provider or emergency dispatch provider, public safety, fire service, or law enforcement official, or hospital emergency or trauma care facility, in order to respond to the user's call for emergency services;

(B) to inform the user's legal guardian or members of the user's immediate family of the user's location in an emergency situation that involves the risk of death or serious physical harm; or

(C) to providers of information or database management services solely for purposes of assisting in the delivery of emergency services in response to an emergency.

(e) Subscriber list information

Notwithstanding subsections (b), (c), and (d) of this section, a telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.

(f) Authority to use wireless location information

For purposes of subsection (c)(1) of this section, without the express prior authorization of the customer, a customer shall not be considered to have approved the use or disclosure of or access to--

(1) call location information concerning the user of a commercial mobile service (as such term is defined in section 332(d)

of this title), other than in accordance with subsection (d)(4) of this section; or

(2) automatic crash notification information to any person other than for use in the operation of an automatic crash notification system.

(g) Subscriber listed and unlisted information for emergency services

Notwithstanding subsections (b), (c), and (d) of this section, a telecommunications carrier that provides telephone exchange service shall provide information described in subsection (i)(3)(A) \1\ of this section (including information pertaining to subscribers whose information is unlisted or unpublished) that is in its possession or control (including information pertaining to subscribers of other carriers) on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions to providers of emergency services, and providers of emergency support services, solely for purposes of delivering or assisting in the delivery of emergency services.

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\1\ So in original. Probably should be subsection `` (h) (3) (A) ''.  
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(h) Definitions

As used in this section:

(1) Customer proprietary network information

The term ``customer proprietary network information'' means--

(A) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and

(B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier;

except that such term does not include subscriber list information.

(2) Aggregate information

The term ``aggregate customer information'' means collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed.

(3) Subscriber list information

The term ``subscriber list information'' means any information--

(A) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or

classifications; and

(B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.

(4) Public safety answering point

The term ``public safety answering point'' means a facility that has been designated to receive emergency calls and route them to emergency service personnel.

(5) Emergency services

The term ``emergency services'' means 9-1-1 emergency services and emergency notification services.

(6) Emergency notification services

The term ``emergency notification services'' means services that notify the public of an emergency.

(7) Emergency support services

The term ``emergency support services'' means information or data base management services used in support of emergency services.

(June 19, 1934, ch. 652, title II, Sec. 222, as added Pub. L. 104-104, title VII, Sec. 702, Feb. 8, 1996, 110 Stat. 148; amended Pub. L. 106-81, Sec. 5, Oct. 26, 1999, 113 Stat. 1288.)

Prior Provisions

A prior section 222, act June 19, 1934, ch. 652, title II, Sec. 222, as added Mar. 6, 1943, ch. 10, Sec. 1, 57 Stat. 5; amended July 12, 1960, Pub. L. 86-624, Sec. 36, 74 Stat. 421; Nov. 30, 1974, Pub. L. 93-506, Sec. 2, 88 Stat. 1577; Dec. 24, 1980, Pub. L. 96-590, 94 Stat. 3414; Dec. 29, 1981, Pub. L. 97-130, Sec. 2, 95 Stat. 1687, related to competition among record carriers, prior to repeal by Pub. L. 103-414, title III, Sec. 304(a)(6), Oct. 25, 1994, 108 Stat. 4297.

Amendments

1999--Subsec. (d)(4). Pub. L. 106-81, Sec. 5(1), added par. (4).  
Subsecs. (f), (g). Pub. L. 106-81, Sec. 5(2), added subsecs. (f) and (g). Former subsec. (f) redesignated (h).  
Subsec. (h). Pub. L. 106-81, Sec. 5(2)-(4), redesignated subsec. (f) as (h), inserted ``location,'' after ``destination,'' in par. (1)(A), and added pars. (4) to (7).

**Attachment 3**

**Proposed Slamming Rules for TRS**

**Proposed Slamming Rules for TRS**  
**Part XX, Subpart X – Changes in Preferred TRS Providers**

**§ XX.XX00 Definitions.**

(a) The term *provider* is generally any provider of TRS that meets the requirements of 47 C.F.R. § 64.604(c)(5)(iii)(F) for eligibility to receive payments from the TRS Fund and that provides a form of TRS for which there is number portability.

(b) The term *preferred provider* is generally any provider that a subscriber has selected to be the preferred provider of TRS for calls to a telephone number assigned to the end user subscriber.

(c) The term *submitting provider* is generally any provider that requests on the behalf of a subscriber that the subscriber's TRS provider be changed, and seeks to become the subscriber's preferred provider. A carrier may be treated as a submitting provider, however, if it is responsible for any unreasonable delays in the submission of provider change requests or for the submission of unauthorized provider change requests, including fraudulent authorizations.

(d) The term *executing provider* is generally any provider that effects, or directs another entity to effect, a request that a subscriber's preferred provider be changed. A carrier may be treated as an executing provider, however, if it is responsible for any unreasonable delays in the execution of provider changes or for the execution of unauthorized provider changes, including fraudulent authorizations.

(e) The term *authorized provider* is generally any provider that submits a change, on behalf of a subscriber, in the subscriber's selection of a preferred provider with the subscriber's authorization verified in accordance with the procedures specified in this part.

(f) The term *unauthorized provider* is generally any provider that submits a change, on behalf of a subscriber, in the subscriber's selection of a preferred provider but fails to obtain the subscriber's authorization verified in accordance with the procedures specified in this part.

(g) The term *unauthorized change* is a change in a subscriber's selection of preferred provider that was made without authorization verified in accordance with the verification procedures specified in this part.

(h) The term *subscriber* is any one of the following:

(1) The party identified in the account records of a provider as having been assigned a telephone number by that provider or having chosen that provider as a preferred provider;

(2) Any adult person authorized by such party to change providers; or

(3) Any person contractually or otherwise lawfully authorized to represent such party.

(i) The term *TRS* shall refer to telecommunications relay services, as that term is defined in 47 CFR 64.601(14).

(j) The term *telephone number* is a ten-digit geographic North American Number Plan number assigned to a subscriber by a provider.

(k) Nothing in this subpart shall be construed to limit or reduce the obligations of submitting or executing carriers under §64.1100, et seq.

**§ XX.XX20 Verification of orders for TRS telephone numbers.**

(a) No provider shall submit or execute a change on the behalf of a subscriber in the subscriber's selection of a preferred provider except in accordance with the procedures prescribed in this subpart.

(1) No submitting provider shall submit a change on the behalf of a subscriber in the subscriber's selection of a preferred provider prior to obtaining:

(i) Authorization from the subscriber, and

(ii) Verification of that authorization in accordance with the procedures prescribed in this section. The submitting provider shall maintain and preserve records of verification of subscriber authorization for a minimum period of two years after obtaining such verification.

(2) An executing provider shall not verify the submission of a change in a subscriber's selection of a preferred provider received from a submitting provider. For an executing provider, compliance with the procedures described in this part shall be defined as prompt execution, without any unreasonable delay, of changes that have been verified by a submitting provider.

(b) Where a provider is offering more than one type of TRS (e.g., VRS, IP Relay and IP CapTel) for which there is number portability, that provider must obtain separate authorization from the subscriber for each service, although the authorizations may be obtained within the same solicitation. Each authorization must be verified separately from any other authorizations obtained in the same solicitation. Each authorization must be verified in accordance with the verification procedures prescribed in this part.

(c) No provider shall submit a preferred provider change order unless and until the order has been confirmed in accordance with one of the following procedures:

(1) The provider has obtained the subscriber's written or electronically signed authorization in a form that meets the requirements of § XX.XX30; or

(2) The provider has obtained the subscriber's electronic authorization to submit the preferred

provider change order. Such authorization must be placed from the telephone number(s) on which the preferred provider is to be changed and must confirm the information in paragraph (a)(1) of this section; or

(3) An appropriately qualified independent third party has obtained, in accordance with the procedures set forth in paragraphs (c)(3)(i) through (c)(3)(iv) of this section, the subscriber's authorization to submit the preferred provider change order that confirms and includes appropriate verification data (e.g., the subscriber's date of birth or social security number). The independent third party must not be owned, managed, controlled, or directed by the provider or the provider's marketing agent; must not have any financial incentive to confirm preferred provider change orders for the provider or the provider's marketing agent; and must operate in a location physically separate from the provider or the provider's marketing agent.

(i) Methods of third party verification. Third party verification systems and three-way conference calls may be used for verification purposes so long as the requirements of paragraphs (c)(3)(ii) through (c)(3)(iv) of this section are satisfied.

(ii) Provider initiation of third party verification. A provider or a provider's sales representative initiating a three-way conference call must drop off the call once the three-way connection has been established.

(iii) Requirements for content and format of third party verification. Any description of the provider change transaction by a third party verifier must not be misleading, and all third party verification methods shall elicit, at a minimum: The date of the verification; the identity of the subscriber; confirmation that the person on the call is authorized to make the provider change; confirmation that the person on the call wants to make the provider change; confirmation that the person on the call understands that a provider change, not an upgrade to existing service, or any other misleading description of the transaction, is being authorized; the names of the providers affected by the change (not including the name of the displaced provider); the telephone numbers to be switched; and the types of service involved (including a brief description of a service about which the subscriber demonstrates confusion regarding the nature of that service). If the subscriber has additional questions for the provider's sales representative during the verification, the verifier shall indicate to the subscriber that, upon completion of the verification process, the subscriber will have authorized a provider change. Third party verifiers may not market the provider's services by providing additional information, including information regarding preferred provider freeze procedures.

(iv) Other requirements for third party verification. All third party verifications shall be conducted in the same language that was used in the underlying transaction and shall be recorded by the third-party verifier in their entirety. The third-party verifier shall inform both the subscriber and, where applicable, the communications assistant relaying the call, that the call is being recorded. The third-party verifier shall provide the submitting provider an audio record of the verification of subscriber authorization. In accordance with the procedures set forth in XX.XX20(a)(1)(ii), submitting providers shall maintain and preserve audio records of

verification of subscriber authorization for a minimum period of two years after obtaining such verification.

(d) Providers must provide subscribers the option of using one of the authorization and verification procedures specified in § XX.XX20(c) in addition to an electronically signed authorization and verification procedure under XX.XX20(c)(1).

(e) A provider may acquire, through a sale or transfer, either part or all of another provider's subscriber base without obtaining each subscriber's authorization and verification in accordance with § XX.XX20(c), provided that the acquiring provider complies with the following streamlined procedures. A provider may not use these streamlined procedures for any fraudulent purpose, including any attempt to avoid liability for violations under part 64 of the Commission rules.

(1) Not later than 30 days before the transfer of the affected subscribers from the selling or transferring provider to the acquiring provider, the acquiring provider shall provide written notice to each affected subscriber of the information specified. The acquiring provider is required to fulfill the obligations set forth in the advance subscriber notice. The advance subscriber notice shall be provided in a manner consistent with [47 U.S.C. 255](#) and the Commission's rules regarding accessibility to blind and visually-impaired consumers, [47 CFR 6.3](#), [6.5](#) of this chapter. The following information must be included in the advance subscriber notice:

(i) The date on which the acquiring provider will become the subscriber's new preferred provider;

(ii) The rates, terms, and conditions of the service(s) to be provided by the acquiring provider upon the subscriber's transfer to the acquiring provider, and the means by which the acquiring provider will notify the subscriber of any change(s) to these rates, terms, and conditions;

(iii) The acquiring provider will be responsible for any provider change charges associated with the transfer, except where the provider is acquiring subscribers by default, other than through bankruptcy, and state law requires the exiting provider to pay these costs;

(iv) The subscriber's right to select a different preferred provider for the telecommunications relay service(s) at issue, if an alternative provider is available;

(v) All subscribers receiving the notice, even those who have arranged preferred provider freezes on the service(s) involved in the transfer, will be transferred to the acquiring provider, unless they have selected a different provider before the transfer date; existing preferred provider freezes on the service(s) involved in the transfer will be lifted; and any subscriber wishing to freeze their service(s) with the new provider must arrange a new freeze;

(vi) Whether the acquiring provider will be responsible for handling any complaints filed, or otherwise raised, prior to or during the transfer against the selling or transferring provider; and

(vii) The toll-free customer service telephone number of the acquiring provider.

**§ XX.XX30 Letter of agency form and content.**

(a) A provider may use a written or electronically signed letter of agency to obtain authorization and/or verification of a subscriber's request to change his or her preferred provider selection. A letter of agency that does not conform with this section is invalid for purposes of this part.

(b) The letter of agency shall be a separate document (or an easily separable document) or located on a separate screen or webpage containing only the authorizing language described in paragraph (e) of this section having the sole purpose of authorizing a provider to initiate a preferred provider change. The letter of agency must be signed and dated by the subscriber to the telephone number(s) requesting the preferred provider change.

(c) The letter of agency shall not be combined on the same document, screen, or webpage with inducements of any kind.

(d) At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

(1) The subscriber's registered name and address and each telephone number to be covered by the preferred provider change order;

(2) The decision to change the preferred provider from the current provider to the soliciting provider;

(3) That the subscriber designates [insert the name of the submitting provider] to act as the subscriber's agent for the preferred provider change;

(4) That the subscriber understands that only one provider may be designated as the subscriber's preferred provider for any one telephone number; and

(5) That the subscriber may consult with the provider as to whether a fee will apply to the change in the subscriber's preferred provider.

(e) Any provider designated in a letter of agency as a preferred provider must be the preferred provider directly serving the subscriber's telephone number.

(f) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current provider.

(g) If any portion of a letter of agency is translated into another language then all portions of the

letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, descriptions or instructions provided with the letter of agency.

(h) Letters of agency submitted with an electronically signed authorization must include the consumer disclosures required by Section 101(c) of the Electronic Signatures in Global and National Commerce Act.

(i) A provider shall submit a preferred provider change order on behalf of a subscriber within no more than 60 days of obtaining a written or electronically signed letter of agency. However, letters of agency for business customers with multiple locations and/or multiple telephone numbers that have entered into negotiated agreements with providers to add equipment and/or telephone numbers to their business locations during the course of a term agreement shall be valid for the period specified in the term agreement.

**§ XX.XX40 Provider liability for slamming.**

(a) Provider Liability. Any submitting provider that fails to comply with the procedures prescribed in this part for a particular subscriber shall be liable to the Interstate Telecommunications Relay Services Fund in an amount equal to 50% of the amount paid to that provider by the Fund for the minutes generated by that subscriber after such violation and shall be liable to the subscriber's properly authorized provider for an amount equal to 100% of the amount paid to the unauthorized provider by the Fund for the minutes generated by that subscriber after such violation. The remedies provided in this part are in addition to any other remedies available by law.

(1) The unauthorized provider shall also be liable to the subscriber for any charge required to return the subscriber to his or her properly authorized provider, if applicable.

**§ XX.XX50 Procedures for resolution of unauthorized changes in preferred provider.**

(a) Notification of Alleged Unauthorized Provider Change. Executing carriers who are informed of an unauthorized provider change by a subscriber must immediately notify both the authorized and allegedly unauthorized provider of the incident. This notification must include the identity of both providers.

(b) Referral of Complaint. Any provider, executing, authorized, or allegedly unauthorized, that is informed by a subscriber or an executing provider of an unauthorized provider change shall direct that subscriber to the Federal Communications Commission's Consumer & Governmental Affairs Bureau, for resolution of the complaint. Providers shall also inform the subscriber that he or she may contact and seek resolution from the alleged unauthorized provider and, in addition, may contact the authorized provider. An executing provider shall also have the right to file a

complaint with the Commission in the event that one of its subscribers is the subject of an unauthorized provider change.

(c) Notification of Receipt of Complaint. Upon receipt of an unauthorized provider change complaint, the Federal Communications Commission will notify the allegedly unauthorized provider of the complaint and order that the provider exclude all minutes attributable to the subscriber for the first 30 days after the unauthorized change from the monthly minutes the provider submits to the Fund Administrator for reimbursement pending a determination of whether an unauthorized change, as defined by § XX.XX00(g), has occurred, if it has not already done so.

(d) Proof of Verification. Not more than 30 days after notification of the complaint, the alleged unauthorized provider shall provide to the Commission a copy of any valid proof of verification of the provider change. This proof of verification must contain clear and convincing evidence of a valid authorized provider change, as that term is defined in §§ XX.XX20 through XX.XX30. The Federal Communications Commission will determine whether an unauthorized change, as defined by § XX.XX00(g), has occurred using such proof and any evidence supplied by the subscriber. Failure by the provider to respond or provide proof of verification will be presumed to be clear and convincing evidence of a violation.

#### **§ XX.XX60 Procedures where the Fund has not yet reimbursed.**

(a) This section shall only apply after a subscriber or provider has determined that an unauthorized change, as defined by § XX.XX00(g), has occurred and the Fund has not reimbursed the allegedly unauthorized provider for service provided to the subscriber for 30 days, or a portion thereof, after the unauthorized change occurred.

(b) An allegedly unauthorized provider shall remove all minutes for service provided to subscriber during the first 30 days after an alleged unauthorized change occurred, as defined by § XX.XX00(g), from its monthly submission to the Fund Administrator upon notification that such unauthorized change is alleged to have occurred.

(c) An allegedly unauthorized provider may challenge an allegation that an unauthorized change, as defined by § XX.XX00(g), occurred. An allegedly unauthorized provider choosing to challenge such allegation shall immediately notify the complaining subscriber or complaining provider that: The complaining subscriber or provider must file a complaint with the Commission within 30 days of the date the allegedly unauthorized provider notifies the complaining subscriber of the requirements of this paragraph. No allegedly unauthorized provider shall reinstate charges to the Fund pursuant to the provisions of this paragraph without first providing the subscriber or provider with a reasonable opportunity to demonstrate that the requisite complaint was timely filed within the 30-day period described in this paragraph.

(d) If the Federal Communications Commission determines after reasonable investigation that an

unauthorized change, as defined by § XX.XX00(g), has occurred, an order shall be issued providing that the Fund will not reimburse for any minutes attributable to the subscriber during the first 30 days after the unauthorized provider change occurred, and neither the authorized or unauthorized provider may seek reimbursement from the Fund for those charges.

(e) If the unauthorized provider received payment from the Fund for services provided after the first 30 days after the unauthorized change occurred, the obligations for payments provided for in § XX.XX70 shall apply to those payments. If the Federal Communications Commission determines after reasonable investigation that the provider change was authorized, the provider may seek reimbursement from the Fund for charges incurred.

**§ XX.XX70 Procedures where the Fund has already reimbursed.**

(a) The procedures in this section shall only apply after a subscriber or provider has determined that an unauthorized change, as defined by § XX.XX00(g), has occurred and the Fund has reimbursed the allegedly unauthorized provider for minutes of service provided to the subscriber.

(b) If the Federal Communications Commission determines after reasonable investigation that an unauthorized change, as defined by § XX.1100(f), has occurred, it shall issue an order directing the unauthorized provider to refund to the Fund 50% of all payments the unauthorized provider received from the Fund for minutes attributable to the subscriber and to forward to the authorized provider an amount equal to 100% of all payments the unauthorized provider received from the Fund for minutes attributable to the subscriber.

**§ XX.XX90 Preferred provider freezes.**

(a) A preferred provider freeze (or freeze) prevents a change in a subscriber's preferred provider selection unless the subscriber gives the provider from whom the freeze was requested his or her express consent.

(b) Preferred provider freeze procedures, including any solicitation, must clearly distinguish among telecommunications relay services (e.g., VRS, IP Relay and IP CapTel) subject to a preferred provider freeze. The provider offering the freeze must obtain separate authorization for each service for which a preferred provider freeze is requested.

(c) Solicitation and imposition of preferred provider freezes.

(1) All provider-provided solicitation and other materials regarding preferred provider freezes must include:

(i) An explanation, in clear and neutral language, of what a preferred provider freeze is and what services may be subject to a freeze;

(ii) A description of the specific procedures necessary to lift a preferred provider freeze; an explanation that these steps are in addition to the Commission's verification rules in §§ XX.XX20 and XX.XX30 for changing a subscriber's preferred provider selections; and an explanation that the subscriber will be unable to make a change in provider selection unless the subscriber lifts the freeze.

(2) No provider shall implement a preferred provider freeze unless the subscriber's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

(i) The provider has obtained the subscriber's written or electronically signed authorization in a form that meets the requirements of § XX.XX90(c)(3); or

(ii) The provider has obtained the subscriber's electronic authorization, placed from the telephone number(s) on which the preferred provider freeze is to be imposed, to impose a preferred provider freeze. The electronic authorization should confirm appropriate verification data (e.g., the subscriber's date of birth or social security number) and the information required in §§ XX.XX90(c)(3)(ii)(A) through (C); or

(iii) An appropriately qualified independent third party has obtained the subscriber's authorization to submit the preferred provider freeze and confirmed the appropriate verification data (e.g., the subscriber's date of birth or social security number) and the information required in § XX.XX90(c)(3)(ii)(A) through (C). The independent third party must not be owned, managed, or directly controlled by the provider or the provider's marketing agent; must not have any financial incentive to confirm preferred provider freeze requests for the provider or the provider's marketing agent; and must operate in a location physically separate from the provider or the provider's marketing agent. The content of the verification must include clear and conspicuous confirmation that the subscriber has authorized a preferred provider freeze.

(3) Written authorization to impose a preferred carrier freeze. A provider may accept a subscriber's written and signed authorization to impose a freeze on his or her preferred provider selection. Written authorization that does not conform with this section is invalid and may not be used to impose a preferred provider freeze.

(i) The written authorization shall comply with §§ XX.XX30 (b), (c), and (g) of the Commission's rules concerning the form and content for letters of agency.

(ii) At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(A) The subscriber's registered name and address and the telephone number(s) to be covered by the preferred provider freeze;

(B) The decision to place a preferred provider freeze on the telephone number(s) and particular

service(s). To the extent that the Federal Communications Commission allows the imposition of preferred provider freezes on additional preferred provider selections (e.g., for VRS, IP Relay and IP CapTel), the authorization must contain separate statements regarding the particular selections to be frozen; and

(C) That the subscriber understands that she or he will be unable to make a change in provider selection unless she or he lifts the preferred provider freeze.

(d) Procedures for lifting preferred provider freezes. All providers that offer preferred provider freezes must, at a minimum, offer subscribers the following procedures for lifting a preferred provider freeze:

(1) A provider administering a preferred provider freeze must accept a subscriber's written or electronically signed authorization stating his or her intent to lift a preferred provider freeze; and

(2) A provider administering a preferred provider freeze must accept a subscriber's authorization stating her or his intent to lift a preferred provider freeze and must offer a mechanism that allows a submitting provider to conduct a three-way conference call with the provider administering the freeze and the subscriber in order to lift a freeze. When engaged in an authorization that does not involve a subscriber's signed authorization to lift a preferred provider freeze, the provider administering the freeze shall confirm appropriate verification data (e.g., the subscriber's date of birth or social security number) and the subscriber's intent to lift the particular freeze.

**Attachment 4**

**Current Slamming Rules for Carriers**

## Part 64, Subpart K – Changes in Preferred Telecommunications Service Providers

### § 64.1100 Definitions.

(a) The term *submitting carrier* is generally any telecommunications carrier that requests on the behalf of a subscriber that the subscriber's telecommunications carrier be changed, and seeks to provide retail services to the end user subscriber. A carrier may be treated as a submitting carrier, however, if it is responsible for any unreasonable delays in the submission of carrier change requests or for the submission of unauthorized carrier change requests, including fraudulent authorizations.

(b) The term *executing carrier* is generally any telecommunications carrier that effects a request that a subscriber's telecommunications carrier be changed. A carrier may be treated as an executing carrier, however, if it is responsible for any unreasonable delays in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations.

(c) The term *authorized carrier* is generally any telecommunications carrier that submits a change, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service with the subscriber's authorization verified in accordance with the procedures specified in this part.

(d) The term *unauthorized carrier* is generally any telecommunications carrier that submits a change, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service but fails to obtain the subscriber's authorization verified in accordance with the procedures specified in this part.

(e) The term *unauthorized change* is a change in a subscriber's selection of a provider of telecommunications service that was made without authorization verified in accordance with the verification procedures specified in this part.

(f) The term *state commission* shall include any state entity with the state-designated authority to resolve the complaints of such state's residents arising out of an allegation that an unauthorized change of a telecommunication service provider has occurred that has elected, in accordance with the requirements of § 64.1110(a), to administer the Federal Communications Commission's slamming rules and remedies, as enumerated in §§ 64.1100 through 64.1190.

(g) The term *relevant governmental agency* shall be the state commission if the complainant files a complaint with the state commission or if the complaint is forwarded to the state commission by the Federal Communications Commission, and the Federal Communications Commission if the complainant files a complaint with the Federal Communications Commission, and the complaint is not forwarded to a state commission.

(h) The term *subscriber* is any one of the following:

- (1) The party identified in the account records of a common carrier as responsible for payment of the telephone bill;
- (2) Any adult person authorized by such party to change telecommunications services or to charge services to the account; or
- (3) Any person contractually or otherwise lawfully authorized to represent such party.

**§ 64.1110 State notification of election to administer FCC rules.**

(a) Initial Notification. State notification of an intention to administer the Federal Communications Commission's unauthorized carrier change rules and remedies, as enumerated in §§ 64.1100 through 64.1190, shall be filed with the Commission Secretary in CC Docket No. 94-129 with a copy of such notification provided to the Consumer & Governmental Affairs Bureau Chief. Such notification shall contain, at a minimum, information on where consumers should file complaints, the type of documentation, if any, that must accompany a complaint, and the procedures the state will use to adjudicate complaints.

(b) Withdrawal of Notification. State notification of an intention to discontinue administering the Federal Communications Commission's unauthorized carrier change rules and remedies, as enumerated in §§ 64.1100 through 64.1190, shall be filed with the Commission Secretary in CC Docket No. 94-129 with a copy of such amended notification provided to the Consumer & Governmental Affairs Bureau Chief. Such discontinuance shall become effective 60 days after the Commission's receipt of the state's letter.

**§ 64.1120 Verification of orders for telecommunications service.**

(a) No telecommunications carrier shall submit or execute a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service except in accordance with the procedures prescribed in this subpart. Nothing in this section shall preclude any State commission from enforcing these procedures with respect to intrastate services.

(1) No submitting carrier shall submit a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service prior to obtaining:

(i) Authorization from the subscriber, and

(ii) Verification of that authorization in accordance with the procedures prescribed in this section. The submitting carrier shall maintain and preserve records of verification of subscriber authorization for a minimum period of two years after obtaining such verification.

(2) An executing carrier shall not verify the submission of a change in a subscriber's selection of a provider of telecommunications service received from a submitting carrier. For an executing carrier, compliance with the procedures described in this part shall be defined as prompt execution, without any unreasonable delay, of changes that have been verified by a submitting carrier.

(3) Commercial mobile radio services (CMRS) providers shall be excluded from the verification requirements of this part as long as they are not required to provide equal access to common carriers for the provision of telephone toll services, in accordance with 47 U.S.C. 332(c)(8).

(b) Where a telecommunications carrier is selling more than one type of telecommunications service (e.g., local exchange, intraLATA toll, and interLATA toll), that carrier must obtain separate authorization from the subscriber for each service sold, although the authorizations may be obtained within the same solicitation. Each authorization must be verified separately from any other authorizations obtained in the same solicitation. Each authorization must be verified in accordance with the verification procedures prescribed in this part.

(c) No telecommunications carrier shall submit a preferred carrier change order unless and until the order has been confirmed in accordance with one of the following procedures:

(1) The telecommunications carrier has obtained the subscriber's written or electronically signed authorization in a form that meets the requirements of § 64.1130; or

(2) The telecommunications carrier has obtained the subscriber's electronic authorization to submit the preferred carrier change order. Such authorization must be placed from the telephone number(s) on which the preferred carrier is to be changed and must confirm the information in paragraph (a)(1) of this section. Telecommunications carriers electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism, that records the required information regarding the preferred carrier change, including automatically recording the originating automatic number identification; or

(3) An appropriately qualified independent third party has obtained, in accordance with the procedures set forth in paragraphs (c)(3)(i) through (c)(3)(iv) of this section, the subscriber's oral authorization to submit the preferred carrier change order that confirms and includes appropriate verification data (e.g., the subscriber's date of birth or social security number). The independent third party must not be owned, managed, controlled, or directed by the carrier or the carrier's marketing agent; must not have any financial incentive to confirm preferred carrier change orders for the carrier or the carrier's marketing agent; and must operate in a location physically separate from the carrier or the carrier's marketing agent.

(i) Methods of third party verification. Automated third party verification systems and three-way conference calls may be used for verification purposes so long as the requirements of paragraphs (c)(3)(ii) through (c)(3)(iv) of this section are satisfied.

(ii) Carrier initiation of third party verification. A carrier or a carrier's sales representative

initiating a three-way conference call or a call through an automated verification system must drop off the call once the three-way connection has been established.

(iii) Requirements for content and format of third party verification. Any description of the carrier change transaction by a third party verifier must not be misleading, and all third party verification methods shall elicit, at a minimum: The date of the verification; the identity of the subscriber; confirmation that the person on the call is authorized to make the carrier change; confirmation that the person on the call wants to make the carrier change; confirmation that the person on the call understands that a carrier change, not an upgrade to existing service, bill consolidation, or any other misleading description of the transaction, is being authorized; the names of the carriers affected by the change (not including the name of the displaced carrier); the telephone numbers to be switched; and the types of service involved (including a brief description of a service about which the subscriber demonstrates confusion regarding the nature of that service). Except in Hawaii, any description of interLATA or long distance service shall convey that it encompasses both international and state-to-state calls, as well as some intrastate calls where applicable. If the subscriber has additional questions for the carrier's sales representative during the verification, the verifier shall indicate to the subscriber that, upon completion of the verification process, the subscriber will have authorized a carrier change. Third party verifiers may not market the carrier's services by providing additional information, including information regarding preferred carrier freeze procedures.

(iv) Other requirements for third party verification. All third party verifications shall be conducted in the same language that was used in the underlying sales transaction and shall be recorded in their entirety. In accordance with the procedures set forth in 64.1120(a)(1)(ii), submitting carriers shall maintain and preserve audio records of verification of subscriber authorization for a minimum period of two years after obtaining such verification. Automated systems must provide consumers with an option to speak with a live person at any time during the call.

(4) Any State-enacted verification procedures applicable to intrastate preferred carrier change orders only.

(d) Telecommunications carriers must provide subscribers the option of using one of the authorization and verification procedures specified in § 64.1120(c) in addition to an electronically signed authorization and verification procedure under 64.1120(c)(1).

(e) A telecommunications carrier may acquire, through a sale or transfer, either part or all of another telecommunications carrier's subscriber base without obtaining each subscriber's authorization and verification in accordance with § 64.1120(c), provided that the acquiring carrier complies with the following streamlined procedures. A telecommunications carrier may not use these streamlined procedures for any fraudulent purpose, including any attempt to avoid liability for violations under part 64, subpart K of the Commission rules.

(1) No later than 30 days before the planned transfer of the affected subscribers from the selling or transferring carrier to the acquiring carrier, the acquiring carrier shall file with the Commission's Office of the Secretary a letter notification in CC Docket No. 00-257 providing

the names of the parties to the transaction, the types of telecommunications services to be provided to the affected subscribers, and the date of the transfer of the subscriber base to the acquiring carrier. In the letter notification, the acquiring carrier also shall certify compliance with the requirement to provide advance subscriber notice in accordance with § 64.1120(e)(3), with the obligations specified in that notice, and with other statutory and Commission requirements that apply to this streamlined process. In addition, the acquiring carrier shall attach a copy of the notice sent to the affected subscribers.

(2) If, subsequent to the filing of the letter notification with the Commission required by § 64.1120(e)(1), any material changes to the required information should develop, the acquiring carrier shall file written notification of these changes with the Commission no more than 10 days after the transfer date announced in the prior notification. The Commission reserves the right to require the acquiring carrier to send an additional notice to the affected subscribers regarding such material changes.

(3) Not later than 30 days before the transfer of the affected subscribers from the selling or transferring carrier to the acquiring carrier, the acquiring carrier shall provide written notice to each affected subscriber of the information specified. The acquiring carrier is required to fulfill the obligations set forth in the advance subscriber notice. The advance subscriber notice shall be provided in a manner consistent with 47 U.S.C. 255 and the Commission's rules regarding accessibility to blind and visually-impaired consumers, 47 CFR 6.3, 6.5 of this chapter. The following information must be included in the advance subscriber notice:

(i) The date on which the acquiring carrier will become the subscriber's new provider of telecommunications service,

(ii) The rates, terms, and conditions of the service(s) to be provided by the acquiring carrier upon the subscriber's transfer to the acquiring carrier, and the means by which the acquiring carrier will notify the subscriber of any change(s) to these rates, terms, and conditions.

(iii) The acquiring carrier will be responsible for any carrier change charges associated with the transfer, except where the carrier is acquiring customers by default, other than through bankruptcy, and state law requires the exiting carrier to pay these costs;

(iv) The subscriber's right to select a different preferred carrier for the telecommunications service(s) at issue, if an alternative carrier is available,

(v) All subscribers receiving the notice, even those who have arranged preferred carrier freezes through their local service providers on the service(s) involved in the transfer, will be transferred to the acquiring carrier, unless they have selected a different carrier before the transfer date; existing preferred carrier freezes on the service(s) involved in the transfer will be lifted; and the subscribers must contact their local service providers to arrange a new freeze.

(vi) Whether the acquiring carrier will be responsible for handling any complaints filed, or otherwise raised, prior to or during the transfer against the selling or transferring carrier, and

(vii) The toll-free customer service telephone number of the acquiring carrier.

**§ 64.1130 Letter of agency form and content.**

(a) A telecommunications carrier may use a written or electronically signed letter of agency to obtain authorization and/or verification of a subscriber's request to change his or her preferred carrier selection. A letter of agency that does not conform with this section is invalid for purposes of this part.

(b) The letter of agency shall be a separate document (or an easily separable document) or located on a separate screen or webpage containing only the authorizing language described in paragraph (e) of this section having the sole purpose of authorizing a telecommunications carrier to initiate a preferred carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the preferred carrier change.

(c) The letter of agency shall not be combined on the same document, screen, or webpage with inducements of any kind.

(d) Notwithstanding paragraphs (b) and (c) of this section, the letter of agency may be combined with checks that contain only the required letter of agency language as prescribed in paragraph (e) of this section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain in easily readable, bold-face type on the front of the check, a notice that the subscriber is authorizing a preferred carrier change by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

(e) At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

(1) The subscriber's billing name and address and each telephone number to be covered by the preferred carrier change order;

(2) The decision to change the preferred carrier from the current telecommunications carrier to the soliciting telecommunications carrier;

(3) That the subscriber designates [insert the name of the submitting carrier] to act as the subscriber's agent for the preferred carrier change;

(4) That the subscriber understands that only one telecommunications carrier may be designated as the subscriber's interstate or interLATA preferred interexchange carrier for any one telephone number. To the extent that a jurisdiction allows the selection of additional preferred carriers (e.g., local exchange, intraLATA toll, interLATA toll, or international interexchange), the letter of agency must contain separate statements regarding those choices, although a separate letter of agency for each choice is not necessary; and

(5) That the subscriber may consult with the carrier as to whether a fee will apply to the change in the subscriber's preferred carrier.

(f) Any carrier designated in a letter of agency as a preferred carrier must be the carrier directly setting the rates for the subscriber.

(g) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current telecommunications carrier.

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

(i) Letters of agency submitted with an electronically signed authorization must include the consumer disclosures required by Section 101(c) of the Electronic Signatures in Global and National Commerce Act.

(j) A telecommunications carrier shall submit a preferred carrier change order on behalf of a subscriber within no more than 60 days of obtaining a written or electronically signed letter of agency. However, letters of agency for multi-line and/or multi-location business customers that have entered into negotiated agreements with carriers to add presubscribed lines to their business locations during the course of a term agreement shall be valid for the period specified in the term agreement.

#### **§ 64.1140 Carrier liability for slamming.**

(a) **Carrier Liability for Charges.** Any submitting telecommunications carrier that fails to comply with the procedures prescribed in this part shall be liable to the subscriber's properly authorized carrier in an amount equal to 150% of all charges paid to the submitting telecommunications carrier by such subscriber after such violation, as well as for additional amounts as prescribed in § 64.1170. The remedies provided in this part are in addition to any other remedies available by law.

(b) **Subscriber Liability for Charges.** Any subscriber whose selection of telecommunications services provider is changed without authorization verified in accordance with the procedures set for in this part is liable for charges as follows:

(1) If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. Upon being informed by a subscriber that an unauthorized change has occurred, the authorized carrier, the unauthorized carrier, or the executing carrier shall inform the subscriber of this 30-day absolution period. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day

period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change in accordance with the provisions of § 64.1160(e).

(2) If the subscriber has already paid charges to the unauthorized carrier, and the authorized carrier receives payment from the unauthorized carrier as provided for in paragraph (a) of this section, the authorized carrier shall refund or credit to the subscriber any amounts determined in accordance with the provisions of § 64.1170(c).

(3) If the subscriber has been absolved of liability as prescribed by this section, the unauthorized carrier shall also be liable to the subscriber for any charge required to return the subscriber to his or her properly authorized carrier, if applicable.

#### **§ 64.1150 Procedures for resolution of unauthorized changes in preferred carrier.**

(a) Notification of Alleged Unauthorized Carrier Change. Executing carriers who are informed of an unauthorized carrier change by a subscriber must immediately notify both the authorized and allegedly unauthorized carrier of the incident. This notification must include the identity of both carriers.

(b) Referral of Complaint. Any carrier, executing, authorized, or allegedly unauthorized, that is informed by a subscriber or an executing carrier of an unauthorized carrier change shall direct that subscriber either to the state commission or, where the state commission has not opted to administer these rules, to the Federal Communications Commission's Consumer & Governmental Affairs Bureau, for resolution of the complaint. Carriers shall also inform the subscriber that he or she may contact and seek resolution from the alleged unauthorized carrier and, in addition, may contact the authorized carrier.

(c) Notification of Receipt of Complaint. Upon receipt of an unauthorized carrier change complaint, the relevant governmental agency will notify the allegedly unauthorized carrier of the complaint and order that the carrier remove all unpaid charges for the first 30 days after the slam from the subscriber's bill pending a determination of whether an unauthorized change, as defined by § 64.1100(e), has occurred, if it has not already done so.

(d) Proof of Verification. Not more than 30 days after notification of the complaint, or such lesser time as is required by the state commission if a matter is brought before a state commission, the alleged unauthorized carrier shall provide to the relevant government agency a copy of any valid proof of verification of the carrier change. This proof of verification must contain clear and convincing evidence of a valid authorized carrier change, as that term is defined in §§ 64.1120 through 64.1130. The relevant governmental agency will determine whether an unauthorized change, as defined by § 64.1100(e), has occurred using such proof and any evidence supplied by the subscriber. Failure by the carrier to respond or provide proof of verification will be presumed to be clear and convincing evidence of a violation.

(e) Election of Forum. The Federal Communications Commission will not adjudicate a

complaint filed pursuant to § 1.719 or §§ 1.720 through 1.736 of this chapter, involving an alleged unauthorized change, as defined by § 64.1100(e), while a complaint based on the same set of facts is pending with a state commission.

**§ 64.1160 Absolution procedures where the subscriber has not paid charges.**

(a) This section shall only apply after a subscriber has determined that an unauthorized change, as defined by § 64.1100(e), has occurred and the subscriber has not paid charges to the allegedly unauthorized carrier for service provided for 30 days, or a portion thereof, after the unauthorized change occurred.

(b) An allegedly unauthorized carrier shall remove all charges incurred for service provided during the first 30 days after the alleged unauthorized change occurred, as defined by § 64.1100(e), from a subscriber's bill upon notification that such unauthorized change is alleged to have occurred.

(c) An allegedly unauthorized carrier may challenge a subscriber's allegation that an unauthorized change, as defined by § 64.1100(e), occurred. An allegedly unauthorized carrier choosing to challenge such allegation shall immediately notify the complaining subscriber that: The complaining subscriber must file a complaint with a State commission that has opted to administer the FCC's rules, pursuant to § 64.1110, or the FCC within 30 days of either the date of removal of charges from the complaining subscriber's bill in accordance with paragraph (b) of this section, or the date the allegedly unauthorized carrier notifies the complaining subscriber of the requirements of this paragraph, whichever is later; and a failure to file such a complaint within this 30-day time period will result in the charges removed pursuant to paragraph (b) of this section being reinstated on the subscriber's bill and, consequently, the complaining subscriber will only be entitled to remedies for the alleged unauthorized change other than those provided for in § 64.1140(b)(1). No allegedly unauthorized carrier shall reinstate charges to a subscriber's bill pursuant to the provisions of this paragraph without first providing such subscriber with a reasonable opportunity to demonstrate that the requisite complaint was timely filed within the 30-day period described in this paragraph.

(d) If the relevant governmental agency determines after reasonable investigation that an unauthorized change, as defined by § 64.1100(e), has occurred, an order shall be issued providing that the subscriber is entitled to absolution from the charges incurred during the first 30 days after the unauthorized carrier change occurred, and neither the authorized or unauthorized carrier may pursue any collection against the subscriber for those charges.

(e) If the subscriber has incurred charges for more than 30 days after the unauthorized carrier change, the unauthorized carrier must forward the billing information for such services to the authorized carrier, which may bill the subscriber for such services using either of the following means:

(1) The amount of the charge may be determined by a re-rating of the services provided based on what the authorized carrier would have charged the subscriber for the same services had an

unauthorized change, as described in § 64.1100(e), not occurred; or

(2) The amount of the charge may be determined using a 50% Proxy Rate as follows: Upon receipt of billing information from the unauthorized carrier, the authorized carrier may bill the subscriber for 50% of the rate the unauthorized carrier would have charged the subscriber for the services provided. However, the subscriber shall have the right to reject use of this 50% proxy method and require that the authorized carrier perform a re-rating of the services provided, as described in paragraph (e)(1) of this section.

(f) If the unauthorized carrier received payment from the subscriber for services provided after the first 30 days after the unauthorized change occurred, the obligations for payments and refunds provided for in § 64.1170 shall apply to those payments. If the relevant governmental agency determines after reasonable investigation that the carrier change was authorized, the carrier may re-bill the subscriber for charges incurred.

(g) When a LEC has assigned a subscriber to a carrier without authorization, and where the subscriber has not paid the unauthorized charges, the LEC shall switch the subscriber to the desired carrier at no cost to the subscriber, and shall also secure the removal of the unauthorized charges from the subscriber's bill in accordance with the procedures specified in paragraphs (a) through (f) of this section.

#### **§ 64.1170 Reimbursement procedures where the subscriber has paid charges.**

(a) The procedures in this section shall only apply after a subscriber has determined that an unauthorized change, as defined by § 64.1100(e), has occurred and the subscriber has paid charges to an allegedly unauthorized carrier.

(b) If the relevant governmental agency determines after reasonable investigation that an unauthorized change, as defined by § 64.1100(e), has occurred, it shall issue an order directing the unauthorized carrier to forward to the authorized carrier the following, in addition to any appropriate state remedies:

(1) An amount equal to 150% of all charges paid by the subscriber to the unauthorized carrier; and

(2) Copies of any telephone bills issued from the unauthorized carrier to the subscriber. This order shall be sent to the subscriber, the unauthorized carrier, and the authorized carrier.

(c) Within ten days of receipt of the amount provided for in paragraph (b)(1) of this section, the authorized carrier shall provide a refund or credit to the subscriber in the amount of 50% of all charges paid by the subscriber to the unauthorized carrier. The subscriber has the option of asking the authorized carrier to re-rate the unauthorized carrier's charges based on the rates of the authorized carrier and, on behalf of the subscriber, seek an additional refund from the unauthorized carrier, to the extent that the re-rated amount exceeds the 50% of all charges paid by the subscriber to the unauthorized carrier. The authorized carrier shall also send notice to the

relevant governmental agency that it has given a refund or credit to the subscriber.

(d) If an authorized carrier incurs billing and collection expenses in collecting charges from the unauthorized carrier, the unauthorized carrier shall reimburse the authorized carrier for reasonable expenses.

(e) If the authorized carrier has not received payment from the unauthorized carrier as required by paragraph (c) of this section, the authorized carrier is not required to provide any refund or credit to the subscriber. The authorized carrier must, within 45 days of receiving an order as described in paragraph (b) of this section, inform the subscriber and the relevant governmental agency that issued the order if the unauthorized carrier has failed to forward to it the appropriate charges, and also inform the subscriber of his or her right to pursue a claim against the unauthorized carrier for a refund of all charges paid to the unauthorized carrier.

(f) Where possible, the properly authorized carrier must reinstate the subscriber in any premium program in which that subscriber was enrolled prior to the unauthorized change, if the subscriber's participation in that program was terminated because of the unauthorized change. If the subscriber has paid charges to the unauthorized carrier, the properly authorized carrier shall also provide or restore to the subscriber any premiums to which the subscriber would have been entitled had the unauthorized change not occurred. The authorized carrier must comply with the requirements of this section regardless of whether it is able to recover from the unauthorized carrier any charges that were paid by the subscriber.

(g) When a LEC has assigned a subscriber to a non-affiliated carrier without authorization, and when a subscriber has paid the non-affiliated carrier the charges for the billed service, the LEC shall reimburse the subscriber for all charges paid by the subscriber to the unauthorized carrier and shall switch the subscriber to the desired carrier at no cost to the subscriber. When a LEC makes an unauthorized carrier change to an affiliated carrier, and when the customer has paid the charges, the LEC must pay to the authorized carrier 150% of the amounts collected from the subscriber in accordance with paragraphs (a) through (f) of this section.

#### **§ 64.1190 Preferred carrier freezes.**

(a) A preferred carrier freeze (or freeze) prevents a change in a subscriber's preferred carrier selection unless the subscriber gives the carrier from whom the freeze was requested his or her express consent. All local exchange carriers who offer preferred carrier freezes must comply with the provisions of this section.

(b) All local exchange carriers who offer preferred carrier freezes shall offer freezes on a nondiscriminatory basis to all subscribers, regardless of the subscriber's carrier selections.

(c) Preferred carrier freeze procedures, including any solicitation, must clearly distinguish among telecommunications services (e.g., local exchange, intraLATA toll, and interLATA toll) subject to a preferred carrier freeze. The carrier offering the freeze must obtain separate authorization for each service for which a preferred carrier freeze is requested.

(d) Solicitation and imposition of preferred carrier freezes.

(1) All carrier-provided solicitation and other materials regarding preferred carrier freezes must include:

(i) An explanation, in clear and neutral language, of what a preferred carrier freeze is and what services may be subject to a freeze;

(ii) A description of the specific procedures necessary to lift a preferred carrier freeze; an explanation that these steps are in addition to the Commission's verification rules in §§ 64.1120 and 64.1130 for changing a subscriber's preferred carrier selections; and an explanation that the subscriber will be unable to make a change in carrier selection unless he or she lifts the freeze.

(iii) An explanation of any charges associated with the preferred carrier freeze.

(2) No local exchange carrier shall implement a preferred carrier freeze unless the subscriber's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

(i) The local exchange carrier has obtained the subscriber's written or electronically signed authorization in a form that meets the requirements of § 64.1190(d)(3); or

(ii) The local exchange carrier has obtained the subscriber's electronic authorization, placed from the telephone number(s) on which the preferred carrier freeze is to be imposed, to impose a preferred carrier freeze. The electronic authorization should confirm appropriate verification data (e.g., the subscriber's date of birth or social security number) and the information required in §§ 64.1190(d)(3)(ii)(A) through (D). Telecommunications carriers electing to confirm preferred carrier freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the preferred carrier freeze request, including automatically recording the originating automatic numbering identification; or

(iii) An appropriately qualified independent third party has obtained the subscriber's oral authorization to submit the preferred carrier freeze and confirmed the appropriate verification data (e.g., the subscriber's date of birth or social security number) and the information required in § 64.1190(d)(3)(ii)(A) through (D). The independent third party must not be owned, managed, or directly controlled by the carrier or the carrier's marketing agent; must not have any financial incentive to confirm preferred carrier freeze requests for the carrier or the carrier's marketing agent; and must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the subscriber has authorized a preferred carrier freeze.

(3) Written authorization to impose a preferred carrier freeze. A local exchange carrier may accept a subscriber's written and signed authorization to impose a freeze on his or her preferred

carrier selection. Written authorization that does not conform with this section is invalid and may not be used to impose a preferred carrier freeze.

(i) The written authorization shall comply with §§ 64.1130(b), (c), and (h) of the Commission's rules concerning the form and content for letters of agency.

(ii) At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(A) The subscriber's billing name and address and the telephone number(s) to be covered by the preferred carrier freeze;

(B) The decision to place a preferred carrier freeze on the telephone number(s) and particular service(s). To the extent that a jurisdiction allows the imposition of preferred carrier freezes on additional preferred carrier selections (e.g., for local exchange, intraLATA toll, and interLATA toll), the authorization must contain separate statements regarding the particular selections to be frozen;

(C) That the subscriber understands that she or he will be unable to make a change in carrier selection unless she or he lifts the preferred carrier freeze; and

(D) That the subscriber understands that any preferred carrier freeze may involve a charge to the subscriber.

(e) Procedures for lifting preferred carrier freezes. All local exchange carriers who offer preferred carrier freezes must, at a minimum, offer subscribers the following procedures for lifting a preferred carrier freeze:

(1) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's written or electronically signed authorization stating his or her intent to lift a preferred carrier freeze; and

(2) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's oral authorization stating her or his intent to lift a preferred carrier freeze and must offer a mechanism that allows a submitting carrier to conduct a three-way conference call with the carrier administering the freeze and the subscriber in order to lift a freeze. When engaged in oral authorization to lift a preferred carrier freeze, the carrier administering the freeze shall confirm appropriate verification data (e.g., the subscriber's date of birth or social security number) and the subscriber's intent to lift the particular freeze.

#### **§ 64.1195 Registration requirement.**

(a) Applicability. A telecommunications carrier that will provide interstate telecommunications service shall file the registration information described in paragraph (b) of this section in accordance with the procedures described in paragraphs (c) and (g) of this section.

Any telecommunications carrier already providing interstate telecommunications service on the effective date of these rules shall submit the relevant portion of its FCC Form 499-A in accordance with paragraphs (b) and (c) of this section.

(b) Information required for purposes of part 64. A telecommunications carrier that is subject to the registration requirement pursuant to paragraph (a) of this section shall provide the following information:

(1) The carrier's business name(s) and primary address;

(2) The names and business addresses of the carrier's chief executive officer, chairman, and president, or, in the event that a company does not have such executives, three similarly senior-level officials of the company;

(3) The carrier's regulatory contact and/or designated agent;

(4) All names that the carrier has used in the past; and

(5) The state(s) in which the carrier provides telecommunications service.

(c) Submission of registration. A carrier that is subject to the registration requirement pursuant to paragraph (a) of this section shall submit the information described in paragraph (b) of this section in accordance with the Instructions to FCC Form 499-A. FCC Form 499-A must be submitted under oath and penalty of perjury.

(d) Rejection of registration. The Commission may reject or suspend a carrier's registration for any of the reasons identified in paragraphs (e) or (f) of this section.

(e) Revocation or suspension of operating authority. After notice and opportunity to respond, the Commission may revoke or suspend the authorization of a carrier to provide service if the carrier provides materially false or incomplete information in its FCC Form 499-A or otherwise fails to comply with paragraphs (a), (b), and (c) of this section.

(f) Imposition of fine. After notice and opportunity to respond, the Commission may impose a fine on a carrier that is subject to the registration requirement pursuant to paragraph (a) of this section if that carrier fails to submit an FCC Form 499-A in accordance with paragraphs (a), (b), and (c) of this section.

(g) Changes in information. A carrier must notify the Commission of any changes to the information provided pursuant to paragraph (b) of this section within no more than one week of the change. Carriers may satisfy this requirement by filing the relevant portion of FCC Form 499-A in accordance with the Instructions to such form.

(h) Duty to confirm registration of other carriers. The Commission shall make available to the public a comprehensive listing of registrants and the information that they have provided pursuant to paragraph (b) of this section. A telecommunications carrier providing

telecommunications service for resale shall have an affirmative duty to ascertain whether a potential carrier-customer (i.e., reseller) that is subject to the registration requirement pursuant to paragraph (a) of this section has filed an FCC Form 499-A with the Commission prior to offering service to that carrier-customer. After notice and opportunity to respond, the Commission may impose a fine on a carrier for failure to confirm the registration status of a potential carrier-customer before providing that carrier-customer with service.