

5. Be considered public records.

(b) Cross-references to Federal Communications Commission interstate tariffs are permitted for volume discounts, optional features and other provisions not specifically required to be included in intrastate tariffs pursuant to (a) above.

Amended by R.1996 d.412, effective September 3, 1996.  
See: 28 N.J.R. 2832(a), 28 N.J.R. 4107(a).  
Recodified from N.J.A.C. 14:10-5.3 by R.2007 d.276, effective September 17, 2007.  
See: 38 N.J.R. 3250(a), 39 N.J.R. 3953(a).  
Former N.J.A.C. 14:10-5.2, Definitions, repealed.

### 14:10-5.3 Tariff revisions that increase charges

(a) Tariff revisions regarding existing competitive telecommunications services, which create increased charges to any customer, shall become effective five business days after notice of the proposed revision as described in (b) below, without the requirement of prior Board approval.

(b) The notice requirement for a tariff revision, as described in (a) above, shall be by direct mail to all affected customers or by publication in newspapers of general circulation throughout the affected service area, within 24 hours of filing of revised tariff pages with the Board.

(c) Proposed revisions as described in (a) above shall be served on the Division of the Ratepayer Advocate within 24 hours of filing with the Board.

Amended by R.1996 d.412, effective September 3, 1996.  
See: 28 N.J.R. 2832(a), 28 N.J.R. 4107(a).  
Recodified from N.J.A.C. 14:10-5.4 and amended by R.2007 d.276, effective September 17, 2007.  
See: 38 N.J.R. 3250(a), 39 N.J.R. 3953(a).

Section was "Requirements for tariff revisions to existing services which create increased charges to any customer". In (a), substituted "regarding" for first occurrence of "to" and inserted a comma following "customer".

Former N.J.A.C. 14:10-5.3, Informational tariff filings, recodified to N.J.A.C. 14:10-5.2.

### 14:10-5.4 Tariff revisions that do not increase charges

(a) Tariff revisions to existing competitive telecommunications services, or to any CLEC or IXC tariff, which do not increase charges to any customer, shall become effective one day after the filing of revised tariff pages with the Board, without the requirement of prior Board approval; except that a tariff revision for withdrawal of a service offering shall be governed by N.J.A.C. 14:10-5.8.

(b) Proposed revisions described in (a) above shall be served on the Public Advocate within 24 hours of filing with the Board.

(c) Revisions to non-competitive telecommunications service tariffs are governed by the Board's rules for all utilities at N.J.A.C. 14:3.

Amended by R.1996 d.412, effective September 3, 1996.  
See: 28 N.J.R. 2832(a), 28 N.J.R. 4107(a).

Amended by R.2002 d.90, effective March 18, 2002.

See: 33 N.J.R. 2041(a), 34 N.J.R. 1275(b).

Rewrote (a).

Recodified from N.J.A.C. 14:10-5.5 and amended by R.2007 d.276, effective September 17, 2007.

See: 38 N.J.R. 3250(a), 39 N.J.R. 3953(a).

Section was "Requirements for tariff revisions to existing services which do not create increased charges to any customer". Rewrote (a); in (b), deleted "as" preceding "described" and substituted "Public" for "Division of the Ratepayer"; and added (c).

Former N.J.A.C. 14:10-5.4, Requirements for tariff revisions to existing services which create increased charges to any customer, recodified to N.J.A.C. 14:10-5.3.

### 14:10-5.5 New competitive telecommunications service offerings by interexchange carriers

(a) New competitive telecommunications service offerings of existing interexchange carriers shall become effective five business days after filing without the requirement of prior Board approval.

(b) An IXC shall file a tariff revision for a service offering described in (a) above on the Public Advocate within 24 hours of filing with the Board.

(c) A proposed tariff revision filing for new competitive telecommunications services offerings by existing interexchange carriers shall include a letter describing the new service and tariff pages with all rates, terms and conditions.

Amended by R.1996 d.412, effective September 3, 1996.

See: 28 N.J.R. 2832(a), 28 N.J.R. 4107(a).

Recodified from N.J.A.C. 14:10-5.6 and amended by R.2007 d.276, effective September 17, 2007.

See: 38 N.J.R. 3250(a), 39 N.J.R. 3953(a).

Section was "Requirements for new competitive telecommunications service offerings for existing interexchange carriers". Rewrote (b) and (c); and deleted (d).

Former N.J.A.C. 14:10-5.5, Requirements for tariff revisions to existing services which do not create increased charges to any customer, recodified to N.J.A.C. 14:10-5.4.

### 14:10-5.6 Initial CLEC or IXC tariff

(a) Initial tariffs filed by CLECs for local exchange and exchange access services, or by IXCs for interexchange services, shall be effective as filed 30 days following submittal to the Board, without the requirement of prior Board approval.

(b) (Reserved)

(c) All initial tariff filings made by a CLEC or IXC shall be certified to be accurate, and in compliance with existing law, by an officer of the CLEC or IXC.

(d) Should an initial tariff filing be inconsistent with existing laws, Board staff shall forward a letter of deficiency to the submitting CLEC or IXC. The deficiency letter shall:

1. List the deficiencies in the initial tariff as submitted;
2. Identify the submittals required to correct the deficiencies;

3. Provide a deadline for the submittals required under (d)2 above; and

4. Notify the submitting CLEC or IXC that the initial tariff is suspended until the Board receives the necessary submittals required under (d)2 above.

(e) If Board staff receive the submittals identified in (d)2 above within the deadline in (d)3 above, the initial tariff shall be effective immediately following the Board's receipt of the submittals.

(f) If Board staff do not receive the submittals required under (d)2 above within the deadline, the CLEC or IXC petition shall be considered withdrawn. The CLEC or IXC may subsequently submit a new tariff filing and begin the review process again.

New Rule, R.2002 d.90, effective March 18, 2002.

See: 33 N.J.R. 2041(a), 34 N.J.R. 1275(b).

Former N.J.A.C. 14:10-5.7, was reserved.

Recodified from N.J.A.C. 14:10-5.7 and amended by R.2007 d.276, effective September 17, 2007.

See: 38 N.J.R. 3250(a), 39 N.J.R. 3953(a).

Section was "Initial tariff of competitive local exchange carriers (CLECs) and interexchange carriers (IXCs)". Rewrote the section.

Former N.J.A.C. 14:10-5.6, Requirements for new competitive telecommunications service offerings for existing interexchange carriers, recodified to N.J.A.C. 14:10-5.5.

#### 14:10-5.7 Board monitoring of competitiveness

(a) In monitoring the competitiveness of rate regulated and competitive telecommunications services and/or providers of those services, the Board may request any information necessary from a carrier. In addition, the Board may use information collected pursuant to N.J.A.C. 14:10-4 to conduct an analysis as to whether individual services and/or the markets for telecommunications services are becoming more or less competitive.

(b) In conducting the analysis described under (a) above, the Board may:

1. Monitor the market shares of carriers as measured by number of calls, minutes of use, number of customers and customer complaints;

2. Use an economic measure of concentration or any other appropriate economic indicator, statistical technique or analytical tool to measure existing or projected market share and the competitiveness of individual services and providers; and/or

3. Use a customer survey to solicit information related to the perception of the level of competition by telecommunications end users.

(c) The Board may reclassify a service that had previously been found to be competitive, if, after notice and hearing, the Board finds that one or more of the following conditions are met:

1. That the market concentration for an individual carrier results in a service no longer being sufficiently competitive;

2. That significant barriers to market entry exist;

3. That there is a lack of significant presence of competitors;

4. That there is a lack of like or substitute services in the relevant geographic area;

5. That a carrier is not providing safe, adequate or proper service; or

6. That the public interest is no longer served by the existing regulatory flexibility afforded to carriers.

Amended by R.1996 d.412, effective September 3, 1996.

See: 28 N.J.R. 2832(a), 28 N.J.R. 4107(a).

Recodified from N.J.A.C. 14:10-5.10 and amended by R.2007 d.276, effective September 17, 2007.

See: 38 N.J.R. 3250(a), 39 N.J.R. 3953(a).

Section was "Standards for monitoring the competitiveness of services". Rewrote the section.

Former N.J.A.C. 14:10-5.7, Initial tariff of competitive local exchange carriers (CLECs) and interexchange carriers (IXCs), recodified to N.J.A.C. 14:10-5.6.

#### Case Notes

Cable television operator not entitled to emergent relief; television pole attachments not located at reference gain. In Matter of Report on Status of Construction by Shore Cable Company, 92 N.J.A.R.2d (BRC) 37.

#### 14:10-5.8 Withdrawal of a competitive service from subscribers

(a) Any carrier providing competitive services may withdraw a competitive service from subscribers after 30 days notice to all of its affected customers and the Board, except as specified under (b) below.

(b) Service offerings provided solely by a single carrier, may be discontinued, unless the Board notifies the carrier that it will postpone the discontinuance of the service pending Board review and approval.

Repealed by R.2002 d.90, effective March 18, 2002.

See: 33 N.J.R. 2041(a), 34 N.J.R. 1275(b).

Section was "Requirements for interexchange carriers initial tariff filings".

Recodified from N.J.A.C. 14:10-5.11 and amended by R.2007 d.276, effective September 17, 2007.

See: 38 N.J.R. 3250(a), 39 N.J.R. 3953(a).

Section was "Discontinuance of service offerings". Rewrote (a).

Former N.J.A.C. 14:10-5.8, Requirements for interexchange carriers initial tariff filings, repealed.

#### 14:10-5.9 Discontinuance of a competitive service offering

(a) A carrier may discontinue offering a competitive service after providing one day notice of the discontinuance to all customers and the Board. New customers will not have the option to subscribe to the service. However, existing subscribers shall continue to receive the service.

(b) Notwithstanding (a) above, if a competitive service is offered solely by a single carrier, the carrier shall not discontinue the service offering if Board staff notifies the carrier that the discontinuance requires prior Board review and approval.

Amended by R.1996 d.412, effective September 3, 1996.

See: 28 N.J.R. 2832(a), 28 N.J.R. 4107(a).

Repeal and New Rule, R.2007 d.276, effective September 17, 2007.

See: 38 N.J.R. 3250(a), 39 N.J.R. 3953(a).

Section was "Reporting requirements".

#### 14:10-5.10 (Reserved)

Recodified to N.J.A.C. 14:10-5.7 by R.2007 d.276, effective September 17, 2007.

See: 38 N.J.R. 3250(a), 39 N.J.R. 3953(a).

Section was "Standards for monitoring the competitiveness of services".

#### 14:10-5.11 (Reserved)

Recodified to N.J.A.C. 14:10-5.8 by R.2007 d.276, effective September 17, 2007.

See: 38 N.J.R. 3250(a), 39 N.J.R. 3953(a).

Section was "Discontinuance of service offerings".

### SUBCHAPTER 6. OPERATOR SERVICE PROVIDERS

#### 14:10-6.1 Scope

(a) This subchapter shall apply to the following, as these terms are defined at N.J.A.C. 14:10-1.2:

1. Operator service providers;
2. Alternate operator service providers; and
3. Aggregators, including those that offer similar services to an operator service provider, from an instrument other than a public pay telephone.

(b) In addition to this subchapter, those aggregators who are also public pay telephone service (PPTS) providers are subject to N.J.A.C. 14:10-9.

Amended by R.2007 d.276, effective September 17, 2007.

See: 38 N.J.R. 3250(a), 39 N.J.R. 3953(a).

Rewrote the section.

#### 14:10-6.2 Operator service providers and aggregators

(a) Any person may hire an OSP to complete intrastate operator-assisted calls, subject to the requirements of this subchapter.

(b) Board staff may investigate the conduct of any OSP or aggregator to evaluate compliance with this subchapter, and may take appropriate enforcement action in accordance with N.J.A.C. 14:10-6.9.

(c) Operator service providers and aggregators are responsible for conformance with all rules as specified in this subchapter. The Board may, after notice and an opportunity

to be heard in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, take such action against an OSP and/or aggregator as is necessary to rectify any non-conformance with the rules or to protect the general public interest. If the Board finds that an OSP or aggregator is not in compliance with a Board rule or order, the Board's actions may include the imposition of penalties for violations as described in N.J.A.C. 14:10-6.9, disconnection of intrastate service to individual aggregator locations experiencing persistent violations, as well as the restriction of certain billing and collection activities subject to the Board's regulation.

Amended by R.2001 d.307, effective September 4, 2001.

See: 33 N.J.R. 1500(a), 33 N.J.R. 3043(a).

In the introductory paragraph, added "unless the context clearly indicates otherwise."; rewrote "Slamming".

Recodified in part from N.J.A.C. 14:10-6.3 and amended by R.2007 d.276, effective September 17, 2007.

See: 38 N.J.R. 3250(a), 39 N.J.R. 3953(a).

Section was "Operator service provider requirements". Recodified and rewrote (a), (b) and (c) from N.J.A.C. 14:10-6.3.

Former N.J.A.C. 14:10-6.2, Definitions, repealed.

#### 14:10-6.3 Informing callers about the OSP

(a) Each aggregator or other regulated entity that hires or otherwise utilizes an OSP shall place directly on the telephone instrument, in plain view of consumers:

1. The name, address, and toll free number of the OSP;
2. A clear and precise description of the geographic area served by the LEC;
3. A clear description of the geographic area served by the OSP;
4. A written disclosure that the rates for all operator-assisted calls are available on request and free of charge, and dialing instructions on how to obtain this information;
5. A written disclosure that consumers have a right to obtain access to the intrastate operator service provider of their choice and may contact their preferred carrier for information on accessing that carrier's service using that telephone;
6. Dialing instructions which detail the OSP's dialing procedures;
7. Dialing instructions for access to the LEC operator;
8. The Board's toll free customer complaint telephone number; and
9. All information required by the Federal Communications Commission at 47 CFR 64.703, as amended and supplemented, which is incorporated herein by reference.

(b) Operator service providers shall verbally inform callers, audibly and distinctly, prior to connecting the call and prior to starting the timing of the call for charging purposes, of all of the following information:

1. That the presubscribed OSP is handling the operator-assisted call, this shall be done by verbal identification of the OSP. Accordingly, branding is required;

2. Prior to connecting any intrastate, 0+ call, how the caller can obtain the actual, or maximum possible, total cost of the call, including any aggregator surcharge and/or location specific charges;

3. That the caller may obtain applicable rate and surcharge quotations, and how to do so. It shall be the option of the OSP whether the rates or quotations are obtainable by dialing one or two digits, or by remaining on the line; and

4. For calling card or any other OSP assisted call that will be billed to the calling party, that the call will be billed to the calling party.

(c) For collect or third-party billed calls, an OSP shall comply with (b)1 through 3 above, and shall, in addition, verbally inform the party being called or the third-party, audibly and distinctly, prior to connecting the call and prior to starting the timing of the call for charging purposes, that the call will be billed to the called party or third party, as applicable.

(d) Each operator services provider shall ensure, by contract, that each aggregator for which such OSP is the presubscribed OSP is in compliance with this section. The OSP shall provide Board staff with a copy of the contract upon request.

Public Notice: Initiation of Investigation to Determine the Benchmark Costs, Expenses and Rates of Return for Payphone Service Providers. See: 29 N.J.R. 1414(a).

Amended by R.1998 d.529, effective November 2, 1998.

See: 30 N.J.R. 331(a), 30 N.J.R. 3967(a).

Added new (h) and (n); and rewrote (i) and (j).

Public Notice: Regulation of Operator Service Providers.

See: 30 N.J.R. 3973(b).

Amended by R.1999 d.111, effective April 5, 1999.

See: 30 N.J.R. 1203(a), 31 N.J.R. 895(a).

In (d), added an exception at the end of 8; and in (e), added the third through fifth sentences.

Recodified in part to N.J.A.C. 14:10-6.2 and N.J.A.C. 14:10-6.4 and amended by R.2007 d.276, effective September 17, 2007.

See: 38 N.J.R. 3250(a), 39 N.J.R. 3953(a).

Rewrote the section.

Former N.J.A.C. 14:10-6.3, Operator Service Provider Requirements, recodified to N.J.A.C. 14:10-6.2, N.J.A.C. 14:10-6.3 and N.J.A.C. 14:10-6.4.

#### Case Notes

Absent any specific requirement from legislature, it was within the Board of Public Utilities' discretion to determine that publicly noticed rulemaking was appropriate vehicle to determine maximum rate caps for alternate operator service (AOS) providers in telecommunications industry. In the Matter of the Regulation of Operator Service Providers, 778 A.2d 546 (2001).

As in all rulemakings, the Board of Public Utilities was at liberty to draw upon its own expertise in setting rate caps on alternate operator service (AOS) providers, preeminently a question of public policy with regard to governance of telecommunications industry. In the Matter of the Regulation of Operator Service Providers, 778 A.2d 546 (2001).

Board of Public Utilities was not required to request additional notice and comments after initial rule proposal and comment period with respect to regulations establishing rate caps on alternate operator service (AOS) providers in telecommunications industry, where there were no changes to actual regulations proposed by the Board, and final rules were essentially identical to those proposed by the Board. In the Matter of the Regulation of Operator Service Providers, 778 A.2d 546 (2001).

Board of Public Utilities' adoption of rate caps on alternate operator service (AOS) providers in telecommunications industry after change in operator service provider's (OSP) rates which Board selected as appropriate benchmark for calls which required intervention of live operator was not arbitrary, capricious, or an abuse of discretion, where the Board stated that it analyzed OSP's increase and was satisfied that caps were still reasonable and met Board's goal of striking a balance between financial integrity of payphone providers and public interest, Board specifically relied on fact that rates for calls which required intervention of a live operator could be increased an additional \$1.00 to \$5.25, and Board concluded that the \$1.00 raise would serve to further mitigate any charges or other costs that might be incurred. In the Matter of the Regulation of Operator Service Providers, 778 A.2d 546 (2001).

Board of Public Utilities' proceeding for promulgating regulations establishing current rate caps on alternate operator service (AOS) in telecommunications industry was not a rate-setting for a particular utility, but rather involved consideration of a generalized standard to apply to a segment of telecommunications industry, and as such, it was a rulemaking which did not require an evidentiary hearing. In the Matter of the Regulation of Operator Service Providers, 778 A.2d 546 (2001).

Changes regarding the Board of Public Utilities' assumptions underlying proposed rule did not render Board's adoption of rate caps on alternate operator service (AOS) providers in telecommunications industry arbitrary, capricious, and an abuse of discretion. In the Matter of the Regulation of Operator Service Providers, 778 A.2d 546 (2001).

Evidence supported the Board of Public Utilities' determination of current rate caps on alternate operator service (AOS) providers in telecommunications industry; rate caps were based on data submitted by industry, Board's discussions with industry representatives, and Board's anticipation of some industry-wide mitigating factors that would tend to offset any potentially negative consequences of rate caps, and then, in great detail, Board discussed those mitigating factors and its decision to use operator service provider's (OSP) rate as benchmark for rate caps for calls which required intervention of live operator. In the Matter of the Regulation of Operator Service Providers, 778 A.2d 546 (2001).

Evidence supported the Board of Public Utilities' determination to limit future rate cap increases on alternate operator service (AOS) providers in telecommunications industry to one dollar; argument ignored the overall history of development of rate caps, and Board believed that the one dollar surcharge in excess of the highest facilities-based carriers' market based rates reflected cost differences between service providers. In the Matter of the Regulation of Operator Service Providers, 778 A.2d 546 (2001).

Given the subject matter it was considering, the Board of Public Utilities complied with the federal-standards review requirement of Administrative Procedure Act (APA) in adopting rate caps on alternate operator service (AOS) providers in telecommunications industry, where Board included a written statement and there were no specific federal rate cap standards. In the Matter of the Regulation of Operator Service Providers, 778 A.2d 546 (2001).

Objector's procedural challenges to the Board of Public Utilities' adoption of regulations establishing current rate caps on alternate operator service (AOS) providers in telecommunications industry were of sufficient public interest to justify waiver of general rule that an objector who fails to participate in administrative proceedings which result in promulgation of regulations forfeits the right to object, in case in which Division of Ratepayer Advocate raised the same or similar issues in its appeal. In the Matter of the Regulation of Operator Service Providers, 778 A.2d 546 (2001).

See: 38 N.J.R. 3250(a), 39 N.J.R. 3953(a).  
Section was "Local exchange safeguards".

#### 14:10-10.6 (Reserved)

Repealed by R.2007 d.276, effective September 17, 2007.

See: 38 N.J.R. 3250(a), 39 N.J.R. 3953(a).

Section was "Classification of intraLATA toll service as competitive".

#### 14:10-10.7 (Reserved)

Amended by R.1997 d.440, effective October 20, 1997.

See: 28 N.J.R. 4414(a), 29 N.J.R. 4558(a).

Inserted (f).

Recodified to N.J.A.C. 14:10-10.3 by R.2007 d.276, effective September 17, 2007.

See: 38 N.J.R. 3250(a), 39 N.J.R. 3953(a).

Section was "Imputation standard".

### SUBCHAPTER 11. ANTI-SLAMMING REQUIREMENTS FOR TSPs

#### 14:10-11.1 Scope; general provisions

(a) This subchapter is intended to protect against unauthorized changes or "switches" in a customer's primary telecommunications carrier, also called a telecommunications service provider, as these terms are defined at N.J.A.C. 14:10-1.2. This subchapter utilizes the term "telecommunications service provider" or "TSP" in place of the term "telecommunications carrier" in order to be consistent with FCC anti-slamming rules. The two terms have the same meaning.

(b) This subchapter applies to all TSPs, including LECs, telephone utilities, and resellers, as these terms are defined at N.J.A.C. 14:10-1.2.

(c) If a TSP has reasonable notice that a person representing or acting on behalf of the TSP has violated this subchapter, the TSP shall immediately take measures sufficient to prevent any further violations. For the purpose of this subsection, "reasonable notice" includes, but is not limited to, receipt by the TSP of one or more complaints of a violation.

New Rule, R.2007 d.276, effective September 17, 2007.

See: 38 N.J.R. 3250(a), 39 N.J.R. 3953(a).

Former N.J.A.C. 14:10-11.1, Definitions, recodified to N.J.A.C. 14:10-11.2.

#### 14:10-11.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Agent" means any person, as defined at N.J.A.C. 14:3-1.1, including, but not limited to, employees, servants or marketers, acting on behalf of a TSP in order to bring about, modify, affect performance of, or terminate mutual obligations between a TSP and the customer.

"Authorized TSP" means a TSP that a customer has chosen as its provider of a telecommunications service, through an authorization that has been verified in accordance with this subchapter.

"Customer" means a person that meets any one or more of the following criteria:

1. The party identified in the account records of the TSP as responsible for payment of the telephone bill;
2. Any adult person (over the age of 18) authorized by such party to change telecommunications services or to charge services to the account; or
3. Any adult person contractually or otherwise lawfully authorized to represent such party.

"Executing TSP" means any TSP that receives a change order that complies with this subchapter and carries out a request that a customer's TSP be switched. Any TSP may be treated as an executing TSP, if it is responsible for any unreasonable delays in the execution of TSP switches, including fraudulent authorizations in violation of this subchapter.

"Primary TSP" means the customer's chosen TSP for a telecommunications service for which there are multiple providers. To the extent permitted by statute, rule or Board order, a customer may select a primary TSP for intrastate interLATA, intraLATA toll, and local exchange telecommunications services, and may select the same or different TSP for each type of service.

"Submitting TSP" means any TSP that:

1. Submits a change order on behalf of a retail or wholesale customer, in order to request a switch in the customer's primary TSP; and
2. Seeks to provide retail telecommunications services to the customer.

"Unauthorized switch" means a change in a customer's selection of a TSP, that was made without an authorization that was verified in accordance with this subchapter.

Amended by R.2003 d.355, effective September 2, 2003.

See: 34 N.J.R. 3200(a), 35 N.J.R. 4126(a).

Added "Authorized carrier" and amended "Customer".

Recodified from N.J.A.C. 14:10-11.1 and amended by R.2007 d.276, effective September 17, 2007.

See: 38 N.J.R. 3250(a), 39 N.J.R. 3953(a).

In the introductory paragraph, inserted "unless the context clearly indicates otherwise"; in definition "Agent", substituted "as defined at N.J.A.C. 14:3-1.1," for "or entity,"; deleted definitions "Authorized carrier", "Authorized TSP change", "Board", "Commission", "Division", "InterLATA telecommunications service", "Intrastate telecommunications service", "Local access and transport area", "Local exchange telecommunications service", "Slamming", "Soliciting telecommunications service provider", "Telecommunications", "Telecommunications service" and "Telecommunications service provider"; in the introductory paragraph of definition "Customer", inserted "a person that meets", "or more" and "criteria"; rewrote definitions "Executing TSP" and "Submitting TSP"; in definition "Primary TSP", substituted "TSP for" for "provider of" and inserted a comma following "toll"; and

substituted definition "Unauthorized switch" for "Unauthorized change" and rewrote the definition.

Former N.J.A.C. 14:10-11.2, Solicitation of customer's authorization for service termination and transfer, recodified to N.J.A.C. 14:10-11.3.

### 14:10-11.3 Solicitation of authorization to change TSPs

(a) All solicitations by a TSP for a customer's authorization to terminate that customer's existing primary TSP and to transfer said customer to a new primary TSP shall include a clear and conspicuous statement of the following:

1. The identity of the soliciting TSP;
2. That the solicitation seeks the customer's authorization to switch the customer's TSP from the customer's existing primary TSP to the soliciting TSP;
3. The types of services that will be affected by the switch; for example, local, regional, and/or long distance;
4. The soliciting TSP's current complete rates, fees, terms and conditions; and
5. All information that the soliciting TSP will require from the customer in order to assume accurate billing for the particular services involved in the switch.

(b) When soliciting a customer's authorization to switch TSPs, a reseller shall not disclose the identity of the TSP whose telecommunications service is being resold, unless the information is provided in a truthful, non-misleading manner in accordance with this subchapter. The reseller shall identify itself as a reseller, disclose that it is not the customer's primary TSP, and advise the customer that accepting the reseller's offer will change the customer's primary TSP.

Recodified from N.J.A.C. 14:10-11.2 and amended by R.2007 d.276, effective September 17, 2007.

See: 38 N.J.R. 3250(a), 39 N.J.R. 3953(a).

Section was "Solicitation of customer's authorization for service termination and transfer". Rewrote the section.

Former N.J.A.C. 14:10-11.3, Verification of change orders for telecommunications service providers, was repealed in part and recodified in part to N.J.A.C. 14:10-11.5 and 11.6.

### 14:10-11.4 Obtaining verified customer authorization; submitting a change order

(a) To switch a customer from one primary TSP to another, the acquiring TSP shall submit a change order, which complies with this subchapter, to an executing TSP.

(b) No TSP shall submit a change order on behalf of a customer without first obtaining a verified authorization from the customer in accordance with this subchapter. Such an authorization may be obtained through any of the following means:

1. The customer's signature, either written or electronic, on a letter of agency, in accordance with N.J.A.C. 14:10-11.5;

2. The customer's verbal authorization obtained by telephone in accordance with N.J.A.C. 14:10-11.6; or

3. A third-party verification that meets the requirements at N.J.A.C. 14:10-11.6.

(c) The requirements in this section and N.J.A.C. 14:10-11.5 and 11.6 are in addition to the FCC slamming requirements at 47 CFR §64.1100 through 1190, incorporated herein by reference, as amended or supplemented. Should there be a difference between the FCC regulations and these rules, the more stringent provision shall govern.

(d) If a TSP sells more than one type of telecommunications service (for example, local exchange, intraLATA toll, and interLATA toll), that TSP shall obtain separate authorization from the customer for each separate access line being switched and each separate service sold, although the authorizations may be verified within the same solicitation. Each authorization shall be verified separately from any other authorizations obtained in the same solicitation, even if the same primary TSP is chosen to provide two or more telecommunications services.

(e) A TSP shall submit a primary TSP change order on behalf of a customer within 60 days after obtaining the verified authorization for that customer.

(f) Notwithstanding N.J.A.C. 14:10-1.3, a submitting TSP shall maintain and preserve records of all verifications of customer authorization for a minimum of three years after obtaining the verification.

New Rule, R.2007 d.276, effective September 17, 2007.

See: 38 N.J.R. 3250(a), 39 N.J.R. 3953(a).

Former N.J.A.C. 14:10-11.4, TSP change order procedures, recodified to N.J.A.C. 14:10-11.7.

### 14:10-11.5 Letters of agency

(a) A TSP that elects to use a letter of agency to obtain a verified authorization for a change in a customer's TSP shall ensure that the letter of agency complies with all requirements of the FCC rules governing letters of agency at 47 CFR §64.1130, incorporated herein by reference, as amended and supplemented. As of September 17, 2007, the substance of 47 CFR §64.1130 is set forth at 1 through 12 below:

1. A TSP may use a letter of agency to obtain written or electronically signed authorization and or verification of a customer's request to change his/her primary TSP selection. A letter of agency that does not conform with this section is invalid for purposes of this subchapter;

2. The letter of agency shall be a separate (or an easily separable) document or located on a separate screen or web page containing only the authorizing language described in (a)5 below having the sole purpose of authorizing a TSP to initiate a primary TSP change. The letters of agency shall be signed and dated by the customer who subscribes to the telephone line(s) requesting the primary TSP change;

3. The letter of agency shall not be combined on the same document, screen, or web page with inducements of any kind. For example, it cannot be used in combination with sweepstakes offerings, entries or boxes.

4. Notwithstanding (a)2 and 3 above, the letter of agency may be combined with check(s) that contain only the required letter of agency language as prescribed in (a)5 below and the necessary information to make the check(s) a negotiable instrument. The letter of agency check(s) shall not contain any promotional language or material. The letter of agency check(s) shall contain, easily readable boldface type on the front of the check(s), a notice that the customer is authorizing a primary TSP change by cashing the check(s). The letter of agency language shall be placed near the signature line on the back of the check;

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

i. The customer's billing name and address and each telephone number to be covered by the primary TSP change order;

ii. The decision to change the primary TSP from the current TSP to the submitting TSP;

iii. That the customer designates (name of submitting TSP) to act as the customer's agent for the primary TSP change;

iv. That the customer understands that a different TSP may be designated for each of the customer's services, that is, interLATA, intraLATA toll or local exchange. The letter of agency shall contain separate check-off boxes for each such choice, with only one signature line at the bottom, although a separate letter of agency for each choice is not necessary; and

v. That the customer understands that each change of a primary TSP selection the customer chooses may involve a charge to the customer. The customer is to be advised of the amount of the charge up to the maximum;

6. Any TSP designated in a letter of agency as a primary TSP shall be the TSP directly setting the rates for the customer;

7. Letters of agency shall not suggest or require that a customer take some action in order to retain the customer's current TSP;

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

9. Letters of agency submitted with an electronically signed authorization shall include the consumer disclosures required by § 101(c) of the Electronic Signatures in the Global and National Commerce Act. (Public Laws 106-229) (E-sign Act);

10. TSPs utilizing electronically signed letters of agency shall employ encryption and/or other security measures in keeping with the best practices used for Internet transactions. TSPs shall also provide notice to subscribers regarding the level of security that applies to the submission of such electronically signed letters of agency.

11. A TSP shall submit a primary TSP change order on behalf of a subscriber within 60 days of obtaining a written or electronically signed letter of agency; and

12. Letters of agency submitted with electronically signed authorizations shall comply with all relevant provisions of the Electronic Signatures in the E-sign Act and the Uniform Electronic Transactions Act, N.J.S.A. 12A:12-1 et seq.

(b) A submitting TSP may also obtain a customer's electronic authorization to submit the primary TSP order in accordance with 47 CFR §64.1120(c)(2).

Recodified in part from N.J.A.C. 14:10-11.3 by R.2007 d.276, effective September 17, 2007.

See: 38 N.J.R. 3250(a), 39 N.J.R. 3953(a).

Section was "Verification of change orders for telecommunications service providers". Rewrote the section.

Former N.J.A.C. 14:10-11.5, Unauthorized service termination and transfer (slamming), recodified to N.J.A.C. 14:10-11.8.

#### **14:10-11.6 Third party verification of authorization**

(a) A submitting TSP may obtain a customer's authorization to submit a change order on the customer's behalf through an independent third-party verification in accordance with this section.

(b) An appropriately qualified independent third party has obtained the customer's oral authorization to submit the primary TSP change order which confirms and includes appropriate verification data (for example, the customer's date of birth or social security number). The independent third party shall not be owned, managed, controlled, or directed by the TSP or the TSP's marketing agent; shall not have any financial incentive to confirm primary TSP change orders for the TSP or the TSP's marketing agent; and shall operate in a location physically separate from the TSP or the TSP's marketing agent. The content of the verification shall include clear and conspicuous confirmation that the customer has authorized primary TSP change.

(c) A TSP may use third-party verification systems and three-way conference calls for verification purposes, so long as, the requirements of this section are satisfied. Automated systems shall provide customers with the option to speak with a live person at any time during the call.



(d) A TSP or a TSP's sales representative initiating a three-way conference call or a call through an automated verification system shall drop off once the three-way connection has been established, unless the third-party verifier obtains a waiver for this requirement from the FCC.

(e) All third-party verification methods shall elicit, at a minimum, all of the following:

1. Confirmation of the identity of the customer (for example, the customer's date of birth or social security number);
2. The date of the verification;
3. Confirmation that the person on the call is authorized to make the TSP switch;
4. Confirmation that the person on the call wants to make the TSP switch;
5. The names of the TSPs affected by the change;
6. Each of the telephone numbers that will be affected by the switch; and
7. The types of service being switched.

(f) Third-party verifiers shall not market the TSP's services by providing additional information during the verification call, including information regarding preferred TSP freeze procedures.

(g) 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.

(h) If a customer has any questions regarding the switching of telecommunications service, the rates, or any other matter; which a third-party verifier is not qualified or not authorized to answer under this subchapter, the third-party verifier shall:

1. Inform the customer that the third-party verifier is not qualified or authorized to answer the question;
2. Offer to terminate the verification and instruct the customer on how to contact the TSP's sales agent to answer the question; and
3. Terminate the verification if the customer requests it, or, if the customer clearly consents to continue the call without having the question answered, continue the call.

(i) If a verification is terminated in accordance with the verification, a new verification may be started only after the TSP's sales agent has fully responded to the customer's questions.

(j) Each customer selection of a primary TSP for local, intraLATA toll, or interLATA telecommunications service shall be verified separately, in accordance with this subchapter, even if the same primary TSP is chosen to provide two or more telecommunications services. For example, a single authorization for changes of local, intraLATA, and long dis-

tance service is not valid. The TSP must obtain a separate authorization for change of local service, a separate authorization for change of intraLATA service, and a separate authorization for long distance.

(k) A TSP may acquire, through a sale or transfer, either part or all of another TSP's customer base, without obtaining each customer's authorization and verification, by complying with the rules set forth at 47 CFR §64.1120(e), as amended and supplemented, which are incorporated herein by reference.

(l) Copies of letter notifications filed with the FCC pursuant to 47 CFR §64.1120(e)(1) and (2) shall also be filed with the Board.

Amended by R.2003 d.355, effective September 2, 2003.

See: 34 N.J.R. 3200(a), 35 N.J.R. 4126(a).

Rewrote the section.

Recodified in part from N.J.A.C. 14:10-11.3 by R.2007 d.276, effective September 17, 2007.

See: 38 N.J.R. 3250(a), 39 N.J.R. 3953(a).

Section was "Verification of change orders for telecommunications service providers". Rewrote the section.

Former N.J.A.C. 14:10-11.6, Primary TSP freezes, recodified to N.J.A.C. 14:10-11.9.

#### **14:10-11.7 Requirements for the executing TSP**

(a) A TSP that receives a primary TSP change order that has been solicited and verified in compliance with this subchapter shall execute the requested TSP change as soon as possible, and in no case later than three business days after a change order for toll services is submitted, whether intraLATA or interLATA; and no later than 30 business days after a change order for local exchange service is submitted.

(b) An executing TSP is not responsible for verifying whether or not a switch is authorized. The executing TSP merely performs the switch in a timely manner after receiving a change order from the submitting TSP.

(c) The 30-day deadline set forth in (a) above for executing local exchange service change orders may be extended for good cause by Board staff. The extension shall last for 30 days, unless a different time period is agreed to by the customer and the TSPs involved in the switch; or if a different time period is required by Federal law or rule.

(d) The 30-day deadline set forth in (c) above for local exchange service may also be shortened by order of the Board pursuant to N.J.S.A. 56:8-88.

(e) When an authorized change of a TSP is made, the acquiring TSP shall notify the customer of the change within 30 days of submitting the primary TSP change order to the executing carrier that serves the customers.

(f) The notice required under (e) above shall be separate from the acquiring TSP's billing statement and shall clearly and conspicuously include at least the following information:



which that customer was enrolled prior to the unauthorized switch, if the customer's participation in that program was terminated because of the unauthorized switch. If the customer has paid charges to the unauthorized TSP, the properly authorized TSP shall also provide or restore to the customer any premiums to which the customer would have been entitled had the unauthorized switch not occurred. The authorized TSP must comply with the requirements of this paragraph regardless of whether it is able to recover from the unauthorized TSP any charges that were paid by the customer.

(c) All investigation procedures are as follows:

1. When an executing or primary TSP is informed of an unauthorized TSP switch by a customer, it shall immediately notify both the authorized and allegedly unauthorized TSP of the incident. This notification shall include the identity of both TSPs;

2. Any TSP, executing, authorized, or allegedly unauthorized, that is informed by a customer or an executing TSP of an unauthorized TSP switch can attempt to resolve the complaint to the satisfaction of the customer. If the TSP is unable to resolve the complaint, the TSP must send the complaint to the Board. The complaint must include the name, address and telephone number of the customer; the date the alleged unauthorized switch occurred; and the name of the alleged unauthorized TSP to which the customer was switched; the type of service switched; and any evidence to substantiate the TSP's position. Nothing in this subsection shall prevent an allegedly unauthorized TSP from resolving the complaint by providing the customer with all relief to which the customer is entitled under this subchapter;

3. Upon receipt of an unauthorized TSP switch complaint, the Board or its designee will notify the allegedly unauthorized TSP of the complaint and require the TSP to remove all unpaid charges for the first 30 days after the slam from the customer's bill pending a determination of whether an unauthorized switch, as defined by N.J.A.C. 14:10-11.1, has occurred, if it has not already done so; and

4. Not more than 30 days after notification of the complaint, the alleged unauthorized TSP shall provide to the Board or its designee a copy of any valid proof of verification of the TSP switch. This proof of verification shall contain clear and convincing evidence of a valid authorized TSP switch. The Board or its designee will determine whether an unauthorized switch has occurred using such proof and any evidence supplied by the customer. Failure by the submitting TSP to respond or provide proof of verification will be presumed to be clear and convincing evidence of a violation.

(d) (Reserved)

(e) Each TSP shall, upon request, submit to the Board and the Division three copies of a report of all slamming com-

plaints received, and the resolution thereof indicating the customers' name, address, telephone number, the type of service that was slammed, and the submitting TSP or agent that requested the alleged unauthorized switch of the customer's primary TSP.

Amended by R.2003 d.355, effective September 2, 2003.

See: 34 N.J.R. 3200(a), 35 N.J.R. 4126(a).

Rewrote (e) through (g).

Recodified from N.J.A.C. 14:10-11.5 and amended by R.2007 d.276, effective September 17, 2007.

See: 38 N.J.R. 3250(a), 39 N.J.R. 3953(a).

Rewrote the section.

Former N.J.A.C. 14:10-11.8, Penalties for violations, recodified to N.J.A.C. 14:10-11.10.

## 14:10-11.9 TSP freezes

(a) A TSP freeze is an additional restriction that prevents a switch in an end-user's primary TSP without the end-user's verified authorization for both of the following:

1. The lifting of the TSP freeze; and
2. The switch itself.

(b) All TSPs responsible for implementing changes of primary TSPs shall offer a plan to freeze and lift the freeze of the customer's local, intraLATA toll or interLATA primary TSPs upon the customer's request.

(c) Customer requests for the imposition or lifting of primary TSP freezes shall be honored without charge.

(d) A TSP freeze applies to each end-user, regardless of the customer of record.

(e) An end-user's authorization to lift a freeze does not satisfy the requirement for a separate verified authorization to make a TSP switch. Therefore, if an end-user has a TSP freeze in effect, both of the following shall apply:

1. A submitting TSP that fails to obtain both authorizations required under (a) above shall be subject to penalties or other enforcement under this subchapter; and

2. A primary TSP that allows a submitting TSP to switch the end-user's TSP without both verifications required under (a) above shall also be subject to penalties or other enforcement under this subchapter.

(f) All TSPs responsible for the imposition or lifting of primary TSP freezes shall, in addition to complying with this chapter, also comply with FCC regulations at 47 CFR 64.1190, preferred carrier freezes, incorporated herein by reference, as amended or supplemented. As of September 17, 2007, the substance of those regulations is as follows:

1. A primary TSP freeze (or freeze) prevents a change in a customer's primary TSP selection unless the customer gives the TSP from whom the freeze was requested his or her express consent to make the switch. All TSPs responsible for the imposition or lifting of primary TSP freezes shall comply with the provisions of this section;

2. All TSPs responsible for the imposition or lifting of primary TSP freezes shall offer freezes on a nondiscriminatory basis to all customers, regardless of the customer's TSP selections;

3. Primary TSP freeze procedures, including any solicitation, shall clearly distinguish among telecommunications services (for example, local exchange, intraLATA toll, and interLATA toll) subject to a primary TSP freeze. The TSP offering the freeze shall obtain separate authorization for each service for which a primary TSP freeze is requested;

4. The following apply to solicitation and imposition of primary TSP freezes:

i. All TSP provided solicitation and other materials regarding primary TSP freezes shall include:

(1) An explanation, in clear and neutral language, of what a primary TSP freeze is and what services may be subject to a freeze; and

(2) A description of the specific procedures necessary to lift a primary TSP freeze; an explanation that these steps are in addition to the verification rules in N.J.A.C. 14:10-11.3 for changing a customer's primary TSP selections; and an explanation that the customer will be unable to make a change in TSP selection unless he or she lifts the freeze;

ii. No TSP responsible for the imposition or lifting of primary TSP freezes shall implement a primary TSP freeze unless the customer's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

(1) The TSP responsible for the imposition or lifting of primary TSP freezes has obtained the customer's written or electronically signed authorization in a form that meets the requirement of (f)4iii below;

(2) The TSP responsible for the imposition or lifting of primary TSP freezes has obtained the customer's electronic authorization, placed from the telephone number(s) on which the primary TSP freeze is to be imposed, to impose a primary TSP freeze. The electronic authorization shall confirm appropriate verification data (for example, the customer's date of birth or social security number) and the information required in (f)4iii(2)(A) through (C) below. TSPs electing to confirm primary TSP freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism that records the required information regarding the primary TSP freeze request, including automatically recording the originating automatic numbering identification; or

(3) An appropriately qualified independent third party has obtained the customer's oral authorization to submit the preferred TSP freeze and confirmed the appropriate verification data (for example, the customer's date of birth or social security number) and the information required in (f)4iii(2)(A) through (C) below. The independent third party shall not be owned, managed, or directly controlled by the TSP or the TSP's marketing agent; not have any financial incentive to confirm primary TSP freeze requests for the TSP or the TSP's marketing agent; and operate in a location physically separate from the TSP or the TSP's marketing agent. The content of the verification shall include clear and conspicuous confirmation that the customer has authorized a primary TSP freeze;

iii. A TSP responsible for the imposition or lifting of primary TSP freezes may accept a customer's written or electronically signed authorization to impose a freeze on his or her primary TSP selection. Written authorization that does not conform with this section is invalid and shall not be used to impose a primary TSP freeze;

(1) The written authorization shall comply with N.J.A.C. 14:10-11.5 concerning the form and content for letters of agency;

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

(A) The customer's billing name and address and the telephone number(s) to be covered by the primary TSP freeze;

(B) The decision to place a primary TSP freeze on the telephone number(s) and particular service(s). The authorization shall contain separate statements regarding the particular selections (for example, for local exchange, intraLATA toll, and interLATA toll service) to be frozen;

(C) That the customer understands that she or he will be unable to make a change in TSP selection unless she or he lifts the primary TSP freeze for that particular service; and

5. All TSPs responsible for the imposition or lifting of primary TSP freezes shall, at a minimum, offer customers the following procedures for lifting a primary TSP freeze:

i. A TSP responsible for the imposition or lifting of primary TSP freezes shall accept a customer's written or electronically signed authorization stating her or his intent to lift a preferred TSP freeze; and

ii. A TSP responsible for the imposition or lifting of primary TSP freezes shall accept a customer's oral authorization stating her or his intent to lift a primary TSP freeze and shall offer a mechanism that allows a submitting TSP to conduct a three-way conference call with the

TSP administering the freeze and the customer in order to lift a freeze. When engaged in oral authorization to lift a primary TSP freeze, the TSP administering the freeze shall confirm appropriate verification data (for example, the customer's date of birth or social security number) and the customer's intent to lift the particular freeze for a particular service (for example, intraLATA, interLATA, local).

Amended by R.2003 d.355, effective September 2, 2003.

See: 34 N.J.R. 3200(a), 35 N.J.R. 4126(a).

In (d), inserted "or electronically" preceding "signed authorization" in ii(1), iii and 5i.

Recodified from N.J.A.C. 14:10-11.6 and amended by R.2007 d.276, effective September 17, 2007.

See: 38 N.J.R. 3250(a), 39 N.J.R. 3953(a).

Section was "Primary TSP freezes". Rewrote the section.

Former N.J.A.C. 14:10-11.9, Scope of authority, recodified to N.J.A.C. 14:10-11.10.

#### 14:10-11.10 Enforcement

(a) TSPs shall adhere to a standard of due care when submitting and processing switches of primary TSPs. Adherence to this standard means that the TSP has taken all reasonable steps necessary to ensure compliance with this subchapter. There shall be a rebuttable presumption that any violation of this standard is "willful or intentional." The burden of proof shall be upon the submitting or executing TSP to rebut the presumption.

(b) Any TSP determined by the Board, after notice and hearing, to have violated this subchapter, or a Board order adopted pursuant to N.J.S.A. 56:8-1 et seq., or to have violated any Federal law or regulation, relating to switches in primary telecommunications service providers, shall be subject to the following, as applicable:

1. Suspension or revocation of the TSP's authority to conduct business in the State;
2. Civil penalties within the following ranges:
  - i. Up to \$7,500 for the first violation; and
  - ii. Up to \$15,000 per violation for each subsequent violation associated with a specific access line; and/or
3. Such other remedies, including, but not limited to, the ordering of restitution to customers as the Board deems appropriate.

(c) In the event the State owes money to the TSP, the amount of the penalty, when finally determined, may be deducted from any sums due and owing.

(d) All monies recovered from a civil or administrative penalty imposed pursuant to this section shall be paid into the State Treasury to the credit of the General Fund.

(e) In the event that the Board suspends or revokes the authority of a TSP to conduct business in this State, the TSP which controls access, and/or the TSP responsible for call completion, shall immediately discontinue the revoked TSP's

access to the facilities of any underlying TSP, and the TSP responsible for billing the customers of the revoked TSP shall notify each affected customer, advising that each customer has 30 days to choose another TSP.

(f) The Board may investigate, upon its own initiative or upon complaint, any allegation of a violation of this subchapter.

(g) The Board may compel the attendance of witnesses, compel the production of documents, and issue subpoenas in connection with any investigation of an alleged violation of this subchapter.

(h) The remedies provided for in this subchapter are in addition to any other remedies available under any Board order, rule, or finding; and in addition to remedies provided by any other applicable law.

Recodified from N.J.A.C. 14:10-11.8 and amended by R.2007 d.276, effective September 17, 2007.

See: 38 N.J.R. 3250(a), 39 N.J.R. 3953(a).

Section was "Penalties for violations". Rewrote the section.

#### 14:10-11.11 Determination of penalties within statutory ranges

(a) Each violation as it relates to each separate access line shall be a separate and distinct violation, for which a separate penalty may be assessed. For example, if a customer has two telephone lines, and a TSP improperly switches the customer's primary TSP for long distance service on both lines, the TSP is liable for two violations. Similarly, if a customer has one telephone line, and a TSP switches both intraLATA and long distance service improperly on that telephone line, the TSP is liable for two violations.

(b) The Board may, in its discretion, adjust a penalty determined in accordance with this section, on the basis of one or more of the following factors:

1. The nature, circumstances and gravity of the violation, including the individual and cumulative effect on customers;
2. The degree of the TSP's culpability;
3. Any history or pattern of prior violations;
4. The prospective effect of the penalty on the ability of the TSP to conduct business;
5. Any good faith effort on the part of the TSP in attempting to achieve compliance;
6. The TSP's ability to pay the penalty; and/or
7. Any other factors the Board determines to be appropriate.

(c) The rights, remedies, and prohibitions accorded the Board under this chapter are in addition to and cumulative of any right, remedy or prohibition accorded by the common law or any statute of this State. Nothing in this subchapter shall be

construed to deny, abrogate or impair any such common law or statutory right, remedy or prohibition.

(d) Neither P.L. 1998, c. 82, nor this subchapter, shall be construed in any way to limit the authority and power of the Attorney General and the Division of Consumer Affairs in the Department of Law and Public Safety to enforce any other sections of the Consumer Fraud Act, P.L. 1960, c. 39 (N.J.S.A. 56:8-1 et seq.) or any other applicable law, rule or regulation in connection with the activities of telecommunications service providers, even if such activities involve slamming. Nothing in this subchapter shall be construed in any way to abrogate a customer's private right of action, pursuant to N.J.S.A. 56:8-19.

New Rule, recodified in part from N.J.A.C. 14:10-11.9 and amended by R.2007 d.276, effective September 17, 2007.

See: 38 N.J.R. 3250(a), 39 N.J.R. 3953(a).

Section was "Scope of Authority". Rewrote the section.

## APPENDIX

### (RESERVED)

Amended by R.2003 d.355, effective September 2, 2003.

See: 34 N.J.R. 3200(a), 35 N.J.R. 4126(a).

Repealed by R.2007 d.276, effective September 17, 2007.

See: 38 N.J.R. 3250(a), 39 N.J.R. 3953(a).

Section was "TSP Slamming Activity Report".

## SUBCHAPTER 12. MASS MIGRATION UPON TSP DEPARTURE FROM A SERVICE TERRITORY

### 14:10-12.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meaning unless the context clearly indicates otherwise.

"Acquiring TSP" means the telecommunications service provider (TSP) that has entered into an agreement with the departing TSP to acquire the departing TSP's end user base.

"Alternative TSP" means a TSP, other than the acquiring TSP, which has been selected by an end user of the departing TSP to be the end user's service provider after the departure of the departing TSP.

"Competitive local exchange carrier" or "CLEC" has the same meaning as is assigned to this term N.J.A.C. 14:10-1.2.

"Cutover coordinator" means a person designated by the acquiring, or alternative, TSP, who is responsible for the line-by-line transfer of accounts from the departing TSP to the acquiring or alternative TSP. The cutover coordinator works under the direction of the project manager, as defined in this section.

"Cut-off date" means the date by which end users must select an alternative TSP or else be automatically transferred to the acquiring TSP, if there is one.

"Departing TSP" means the telecommunications service provider (TSP) that is exiting its New Jersey service territory in whole or in part.

"Departure date" means the date on which the departing TSP ceases to provide service.

"End user" has the same meaning as is assigned to this term in N.J.A.C. 14:3-1.1.

"Firm order confirmation" or "FOC," also known as local service request confirmation (LSC), means a notification from the departing TSP or from a network service provider to the acquiring TSP that the LSR, as defined in this section, is correct and stating the scheduled completion date for the service activity requested in the LSR.

"Full facilities-based" means a TSP that uses its own facilities, that is, local loop, transport and switch(es), to provide telecommunications service to end users.

"Incumbent local exchange carrier" or "ILEC" has the same meaning as is assigned to this term in N.J.A.C. 14:10-1.2.

"Local exchange carrier" or "LEC" has the same meaning as is assigned to this term in N.J.A.C. 14:10-1.2.

"Local service request" or "LSR" means an electronic or written communication that a TSP must send to a network service provider and/or a departing TSP to request a transfer of, or a change to, an end user's existing service, including a change that involves the porting of a telephone number.

"Migration manager" means a person designated by the departing TSP to coordinate end user migrations between the departing TSP and the acquiring TSP or the alternative TSP. The migration manager may be the project manager, as defined in this section, for the departing TSP.

"North American Numbering Plan Administrator" or "NANPA" means the company selected by the Federal Communications Commission to consult with and provide assistance to regulatory authorities and national administrators to ensure that numbering resources are used in the best interests of all participants in the North American Numbering Plan.

"National Emergency Number Association" or "NENA" means the membership association whose mission is to promote research, planning, training and education to promote the implementation and improvement of 9-1-1 service.

"Network service provider" or "NSP" means a TSP that provides the network platform by which service is delivered to an end user.

"NXX code" has the same meaning as is assigned to this term in N.J.A.C. 14:10-3.1.

"Program manager" means the person responsible for coordinating a mass migration, monitoring compliance with this