

v. Is independently developed by the party;

vi. Is approved for release by written authorization of the submitting party.

6. If documents and materials designated as proprietary in nature are to be included in any papers filed with the Board, such papers shall be labeled "CONFIDENTIAL—SUBJECT TO ORDER OF THE BOARD" and shall be filed under seal until further order of the Board.

7. The review described in this subsection shall not affect the implementation date of any customer specific pricing contract.

(g) Should the data demonstrate that the LEC is not in compliance with the imputation requirement, upon receipt of notice from the IXCs or Board staff, the LEC shall, within 30 days, either increase the price(s) for its interexchange service to bring the LEC into compliance, or petition the Board for a compliance ruling. In any such proceeding, the LEC shall not argue that this imputation requirement should be changed.

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).

SUBCHAPTER 11. TELECOMMUNICATIONS SERVICE PROVIDERS

14:10-11.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

"Agent" means any person or entity, 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.

"Board" means the New Jersey Board of Public Utilities.

"Commission" means the Federal Communications Commission.

"Customer" means any person, authorized to make billing and service decisions regarding a telephone account. A person under the age of 18 does not qualify as a customer.

"Division" means the Division of Consumer Affairs within the New Jersey Department of Law and Public Safety.

"Executing TSP" means any TSP that affects a request that a customer's telecommunications carrier be changed. Any carrier may be treated as an executing carrier, 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 it will consider in violation of this subchapter.

"InterLATA telecommunications service" means telecommunications service which originates in one LATA and terminates in a different LATA.

"IntraLATA telecommunications service" means telecommunications service which originates and terminates within the same LATA.

"Intrastate telecommunications service" means a telecommunications service which remains within the boundaries of New Jersey, regardless of the specific routing of the call.

"Local access and transport area" or "LATA" means a geographic area which marks the boundaries beyond which a Bell Operating Company does not carry telephone calls. See *United States v. Western Electric*, 569 F.Supp. 990 (D.D.C. 1983).

"Local exchange telecommunications service" means telecommunications service which originates and terminates within a geographic area established and described by a local exchange carrier's tariffs filed with the Board of Public Utilities.

"Primary TSP" means the customer's chosen provider of 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.

"Slamming" means an unauthorized change of a customer's primary TSP or the failure to execute an authorized change in a customer's primary TSP.

"Soliciting telecommunications service provider" means a telecommunications service provider that seeks, either directly or through an agent, a customer's authorization to terminate said customer's existing primary TSP and subsequently transfer the customer to the soliciting TSP.

"Submitting TSP" means any TSP that:

1. Requests on the behalf of a customer to change the primary TSP; and
2. Seeks to provide retail services to the end user customer.

"Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such

classes of users as to be effectively available directly to the public, regardless of the facilities used.

“Telecommunications service provider” or “TSP” means any individual, firm, joint venture, partnership, corporation, association, public utility, cooperative association, joint stock association and includes any trustee, receiver, assignee, or representative which is a provider of intrastate telecommunications services, whether interLATA, intraLATA toll or local exchange telecommunications services, to an end-user customer. This term includes resellers, whether switched or switchless, of telecommunications services.

“Unauthorized change” means a change in a customer’s selection of a provider of telecommunications service that was made without authorization verified in accordance with the verification procedures specified in this subchapter.

14:10–11.2 Solicitation of customer’s authorization for service termination and transfer

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

1. That the solicitation seeks the customer’s authorization to switch or change the customer’s TSP from the primary TSP to the soliciting TSP; and
2. The soliciting TSP’s current complete rates, fees, terms and conditions and information needed to assume accurate billing and TSP identification for the particular services proposed.

(b) No reseller of intrastate telecommunications services, or any agent acting on its behalf, shall disclose the identity of the underlying carrier 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 current provider and advise the customer that accepting it as his or her carrier will change the customer’s primary TSP.

14:10–11.3 Verification of change orders for telecommunications service providers

(a) No submitting TSP, or any person, firm or corporation acting as an agent or representative on behalf of such submitting TSP, shall submit to an executing TSP, or implement by itself, an order changing a customer’s primary TSP unless and until the order has first been verified in accordance with this subchapter.

(b) Verification of any order changing a customer’s primary TSP shall be in conformance with one of the following procedures as set forth in the Commission’s rules at 47 C.F.R. §§ 64.1150 and 64.1160, as amended or supplemented, which regulations are incorporated herein by reference, copies of which may be obtained upon request from the Secretary of the Board:

1. The submitting TSP has obtained the customer’s written authorization in a form that satisfies the following requirements:

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

ii. The letter of agency shall be a separate (or an easily separable document) containing only the authorizing language described in (b)1v below having the sole purpose of authorizing a TSP to initiate a primary TSP change. The letter of agency shall be signed and dated by the customer who subscribes to the telephone line(s) requesting the primary TSP change;

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

iv. Notwithstanding (b)1ii and iii above, the letter of agency may be combined with check(s) that contain only the required letter of agency language as prescribed in (b)1v 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;

v. 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:

(1) The customer’s billing name and address and each telephone number to be covered by the primary TSP change order;

(2) The decision to change the primary TSP from the current TSP to the submitting TSP;

(3) That the customer designates (name of submitting TSP) to act as the customer’s agent for the primary TSP change;

(4) 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

(5) 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;

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

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

viii. 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;

2. The submitting TSP has obtained the customer's electronic authorization to submit the primary TSP order. Such authorization shall be placed from the telephone number(s) on which the primary TSP is to be changed and shall confirm the information required in (b)1 above. Submitting TSP selecting to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) shall connect a customer to a voice response unit or similar mechanism that records the required information regarding the primary TSP change, 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 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) The verification requirements of this subchapter apply to all primary TSP change requests, regardless of whether a

request is initiated by the customer or the TSP, its agents or representatives.

(d) 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.

14:10–11.4 TSP change order procedures

(a) Notwithstanding the time frame for execution of primary TSP change orders set forth in this section, all primary TSP change orders solicited and verified in compliance with this subchapter shall be executed as soon as possible and without unreasonable delay.

(b) Upon receipt of a primary TSP change order which complies with this subchapter, the executing TSP, person, firm or corporation acting as an agent or representative on behalf of a TSP, shall, on behalf of the customer, promptly and without unreasonable delay, process the TSP change order to assure that the order is completed and service can be provided by the submitting TSP no later than three business days for toll services, whether intraLATA or interLATA and no later than 30 business days for local exchange service. The 30 day period for completing local exchange service changes may be extended for good cause by the Board for an additional 30 day period, unless otherwise agreed to by the customer, or as agreed to by the TSPs involved in the change, or by Federal law or rule. The 30 day period may also be reduced by order of the Board pursuant to N.J.S.A. 56:8–88. The time interval for local exchange service order completion by Verizon New Jersey to the submitting TSP is set forth by Board approved New Jersey Carrier to Carrier Guidelines. (See *I/M/O the Investigation Regarding Local Exchange Competition for Telecommunications Services and I/M/O the Board's Investigation Regarding the Status of Local Exchange Competition in New Jersey*, Docket Nos. TX95120631 and TX98010010, May 25, 2000.)

(c) When an authorized change of a TSP is made, the new TSP shall notify the new customer of the change within 30 days of submitting the primary TSP change order. The notice shall be separate from the primary TSP's billing statement and shall clearly and conspicuously include at least the following information:

1. That the information is being sent to confirm a primary telecommunications service provider change order placed by the customer and confirming the type of service being changed, that is, local, intraLATA or interLATA services;

2. The name of the customer's current telecommunications service provider, if that information is known to the new TSP;

3. The name of the newly requested telecommunications service provider with telephone number and address;

4. A description of any and all terms, conditions or charges that shall be incurred; and

5. The telephone number and address of both the Board of Public Utilities Division of Customer Relations, at Two Gateway Center, Newark, New Jersey 07102, 1 (800) 624–0241, and the Division of Consumer Affairs Consumer Service Center, at 124 Halsey Street 7th Fl, PO Box 45027, Newark, New Jersey (973) 504–6200.

(d) The TSP, or other person, firm or corporation acting as an agent or representative on behalf of a submitting TSP, shall make available to any customer, upon written or verbal request, for the period records are maintained, the TSPs verification of confirmation of that customer's TSP change order. However, in those instances where the customer is unable to obtain the verification from the submitting TSP, then the executing TSP will be required to provide it if such information is in its possession.

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

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

In (b), inserted the fourth sentence.

14:10–11.5 Unauthorized service termination and transfer (slamming)

(a) In construing and enforcing the provisions of this subchapter, the act of any person, firm or corporation acting as an agent or representative on behalf of a TSP, within the parameters of the working agreement set forth by the TSP, shall be deemed to be the act of that TSP. A person or entity representing or as an agent for a TSP shall be construed as a TSP subject to all the provisions of this subchapter.

(b) Upon reasonable notice that an agent of a TSP is violating this subchapter, the TSP shall immediately take measures sufficient to prevent further violations of this subchapter. The term "reasonable notice" shall be construed to include, but not be limited to, receipt by the TSP of any complaint of violations of this subchapter.

(c) In the event a customer notifies the Board that slamming, as defined in this subchapter, has allegedly occurred, that portion of the bill that relates to the alleged slamming shall be considered in dispute pursuant to N.J.A.C. 14:3–7.13. In addition, in the case of a residential customer, the basic residential local telephone service provider, as defined in N.J.A.C. 14:3–7.17, shall neither apply residual or partial payments to the customer's charges for the slammed service nor discontinue the customer's slammed service because of nonpayment. A customer is required to pay all interLATA and intraLATA toll and local exchange charges that are not affected by the unauthorized TSP change.

(d) Changes in customer carrier selections shall be in conformance with Commission rules at 47 C.F.R. § 64.1100 as amended or supplemented, as follows:

1. No TSP shall submit or execute a change on the behalf of a customer in the customer's selection of a TSP except in accordance with the procedures prescribed in this subchapter.

i. No submitting TSP shall submit a change on the behalf of a customer in the customer's selection of a TSP prior to obtaining authorization from the customer, and verification of that authorization in accordance with the procedures prescribed in N.J.A.C. 14:10–11.3. For a submitting TSP, compliance with the verification procedures prescribed in this subchapter shall be defined as compliance with this paragraph and (d)2 below, as well with N.J.A.C. 14:10–11.3. The submitting TSP shall maintain and preserve records of verification of customer authorization for a minimum period of three years after obtaining such verification.

ii. An executing TSP shall not verify the submission of a change in the customer's selection of a TSP received from a submitting TSP. For an executing TSP, compliance with the procedures prescribed in this subchapter shall be defined as prompt execution, without any unreasonable delay, of changes that have been verified by a submitting TSP.

2. Where a TSP is selling 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 service sold, although the authorizations may be made within the same solicitation. Each authorization shall be verified separately from any other authorizations obtained in the same solicitation. Each authorization shall also be verified in accordance with the verification procedures prescribed in this subchapter.

(e)-(f) (Reserved)

(g) Each TSP authorized to provide telecommunications services in New Jersey shall submit quarterly to the Board and to the Division three copies of a report of all slamming complaints received, and the resolution thereof indicating the customer's 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.

(h) Each executing TSP shall submit quarterly to the Board a report indicating the number of authorized primary TSP change orders in sufficient detail to show the number of change orders that were and that were not completed or uncompleted within the time frames specified in N.J.A.C. 14:10–11.4(b), along with the specific reason(s) or reasons for noncompliance.

14:10–11.6 Primary TSP freezes

(a) A primary TSP freeze prevents a change in a customer's primary TSP without the express consent of the customer.

(b) All TSP's responsible for implementing changes of primary TSPs shall be required to 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. TSPs shall adopt a primary TSP freeze plan which complies with this subchapter by August 18, 2000.

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

(d) All TSPs responsible for the imposition or lifting of primary TSP freezes shall comply with 47 C.F.R. § 64.1190, as amended or supplemented, 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 and signed authorization in a form that meets the requirement of (d)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 (d)4iii(2)(A) through (D) 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 (d)4iii(2)(A) through (D) 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 and 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. 14:10-11.3(b)1ii, iii and viii 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.

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 and 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).

14:10-11.7 Investigations

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

(b) 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.

(c) No waiver granted to a TSP by the Commission of any duty or obligation imposed by 47 C.F.R. Part 64, Subpart K shall apply to intrastate telecommunications services without the prior written approval of the Board. Requests for such approval shall comply with N.J.A.C. 14:1-5, and shall be filed within 30 days of the Commission's grant of the waiver, with two copies of the approval request sent to the Division.

14:10-11.8 Penalties for violations

(a) TSPs shall adhere to a standard of due care when submitting and processing changes 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 "willfull 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 any rule, regulation or order adopted pursuant to P.L. 1998, c.82, or to have violated any Federal law or rules relating to changes in primary telecommunications service providers, shall be subject to any one or more of the following:

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

(c) In determining the remedies or penalties to be imposed, the Board shall consider: the nature, circumstances and the gravity of the violation; the degree of the TSP's culpability; any history of prior violations; the prospective effect of the penalty on the ability of the TSP to conduct business; any good faith effort on the part of the TSP in attempting to achieve compliance; the TSP's ability to pay the penalty; and any other factors the Board determines to be appropriate. 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.

14:10-11.9 Scope of authority

The rights, remedies, and prohibitions accorded by the provisions of P.L. 1998, c.82 and this subchapter are in addition to and cumulative of any right, remedy or prohibition accorded by the common law or any statute of this State and nothing contained in this subchapter shall be construed to deny, abrogate or impair any such common law or statutory right, remedy or prohibition. 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 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 customers private right of action, pursuant to N.J.S.A. 56:8-19.