

**CHAPTER 10
TELEPHONE**

Authority

N.J.S.A. 48:2-13.

Source and Effective Date

R.2001 d.307, effective August 1, 2001.
See: 33 N.J.R. 1500(a), 33 N.J.R. 3043(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 10, Telephone, was extended by gubernatorial directive from January 28, 2007 to July 28, 2007. See: 39 N.J.R. 498(a).

Chapter Historical Note

Chapter 10, Telephone, was adopted and became effective prior to September 1, 1969.

Subchapter 4, Regulation for Residential Telephone Underground Extensions, was adopted as R.1971 d.183, effective December 31, 1971. See: 1 N.J.R. 9(a), 3 N.J.R. 227(c).

Subchapter 5, Regulation of InterLATA Telecommunications Carriers, was adopted as R.1986 d.368, effective September 8, 1986. See: 17 N.J.R. 2012(a), 18 N.J.R. 1830(b).

Subchapter 6, Regulation of Alternative Operator Service (AOS) Providers, was adopted as R.1989 d.463, effective September 5, 1989. See: 20 N.J.R. 3115(a), 21 N.J.R. 2801(d).

Pursuant to Executive Order No. 66(1978) Chapter 10, Telephone, was readopted as R.1991 d.489, effective September 6, 1991. See: 23 N.J.R. 2270(a), 23 N.J.R. 3035(a).

Subchapter 7, Access to Adult-Oriented Information-Access Telephone Service, was adopted as R.1993 d.180, effective May 3, 1993. See: 24 N.J.R. 1238(a), 25 N.J.R. 1882(b).

Subchapter 5, Regulation of InterLATA Telecommunications Carriers, was repealed and Subchapter 5, Regulation of Competitive Telecommunication Services, was adopted as new rules by R.1993 d.248, effective June 7, 1993. See: 24 N.J.R. 1868(a), 25 N.J.R. 2492(a).

Subchapter 10, IntraLATA Toll Competition on a Presubscription Basis, was adopted as R.1996 d.346, effective August 5, 1996. See: 28 N.J.R. 250(a), 28 N.J.R. 3824(b).

Pursuant to Executive Order No. 66(1978), Chapter 10, Telephone, was readopted as R.1996 d.412, effective August 7, 1996. See: 28 N.J.R. 2832(a), 28 N.J.R. 4107(a).

Chapter 10, Telephone, was readopted as R.2001 d.307, effective August 1, 2001. See: Source and Effective Date. See, also, section annotations.

Subchapter 3, Suggested Formulae for Extension of Telephone Service was repealed; Subchapter 3, Extension of Telephone Service was adopted as new rules; and Subchapter 4, Regulations for Residential Underground Telephone Extensions was repealed by R.2004 d.462, effective December 20, 2004. See: 36 N.J.R. 276(a), 36 N.J.R. 5928(a).

Subchapter 12, Mass Migration upon TSP Departure from a Service Territory, was adopted as new rules by R.2006 d.368, effective November 6, 2006. See: 38 N.J.R. 4729(a).

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 10, Telephone, was scheduled to expire on January 28, 2007. See: 38 N.J.R. 3250(a).

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SUBCHAPTER 1. SERVICE

14:10-1.1 (Reserved)

Amended by R.1991 d.489, effective October 7, 1991.
See: 23 N.J.R. 2270(a), 23 N.J.R. 3035(a).

Stylistic revisions.
Repealed by R.2004 d.462, effective December 20, 2004.
See: 36 N.J.R. 276(a), 36 N.J.R. 5928(a).
Section was "Service connections".

14:10-1.2 Rate and special charges information

(a) Upon the request of any customer or applicant, each telephone utility shall provide an explanation of the rates, charges and provisions applicable to the service furnished or available to such customer or applicant, and shall take reasonable steps to provide any information and assistance necessary to enable the customer or applicant to obtain the most economical communications service conforming to the needs of such customer or applicant. The customer or applicant shall be advised as to alternative services available to meet the communications requirements of said customer or applicant in accordance with N.J.A.C. 14:11-7.4. Such information may include printed explanations of alternative services and rates. When requested, the telephone utility shall notify the customer or applicant of the minimum installation and service connection charge to be applied to the bill of such customer or applicant prior to undertaking any action and shall inform the customer or applicant of the estimated initial bill for local service.

(b) The customer shall be provided with an estimate of the charges where special charges not specifically set forth in a telephone utility's tariff are levied on the basis of actual cost for such items as extraordinary construction, maintenance or replacement costs or expenses, overtime work at the customer's request and special installations, equipment and assemblies for which the tariff does not prescribe a rate. This estimate need not be furnished if the customer specifically requests that the special equipment and services be provided before the charges for those services and equipment are available.

R.1978 d.89, effective March 10, 1978.
See: 9 N.J.R. 130(a), 10 N.J.R. 171(b).
Amended by R.1996 d.412, effective September 3, 1996.
See: 28 N.J.R. 2832(a), 28 N.J.R. 4107(a).

14:10-1.3 Business offices

(a) Business offices shall be staffed to provide customers and others with convenient access to qualified personnel, including supervisory personnel where warranted, to provide information relating to services and rates, accept and process applications for service, explain charges on customer's bills, adjust charges made in error and to generally act as the representative of the telephone utility. If one business office serves several communities, toll free calling from such communities will be provided.

(b) Business offices will be open during normal working hours of the telephone utility's normal work week in the area being served and at such other times and such other places as may be warranted by circumstances.

(c) Qualified personnel will be instructed to be courteous, considerate, efficient, and available to promptly serve those who contact the business office.

R.1978 d.89, effective March 10, 1978.
See: 9 N.J.R. 130(a), 10 N.J.R. 171(b).

14:10-1.4 Public information

(a) Access to the following information shall be made available at the business office upon request:

1. Maps showing exchange, base rate area and zone boundaries (if applicable) in sufficient size and detail from which most customer locations can be determined and mileage or zone charges quoted.

2. Information concerning plans for major service changes in the area served by the business office.

R.1978 d.89, effective March 10, 1978.
See: 9 N.J.R. 130(a), 10 N.J.R. 171(b).

14:10-1.5 Directories

(a) Telephone directories shall be published regularly, listing the name, location and telephone number of all customers, except telephone service not published at customer's request and public telephones.

(b) Upon issuance, a copy of each directory shall be distributed to all customers within the service area covered by the directory and a copy of each directory shall be furnished to the board.

(c) The name of the telephone utility, the area included in the directory, and the month and year of issue shall appear on the cover.

(d) Data pertaining to emergency numbers shall be conspicuously listed in the front part of the directory pages which shall include space for the customer to list emergency numbers, including those of gas, electric and water companies.

(e) The opening pages of the directory shall contain a conspicuous notice advising customers that should the company fail to satisfactorily resolve telephone service or billing problems, customers may refer their problems to the board. The address of the board shall be shown.

(f) The directory shall contain instructions concerning placing local and long distance calls, calls to repair and directory assistance services, and location and telephone numbers of telephone company business offices as may be appropriate to the area served by the directory. Rate

schedules or representative rates for toll calls shall be included.

(g) Directory assistance operators shall maintain records of all telephone listings (except those not published at customer request) in the area for which they are responsible for furnishing directory assistance service.

(h) Each telephone company shall list its customers in the directory assistance directory as necessary for the directory assistance operators to provide the requested telephone numbers (except those not published at customer request) based on customer name and location to minimize "not found" numbers.

(i) In the event of an error in the listed number of any customer, the telephone utility shall intercept all calls to the listed number for a reasonable period of time provided existing central office equipment will permit and the number is not in service. In the event of an error or omission in the name listing of a customer, such customer's correct name and telephone number shall be in the files of the directory assistance or intercept operators and the correct number furnished the calling party either upon request or interception.

(j) Whenever any customer's telephone number is changed after a directory is published, the utility shall intercept all calls to the former number for a reasonable period of time and give the calling party the new number provided existing central office equipment will permit, and the customer so desires.

(k) When telephone utility operations necessitate a large group of number changes, reasonable notice shall be given to all customers so affected even though the addition or changes may be coincident with a directory issue.

R.1978 d.89, effective March 10, 1978.
See: 9 N.J.R. 130(a), 10 N.J.R. 171(b).

14:10-1.6 Held applications

(a) During such period of time as the telephone utility may not be able to supply regular telephone service to an applicant within five working days or upgrade an existing customer within 30 days or provide special communication service within a reasonable period after the date applicant desires service, the telephone utility shall keep a record by business office showing the name and address of each applicant for service, the date of application, date service was desired, class and grade of service applied for, together with the reason for the inability to provide the new or higher grade service to the applicant.

(b) When, because of shortage of facilities, a telephone utility is unable to supply main telephone service on dates requested by applicants, priority shall be given to furnishing those services which are essential to public health and safety. In cases of prolonged shortage or other emergency,

the Board may require establishment of a priority plan subject to its approval for clearing held orders, and may request periodic reports concerning the progress being made.

(c) Where a previously provided date for service installation cannot be met by the telephone utility, every reasonable effort shall be made to advise the customer of the reason for the delay, interim service available, and probable date the requested service will be provided.

R.1978 d.89, effective March 10, 1978.
See: 9 N.J.R. 130(a), 10 N.J.R. 171(b).
Amended by R.1991 d.489, effective October 7, 1991.
See: 23 N.J.R. 2270(a), 23 N.J.R. 3035(a).
Stylistic revisions.

14:10-1.7 Customer complaints and trouble reports

(a) Each telephone utility shall provide for the receipt of customer trouble reports at all hours and make a full and prompt investigation of all complaints.

(b) Every reasonable effort shall be made to clear line-out-of-service troubles not requiring unusual repairs, such as cable failures, within 24 hours of the time a report is received by the company. When such reports are received during a period when a telephone utility does not have repair personnel scheduled to work, or on Sundays or holidays, every reasonable effort shall be made to clear such line-out-of-service troubles within the same period, provided the service involved is essential to the general public welfare, or the service is required by reason of unusual emergent conditions and demand is made for prompt restoration.

(c) Except when unavoidable, all commitments to customers shall be kept. Every reasonable effort shall be made to notify customers of unavoidable changes. If unusual repairs are required, or other factors preclude cleaning of reported trouble promptly, reasonable efforts shall be made to notify affected customers.

R.1978 d.89, effective March 10, 1978.
See: 9 N.J.R. 130(a), 10 N.J.R. 171(b).

14:10-1.8 Public telephone

In each exchange the telephone utility shall have at least one coin telephone available to the public at all hours, prominently located and properly maintained, equipped with dialing instructions, and lighted at night.

R.1978 d.89, effective March 10, 1978.
See: 9 N.J.R. 130(a), 10 N.J.R. 171(b).

14:10-1.9 Adequacy of service

(a) Each telephone utility shall make traffic studies and maintain records as required to determine that sufficient equipment and an adequate operating force are provided at all times.

(b) Each telephone utility shall employ recognized procedures to determine the adequacy of service provided for customers.

(c) Where service is found to be inadequate, the telephone utility shall immediately institute corrective measures to return that service to an adequate condition.

(d) The telephone utility shall employ prudent management and engineering practices, including the employment of reliable procedures for forecasting future demand for service, conduct studies and maintain records to the end that reasonable margins of facilities and adequate personnel are available with the objective that service will meet all standards prescribed by the Board.

R.1978 d.89, effective March 10, 1978.
See: 9 N.J.R. 130(a), 10 N.J.R. 171(b).
Amended by R.1991 d.489, effective October 7, 1991.
See: 23 N.J.R. 2270(a), 23 N.J.R. 3035(a).
Stylistic revisions.

14:10-1.10 Service standards

(a) These standards establish service levels which should generally be provided by a telephone utility. Failure to attain these levels does not by itself indicate poor service and the liability of the telephone utility to its customers or other persons using its facilities for any such failure shall be governed by the applicable provisions of its tariff. Each telephone utility shall make measurements to determine the level of service for each item included in these standards. Each telephone utility shall provide the Board or its staff with the measurements and summaries thereof for any of the items included herein on request of the Board or its staff. Records of these measurements and summaries shall be retained by the utility as specified by the Board and monthly reports on all service measurements may be required by the Board. When a utility fails to meet any of the minimum service levels listed below in a reporting entity for three consecutive months the service data for the standard not met in that entity shall be reported to the Board.

(b) The following are the minimum service levels referred to in (a) above:

1. Installation of service:

i. Seventy-five percent of regular service installations shall be completed within five working days, unless a later date is requested by the applicant. The interval commences with the receipt of the application.

ii. Eighty-eight percent of the commitments to customers, with the exception of customer-caused delays, as to the date of installation of regular service, shall be met.

iii. A regrade request shall be filled no later than 30 days after the customer has made application for a different grade of service except where the customer requests a later date. In the event the telephone utility is unable to so fill such an order, the customer will be advised and furnished the date or approximate date the order will be filled.

2. Operator handled calls: Each telephone utility shall maintain adequate personnel to provide an average operator answering performance as follows on a monthly basis:

- i. Eighty-five percent of repair service calls shall be answered within 20 seconds or equivalent.
- ii. Eighty-five percent of toll assistance operator calls shall be answered within 10 seconds or equivalent.
- iii. Seventy-eight percent of directory assistance calls shall be answered within 10 seconds or equivalent.
- iv. An "answer" shall mean that the operator or representative is ready to render assistance and/or ready to accept the information necessary to process the call. An acknowledgment that the customer is waiting on the line shall not constitute an "answer."

3. Dial service: Sufficient central office capacity and equipment shall be provided to meet the following requirements:

- i. Ninety-five percent of dialed local calls shall be completed without encountering an all trunk busy or equipment irregularity.
- ii. Ninety-five percent of originating direct distance dialing calls shall reach the toll network without experiencing blockage or failure.

4. Customer trouble reports: The average rate of customer trouble reports shall not be in excess of 8.0 per 100 telephones per month.

5. Transmission requirements: All customer loops shall meet the resistance design standards and trunk facilities shall conform to the transmission design factors required for meeting the objectives of direct distance dialing.

(c) The following refer to reports and records required in (a) above and the standards set forth in (b) above:

1. Record keeping and reporting are to be in accordance with the following table.

Service Measure	Reporting Unit and Minimum Reporting Size
Held Primary Service Orders	Plant Installation District or Business Office
Installation Commitments	Plant Installation District or Business Office
Held Regrade Service Orders.	Plant Installation District or Business Office
Toll Assistance Operator	

Answering Time	Traffic Office handling toll assistance calls—average business day call volume of 2,000 or more
Directory Assistance Operator Answering Time	Traffic Office handling directory assistance calls—average business day call volume of 2,000 or more.
Dialed Local Calls	Central Office entity
Direct Distance Dialing	Toll Recording Center or Area
Customer Trouble Reports	Plant Maintenance Center—Central Office under 1,000 lines need not be included in performance reports.

2. Reports on all service measures except held orders shall set forth the following:

- i. Reporting unit name and further identification if name does not convey geographic location;
- ii. Service measure, level, and months, being reported;
- iii. Cause of performance at the reported level: For installation commitments and customer trouble reports, indicate locations affected if cause is localized within a reporting unit;
- iv. Corrective action and completion date.

3. Reports on held primary and regrade service orders shall set forth the following:

- i. Reporting unit name and further identification if name does not convey geographic location;
- ii. Number of held orders or stations for each month of the quarter.

4. Data shall be compiled monthly and reported quarterly.

Amended by R.1991 d.489, effective October 7, 1991.
See: 23 N.J.R. 2270(a), 23 N.J.R. 3035(a).
Stylistic revisions.

14:10-1.11 Measuring devices

(a) When mechanical and/or electronic measuring and record keeping devices are used at the telephone utility's premises in connection with telecommunication service, the measured data and related customer records from which the customer's bills are prepared shall show:

- 1. Identifying number or means to determine readily the customer's name, address and service classification;
- 2. Measuring device readings;
- 3. Date of reading;
- 4. Multiplier or constant, if used.

(b) As nearly as practicable, measuring devices shall be read at intervals to correspond to customer billing periods.

(c) All measuring and/or record keeping devices used to record data and prepare customers' bills shall be in good mechanical and electrical condition, shall be accurately read

and shall not involve approximations. All such devices shall accurately perform the following:

1. For message rate service, the device shall accumulate the number of message units used.
2. For toll service, when in addition to counting the calls, it is necessary to time the calls, the device shall show the number of calls and the chargeable time involved in each call.
3. Where the measuring equipment provides coded information that is used to automatically prepare customer bills, accurate interpretation of such coded information is required.

R.1978 d.89, effective March 10, 1978.
See: 9 N.J.R. 130(a), 10 N.J.R. 171(b).

14:10-1.12 Inspections, tests and maintenance

(a) Each telephone utility shall adopt a program of periodic tests, inspections and preventative maintenance aimed at achieving efficient operation of its system and the rendering of safe, adequate and proper service.

(b) The actual transmission performance of the telephone utility's system shall be monitored in order to determine if the established objectives and operating requirements are met. This monitoring function consists of circuit order tests prior to placing trunks in service, routine periodic trunk maintenance tests, tests of actual switched trunk connections, periodic noise tests of a sample of customer loops in each exchange, and special transmission surveys of the system.

(c) Each telephone utility shall maintain or have access to test facilities enabling it to determine the operating and transmission capabilities of all equipment and facilities, both for routine maintenance and for trouble location.

(d) Each telephone utility shall maintain or have access to the necessary facilities, instruments, and equipment for testing its measuring and record keeping equipment and shall adopt appropriate practices for the periodic testing of such equipment.

(e) A record of all measuring device tests and adjustments and data sufficient to allow checking of the results shall be recorded. Such record shall include the identifying number of the device, its type, the data and kind of test, and the results of each test.

(f) Maintenance shall include keeping all plant and equipment in a good state of repair consistent with safety and adequate service performance. Broken, damaged, or deteriorated parts which are no longer serviceable shall be repaired or replaced. Adjustable apparatus and equipment shall be readjusted as necessary when found by preventive routines or fault location tests to be in unsatisfactory operating condition. Electrical faults, such as leakage or poor insulation, noise induction, cross-talk or poor transmission characteristics, shall be corrected to the extent practicable.

(g) A telephone utility shall not connect more customers on any line than are contemplated under the grade of service for which the customers on such line are charged.

(h) Telephone utilities shall, when requested, furnish appropriate information concerning location of underground facilities, in order to prevent any interruption of service to telephone customers. Nothing in this rule is intended to affect the responsibility, liability, or legal rights of any party under applicable laws or statutes.

R.1978 d.89, effective March 10, 1978.
See: 9 N.J.R. 130(a), 10 N.J.R. 171(b).

14:10-1.13 Service interruptions

(a) Appropriate measures shall be taken to minimize service interruptions. Each telephone utility shall make provisions to meet emergencies resulting from failure of power, sudden and prolonged increases in traffic, absences of employees or from fire, storm, or similar contingencies. Each telephone utility shall inform its employees as to procedures to be followed in the event of such contingencies in order to prevent or mitigate interruption or impairment of service.

(b) Each central office shall contain sufficient battery reserve to keep the office operational until auxiliary power can be placed into service.

(c) In exchanges exceeding 5,000 lines, a source of permanent auxiliary power shall be installed.

R.1978 d.89, effective March 10, 1978.
See: 9 N.J.R. 130(a), 10 N.J.R. 171(b).

14:10-1.14 Construction

(a) Telephone plant shall be designed, constructed, maintained, and operated in accordance with provisions of the current National Electrical Safety Code, the National Electrical Code, and such other appropriate regulations as may be prescribed.

(b) Telephone utilities shall not provide switching service to lines or facilities that do not meet standard technical criteria and shall eliminate nonconforming switching services.

R.1978 d.89, effective March 10, 1978.
See: 9 N.J.R. 130(a), 10 N.J.R. 171(b).

14:10-1.15 Preservation of records

All records required to be kept shall be preserved for the period of time specified in the current edition of Part 42 of the Rules and Regulations of the Federal Communications Commission, entitled "Preservation of Records of Communication Common Carriers".

R.1978 d.89, effective March 10, 1978.
See: 9 N.J.R. 130(a), 10 N.J.R. 171(b).

14:10-1.16 Adoption by reference of the Uniform System of Accounts

(a) The Board adopts by reference the Uniform System of Accounts for Telephone Companies that has been promulgated by the Federal Communications Commission in Part 32 of the Commission's Rules and Regulations, as well as all present and subsequent amendments, revisions, deletions and corrections which the Federal Communications Commission may adopt insofar as they relate to telephone utilities subject to the jurisdiction of the Board and are in accordance with the Board's policies and procedures.

(b) For good cause shown, for example, where a telephone company obtains a waiver from the Federal Communications Commission from compliance with that commission's Uniform System of Accounts for Telephone Companies, a telephone company may obtain an exemption from (a) above.

New Rule. R.1988 d.10, effective January 4, 1988.
See: 19 N.J.R. 1789(a), 20 N.J.R. 103(d).

14:10-1.17 Telegraph company registration

(a) Every telegraph company operating within New Jersey shall register with the Board the names and addresses of all

lessees and users of tickers, teleprinters and other terminal equipment located within the State of New Jersey and used in connection with the following classes of telegraph service:

1. Leased facilities, other than facilities for the press, with which the lessee disseminates racing news;
2. Leased facilities used by the press to send or receive racing news;
3. Sports ticker service, a service where the telegraph company originates the information;
4. Stock and commodity tickers.

(b) If changes in the location of registered equipment occur, the Board shall be notified within 30 days of such changes.

(c) The Board determines that the following facilities are exempt from registration under the terms of the statute:

1. Means of communication between offices of telegraph company;

2. Means of communication, including patron's tie-lines, between offices of the telegraph company and offices of recognized general commercial customers.

(d) The list of registrations required in this Section shall be available to the Attorney General, county prosecutors and municipal police departments.

Recodified from N.J.A.C. 14:11-1.14 by R.1998 d.84, effective February 2, 1998.

See: 29 N.J.R. 4250(b), 30 N.J.R. 563(a).

14:10-1.18 Number reclamation notice

(a) The following words and terms, as used in this section and in N.J.A.C. 14:10-1.19, shall have the following meanings:

“Central Office Code” or “NXX code” means the sub-numbering plan area code in a telephone number, consisting of the fourth, fifth, and sixth digits in a 10-digit telephone number.

“Central Office Code (NXX) Assignment Request and Confirmation Form—Part 4” or “Part 4” means that form, under the FCC required Industry Numbering Committee's Central Office Code Assignment Guidelines (Guidelines), and as described in the FCC's First Numbering Resource Optimization Order released on March 31, 2000, that within six months of the requested effective date of newly obtained NXX codes, carriers are required to submit to the North American Numbering Plan Administrator (NANPA) that the code has been placed in service as that term is further defined by the FCC in its March 31, 2000 Order (FCC NRO Order of 3/31/00—P233).

“Reclamation” means the process through which code holders are required to return numbering resources to the NANPA.

(b) When the Board receives from the NANPA the list of central office code holders which have failed to file the Part 4 form within the six month time period following the date the new NXX codes become effective in the Local Exchange Routine Guide (LERG), or the date required by the applicable Guidelines, Board staff shall send written notice to the code holders on the past-due list to again remind them that their Part 4 confirmations are overdue.

(c) Within 14 days of receiving the notice under (b) above, the code holders shall provide the Board with written proof that the delinquent NXX codes have been activated and the delinquent NXX codes are serving end-users. The code holders shall submit to the Board information with the Part 4 form regarding how many end-users have been assigned numbers in the NXX code. Code holders unable to activate the NXX codes subject to reclamation may request an extension by following the procedure set forth in N.J.A.C. 14:10-1.19.

(d) In cases where the Board does not receive a Part 4 confirmation from the code holders or a request for an extension, the NXX codes are subject to immediate reclamation.

(e) Code holders shall ensure that the NANPA and the Board have current contact information on file, including contact name, telephone number, fax number, street address and electronic mail address.

New Rule, R.2001 d.390, effective November 5, 2001.

See: 33 N.J.R. 2040(a), 33 N.J.R. 3753(c).

14:10-1.19 Reclamation extensions

(a) Code holders seeking an extension of the deadline for submission of Part 4 Forms shall submit their requests to the Board in writing. Their request shall:

1. Include the reason for the delay in activating the NXX code;
2. Indicate when the NXX codes will be activated;
3. Specify the duration of the extension being sought;
4. Explain whether any third party has contributed to the code holder's inability to activate the NXX codes within the six months following the date the NXXs were assigned;
5. Specify the relevant NXX codes designated by the NANPA and the rate center;
6. Note whether prior extensions have been granted for the NXX codes;
7. Indicate the current Part 4 deadline; and
8. Explain whether the code holder has additional numbering resources in the same rate center.

(b) Upon having considered the written submissions by the code holder requesting an extension, the Board may grant Part 4 extensions of up to 90 days from the date the Part 4 form was initially due. Such an extension shall only be granted upon verifiable proof that the code was not activated due to reasons beyond the carrier's control, such as delay in interconnection with another carrier or delay by a single customer which is to be assigned a full NXX code. Additional extensions shall not be granted.

(c) Every code holder which receives an extension shall submit a Part 4 confirmation before the end of the extension period. NXX codes are subject to immediate reclamation at the end of the extension period unless the required Part 4 certification is received from the code holder.

New Rule, R.2001 d.390, effective November 5, 2001.

See: 33 N.J.R. 2040(a), 33 N.J.R. 3753(c).

SUBCHAPTER 2. PAYMENTS FOR SERVICE

14:10-2.1 Bills for service

(a) The customer's bill shall include as applicable:

1. The telephone number or other numerical or alphabetical designation;
2. The date of the assigned billing period;
3. Clear identification of each service provider;
4. The toll-free number the customer can call with questions;
5. Total recurring charges for service and equipment, and the number and total charge for message units, if any, supported by statement which reflects amounts due and payable before and after application of payment;
6. A separate line item on a monthly basis for basic residential local telephone service (BRLTS), as defined at N.J.A.C. 14:3-3.17(a), and a separate line item on a monthly basis for nonbasic residential telephone service, as defined at N.J.A.C. 14:3-3.17(a), if any, supported by statement which reflects amounts due and payable before and after application of payment;
7. A separate line item on a quarterly basis for each optional service provided, if any;
8. Total charges for intraLATA and interLATA toll calls, supported by statement;
9. Total nonrecurring charges for service and equipment, supported by statement;
10. Total United States Federal Excise Tax;
11. Total New Jersey Sales Tax;
12. Total Subscriber Line Charge, Universal Service Fund, Lifeline, Link-Up America or similar charges or credits; and
13. Total charge for advertising in telephone directories.

Amended by R.1991 d.489, effective October 7, 1991.

See: 23 N.J.R. 2270(a), 23 N.J.R. 3035(a).

Stylistic revisions.

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.2000 d.85, effective March 6, 2000 (operative September 6, 2000).

See: 31 N.J.R. 742(a), 32 N.J.R. 819(a).

Rewrote (a).

Case Notes

Customer whose telephone service was transferred to new business entity was liable for telephone charges incurred under name of former business. *Harcord Packard Company v. Bell Atlantic New Jersey, Inc.*, 96 N.J.A.R.2d (BRC) 67.

14:10-2.2 Itemization of toll charges

All toll charges shall be itemized so as to facilitate the customer identifying his calls.

R.1978 d.89, effective March 10, 1978.

See: 9 N.J.R. 130(a), 10 N.J.R. 171(b).

14:10-2.3 Out of service refund

In the event the customer's service is interrupted otherwise than by the negligence or willful act of the customer and it remains out of service for a period of 24 hours or more after being reported to be out of service, appropriate adjustments or refunds shall be made upon request of the customer or automatically by the telephone utility if out of service beyond 72 hours after being reported or found.

R.1978 d.89, effective March 10, 1978.

See: 9 N.J.R. 130(a), 10 N.J.R. 171(b).

14:10-2.4 Voluntary suspension

Communications service shall, at the request of a customer, be temporarily suspended. The suspension period may be for any period exceeding one month or such lesser period as specified in the tariff. Each telephone utility's tariff shall provide a suspension of service rate chargeable during such period.

R.1978 d.89, effective March 10, 1978.

See: 9 N.J.R. 130(a), 10 N.J.R. 171(b).

14:10-2.5 (Reserved)

Repealed by R.2006 d.368, effective November 6, 2006.

See: 37 N.J.R. 3623(a), 38 N.J.R. 4729(a).

Section was "Discontinuance of service to end-users; notice".

SUBCHAPTER 3. EXTENSION OF TELEPHONE SERVICE

14:10-3.1 Extensions

All extensions of telephone service, including service connections, shall be governed by the provisions for extensions set forth at N.J.A.C. 14:3-8.

Administrative correction.

See: 38 N.J.R. 1225(a).

SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 5. REGULATION OF COMPETITIVE TELECOMMUNICATIONS SERVICES

14:10-5.1 Scope

The rules in this subchapter govern the provision of competitive telecommunications services, as defined below, subject to the jurisdiction of the New Jersey Board of Public Utilities. The rules will apply to all local exchange carriers and intrastate interexchange carriers offering competitive services. In addition to competitive services offered by CLECs, IXCs and the ILECs, this subchapter applies to the offering of new, non-competitive services by CLECs. The subchapter further applies to tariff revisions to existing non-competitive services by CLECs, which do not increase rates. All tariffs concerning rate decreases or which have no rate impact, filed by CLECs and IXCs with the Board which have not been acted upon, will be reviewed in accordance with this subchapter.

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 the section.

14:10-5.2 Definitions

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

“Competitive local exchange carrier” (CLEC) means any local exchange telecommunications company, which is not an incumbent local exchange carrier, that has been granted authority by the Board to provide telecommunications services.

“Competitive telecommunications services” means any telecommunications service determined to be competitive by the Board and/or pursuant to P.L. 1991, c.428.

“Incumbent local exchange carrier” (ILEC) means a local exchange telecommunications company deemed to be an incumbent local exchange carrier pursuant to § 251(h) of the Federal Telecommunications Act of 1996, 47 U.S.C. § 251(h).

“Interexchange carrier” means a carrier, other than a local exchange telecommunications company authorized by the Board to provide long-distance telecommunications services.

“Local exchange carrier” means a carrier authorized by the Board to provide local telecommunications services.

“Type of service” means the category of services provided to customers by local exchange or interexchange carriers. Examples of such types of service include, but are not

limited to, toll, WATS, toll free, operator services, channel services, virtual private networks and optional services.

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).

Inserted “Competitive local exchange carrier” and “Incumbent local exchange carrier”.

14:10-5.3 Informational tariff filings

(a) Unless the Board determines otherwise, tariffs shall be filed for all competitive telecommunications services. Such tariffs shall:

1. Contain specific intrastate usage rates;
2. Contain every intrastate service offered;
3. Clearly and sufficiently provide descriptions and terms and conditions for each service offered to intrastate customers;
4. Be consistent with all provisions of this subchapter; and
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).

14:10-5.4 Requirements for tariff revisions to existing services which create increased charges to any customer

(a) Tariff revisions to 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 the 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).

14:10-5.5 Requirements for tariff revisions to existing services which do not create increased charges to any customer

(a) Tariff revisions to existing competitive telecommunications services, or to any CLEC or IXC tariff revision, which do not create increased 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. The withdrawal of any CLEC non-competitive service shall continue to be processed as set forth in N.J.A.C. 14:1-5.11(a)4 which requires 30 days' notice.

(b) 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).
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).

14:10-5.6 Requirements for new competitive telecommunications service offerings for existing interexchange carriers

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

(b) 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.

(c) The filing requirements for new competitive telecommunications services of existing interexchange carriers are:

1. Interexchange carriers shall submit a letter containing:
 - i. A description of the new service; and
 - ii. Tariff pages with all terms and conditions.
2. The letter must be supplemented by a written schedule, providing, at a minimum, the following additional information:
 - i. The prospective customer base; and
 - ii. An indication of other services that are similarly competitive, through the use of tables or charts describing competitive services and/or alternatives, if applicable and how existing competitive offerings of that carrier or others, compare with the new competitive service, in terms of price, terms and conditions of service for typical customer usage.

3. If the supplemental written schedule contains sensitive information that would qualify under law for protective treatment as proprietary information, such schedule may be provided to the Board as a proprietary document bearing suitable markings, if accompanied by a motion as described at N.J.A.C. 14:10-5.9(d). Until the Board rules on the motion, the supplemental schedule shall not be disclosed to the public.

(d) The Board shall retain its authority to investigate and suspend, if necessary, all aspects of any competitive service if the filing violates any Board rule or is not otherwise in conformance with law.

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

14:10-5.7 Initial tariff of competitive local exchange carriers (CLECs) and interexchange carriers (IXCs)

(a) Initial tariffs filed by CLECs for local exchange and exchange access services and by IXCs for interexchange services shall be effective as filed 30 days following submittal to the Board without the requirement of prior Board approval. All initial tariff filings made by a CLEC or IXC must be consistent with existing law and must be certified by an officer of the company. Should a tariff filing be inconsistent with existing laws, the Board delegates the authority to its staff to forward a letter of deficiency to the filing carrier. The deficiency letter will serve as notice that the tariff is subject to suspension.

(b) Within 30 days of receipt of a notice of deficiency, the submitting CLEC or IXC shall file a modified tariff with the Board. The modified tariff shall be effective immediately following submittal to the Board, unless the submitting carrier is notified in writing of a deficiency by Board staff, in which case, the tariff shall continue to be suspended until all deficiencies are corrected.

(c) Any initial tariff filed in conjunction with a petition for local exchange authority shall become effective 30 days following the grant of local exchange authority by the Board unless a notice of a deficiency is forwarded to the filing carrier in accordance with (a) and (b) above.

(d) If at anytime, upon review of a tariff, the Board's staff determines that a tariff does not conform to existing law, it may notify the provider that the tariff is subject to suspension unless addressed and modified within 30 days of the filing. If the modifications are not satisfactory, the tariff will then be suspended until all existing deficiencies are corrected.

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.

14:10-5.8 (Reserved)

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".

14:10-5.9 Reporting requirements

(a) Every local exchange carrier and interexchange carrier providing competitive intrastate telecommunications services shall provide to the Board information on a quarterly basis within 30 calendar days of the end of the quarter which shall include:

1. Total number of customers pre-subscribed by type of service;
2. Total minutes of use by type of service;
3. Total number of calls by type of service;
4. Per-unit sold, total quarterly revenue by type of service;
5. A schedule detailing any and all price changes by type of service;
6. A description of each service offering;
7. A list of all discount plans applicable to each type of service, as well as a description of their terms and the type and class of customer that could qualify for each such plan.
8. A summary of complaints by type of service; and
9. Any further information deemed necessary by the Board to fulfill the mandates of P.L. 1991, c.428.

(b) In addition to the quarterly information required in (a) above, every local exchange carrier and interexchange carrier providing competitive intrastate telecommunications services shall provide the Board, on an annual basis, no later

than March 31 for the preceding calendar year, a schedule detailing for each type of service, the total number of pre-subscribed customers, total minutes of use, per-unit price, per-unit sold, total quarterly and total annual revenue, service description, and the total and percentage change by quarter and annually to each item.

(c) All background and supporting documentation used to develop the information required by (a) above shall be maintained during the pendency of these rules and shall be available for inspection by the Board, its staff or its designees, upon request.

(d) Any carrier is permitted to file with the Board a motion for a protective order to protect any and/or all of the information required by (a) or (b) above from public disclosure. Any such motion shall be supported by affidavit which shall delineate the specific basis for the request for the protective order.

1. In the event the Board issues a protective order, the Board's staff shall take appropriate measures to maintain the confidentiality of the records and access to such records shall be limited to agents, employees, and attorneys of the Board, and, in the discretion of the Board, to any other appropriate governmental agency. All such governmental agencies shall be subject to the confidentiality requirements contained in this subsection. In addition, the Director of the Division of the Ratepayer Advocate shall be permitted to receive copies of such reports provided that the Director treats the information contained in the reports in a proprietary and confidential manner.

(e) The annual financial reporting requirement shall remain in full force and effect. Such annual reports shall be filed on or before March 31.

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

14:10-5.10 Standards for monitoring the competitiveness of services

(a) In monitoring the competitiveness of services, the Board may:

1. Use information collected pursuant to N.J.A.C. 14:10-5.9 to conduct an analysis as to whether services are becoming more or less competitive; specifically, monitor the market shares of carriers as measured by number of calls, minutes of use, number of customers and customer complaints;
2. Consider using an economic measure of concentration or any other appropriate economic indicator to measure market share and the competitiveness of individual services; or
3. Consider using a customer survey to solicit information related to the perception of the level of competition by actual telecommunications users.

(b) The Board may reclassify a service that had previously been found to be competitive, if, after notice and hearing, the Board finds:

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 available competition.

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

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.

14:10-5.11 Discontinuance of service offerings

(a) Any carrier providing competitive services may, upon 30 days notice to the Board and its customers, discontinue any competitive service offering.

(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.

SUBCHAPTER 6. REGULATION OF OPERATOR SERVICE PROVIDERS

14:10-6.1 Scope

The rules contained in this subchapter shall apply to alternate operator service providers, operator service providers, and aggregators, as defined in N.J.A.C. 14:10-6.2, including aggregators whose location offers services equivalent to an operator service provider. 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.

14:10-6.2 Definitions

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

“Aggregator” means a person or entity which, in the ordinary course of its business, makes telephones available to the public or to transient users of its premises, including, but not limited to, hotels, motels, hospitals, or universities, and which provides operator-assisted services through either automated store and forward technology or through an operator service provider.

“Alternate operator service provider” or “AOS” means a non-facilities based telecommunications carrier that is a reseller leasing lines from local exchange carrier(s) and/or interexchange carrier(s) and which, using these leased facilities, provides operator-assisted intrastate services through the use of its own operators, either through live intervention or automated intervention, including automated store and forward technology where the placement or charging of a telephone call is accomplished at an aggregator location.

“Billing agent” means a billing and collection company or billing clearing house which processes an alternate operator service provider’s call data to appear on local exchange company telephone bills, or any other forms of bills, issued to the consumer that utilized the services of an alternate operator service provider.

“Board” means the Board of Public Utilities.

“Branding” means verbal identification of the OSP prior to connection of the call and implementation of billing.

"Equal access code" means an access code that allows the public to obtain an equal access connection to the carrier associated with that code, such as 10XXX or 101XXXX, if applicable.

"Incumbent local exchange carrier" or "incumbent LEC" means a telecommunications carrier with a Board authorized tariff in effect prior to February 8, 1996, to provide switched local exchange services in the State of New Jersey.

"IXC" means interexchange carrier.

"Operator-assisted services" means services which assist consumers in the placement or charging of a telephone call, either through live intervention or automated intervention, including automated store and forward technology where the placement or charging of a telephone call is accomplished at an aggregator location.

"Operator service provider" or "OSP" means any telecommunications carrier that provides operator-assisted services, including AOS providers.

"Presubscribed provider of operator services" means the provider of intrastate operator services to which the consumer places a call using a provider of operator services without dialing an access code.

"Rate" means the total charge to a consumer for the completion of a call utilizing operator-assisted service including all surcharges, premises imposed fees and other charges, collected from the consumer.

"Slamming" means an unauthorized change of a consumer's primary interexchange carrier or the failure to execute an authorized change in a consumer's primary interexchange carrier.

"Splashing" means billing for a call that does not reflect the location of the origination of the call.

"Tariffed facilities-based carrier" means any communication carrier that provides services on a common carrier basis through the use of their own facilities and currently has, or would be required by statute or rule to file, a tariff. This specifically excludes alternative operator service providers as defined in this subchapter.

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".

14:10-6.3 Operator service provider requirements

(a) Operator service providers may complete intrastate operator-assisted calls subject to this subchapter.

(b) Operator service providers and aggregators shall be subject to Board regulation as described in this subchapter. The Board or its staff may investigate the conduct of any OSP or aggregator and take appropriate action as required.

(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. The Board's actions may include the imposition of penalties for violations as described in N.J.A.C. 14:10-6.6, 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.

(d) Each aggregator connected to an OSP shall place directly on the telephone instrument, in plain view of consumers:

1. The name, address, and toll free number of the provider of operator services;
2. A clear and precise description of the geographic area served by the LEC and the geographic area served by the presubscribed OSP. That is, local operator-assisted calls are carried by the LEC, intrastate operator-assisted toll calls within the area code are carried by one OSP, intrastate operator assisted calls outside the area code are carried by a second OSP;
3. 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;
4. 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;
5. Dialing instructions which detail the OSP's dialing procedures;
6. Dialing instructions for access to the LEC operator;
7. The Board's toll free customer complaint telephone number; and
8. All information required by the Federal Communications Commission at 47 C.F.R. 64.703, as amended and supplemented, incorporated herein by reference, copies of which may be obtained upon request from the Secretary of the Board, except that implementation of 47 C.F.R. 64.703(a)(4) shall be effective on October 1, 1999.

(e) Operator service providers shall inform callers, prior to connecting the call and the implementation of billing, that the presubscribed OSP is handling the operator-assisted call by verbal identification of the OSP. Accordingly, branding is required. In addition, all operator service providers shall disclose audibly and distinctly to the consumer, at no charge and before connecting any intrastate, 0+ call, how to obtain the total cost of the call, including any aggregator surcharge and/or location specific charges, or the maximum possible total cost of the call, including any aggregator surcharge and/or location specific charges, before providing further oral advice to the consumer on how to proceed to make the call. The oral disclosure required in this subsection shall instruct consumers that they may obtain applicable rate and surcharge quotations either, at the option of the provider of operator services, by dialing no more than two digits or by remaining on the line. Operator service providers shall satisfy the requirements of this section by notifying the called party for collect and third party billed calls, and notifying the calling party for calling card or any other operator service provider call that will be billed to the calling party.

(f) Each provider of operator services shall ensure, by contract, that each aggregator for which such provider is the presubscribed provider of operator services, is in compliance with the requirements of (d) above.

(g) Operator service providers shall provide callers with rate quotes, including any and all surcharges, upon request and without charge.

(h) Alternate operator service providers may charge, as a maximum rate for intrastate calling card calls which do not require the intervention or use of a live operator, that is, a "0+" calling card call, at transient locations, which includes all pay telephones, \$2.75 for up to a five minute local or non-local call. Additional per minute rates equal to the applicable per minute rates contained in the AT&T tariff on file with the Board will apply for calls greater than five minutes.

(i) Alternate operator service providers may charge, as a maximum rate for intrastate operator assisted calls which require the intervention or use of a live operator, that is, a "0‐" operator assisted call, at transient locations, which includes all pay telephones, \$4.25 for up to a five minute local or non-local call. This rate is subject to the rate change provisions contained in N.J.A.C. 14:10-6.3(j). Additional per minute rates equal to the applicable per minute rates contained in the AT&T tariff on file with the Board shall apply for calls greater than five minutes. This maximum rate shall also apply to collect calls that do not use a live operator but use a voice prompt. The maximum rate contained in this subsection is indexed to the applicable rate contained in the AT&T tariff on file with the Board, and may increase as AT&T's rate changes. The AT&T rate is posted on the Board's web page at <http://www.njin.net/njbpu>. If AT&T's rate increases by more than \$1.00, AOS companies shall be capped at \$5.25 (\$4.25 plus

\$1.00) and shall be required to seek Board approval for rates in excess of \$5.25. Such filings shall conform to N.J.A.C. 14:1-5.12.

(j) Alternate operator service providers shall file informational tariffs showing the applicable maximum rates and any subsequent rate adjustments with the Board, as required by N.J.A.C. 14:10-6.7, for intrastate services. The Board will permit rate changes in response to a rate change request from an AOS provider, if the new rate remains below the maximum rates described in (h) and (i) above. Such filings shall conform to and be governed by N.J.A.C. 14:10-5.4 or 5.5, as may be applicable.

(k) Surcharges associated with non-coin telephones that are not part of the actual telephone bill or imposed by an OSP, but are add-on charges imposed by hotels, motels, hospitals, universities and/or other similar transient locations, are not prohibited by these rules, but notice of any surcharge shall be displayed by the aggregator for the users of the affected telephones.

(l) No operator service provider shall submit to a LEC a primary interexchange carrier change order to change long distance carriers until the order has first been confirmed in accordance with the procedures set forth by the Federal Communications Commission, at 47 C.F.R. 64.1100, as amended or supplemented, copies of which may be obtained upon request from the Secretary of the Board. To do otherwise results in slamming, as defined in N.J.A.C. 14:10-6.2, a practice which is hereby prohibited.

(m) Operator service providers shall not bill for calls that are not completed.

(n) Twelve months from the date of implementation of the maximum rates contained in (h) and (i) above, the Board shall initiate a review of the rates to assess the effects of these maximum rates on the industry.

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.

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).

Rate caps set forth in the Board of Public Utilities' regulations establishing current rate caps on alternate operator service (AOS) providers in telecommunications industry did not violate federal and state equal protection guarantees, on basis that caps precluded AOS providers from charging identical rates to those charged by facility-based operator service providers (OSP), where facilities-based OSPs and non-facilities based OSPs, that is, AOS providers, were not similarly situated, and capping rates was an effective means to remedy the overcharging of telephone consumers by AOS providers. In the Matter of the Regulation of Operator Service Providers, 778 A.2d 546 (2001).

Rulemaking procedures followed by the Board of Public Utilities in promulgating regulations establishing current rate caps on alternate operator service (AOS) providers in telecommunications industry fully complied with letter and spirit of Administrative Procedure Act (APA), where Board offered at least a 30-day period for interested parties to submit their views and, after receiving comments, Board published written responses in State Register demonstrating that the comments had been fully considered. In the Matter of the Regulation of Operator Service Providers, 778 A.2d 546 (2001).

Section of the federal Telecommunications Act of 1996 providing that Federal Communications Commission's (FCC) regulations relating to provision of payphone service will preempt state requirements to extent that state requirements are inconsistent with FCC regulations did not preempt Board of Public Utilities' regulations establishing current rate caps on alternate operator service (AOS) providers in telecommunications industry, which regulations established maximum rates for intrastate telephone calls, where there were no FCC regulations governing intrastate rates for intrastate telecommunications services, and federal TCA deregulated local coin rates for payphones. In the Matter of the Regulation of Operator Service Providers, 778 A.2d 546 (2001).

Sections of the federal Telecommunications Act of 1996 setting forth general statement of removal of barriers to entry, governing state regulatory authority with respect to removal of barriers to entry, and governing nondiscrimination safeguards in provision of payphone service do not preempt states from acting in subject matter area in manner prescribed by Board of Public Utilities' regulations establishing current rate caps on alternate operator service (AOS) providers in telecommunications industry. In the Matter of the Regulation of Operator Service Providers, 778 A.2d 546 (2001).

When legislature enacted statutes reestablishing a degree of rate authority in the Board of Public Utilities with respect to alternate operator service (AOS) providers in telecommunications industry, legislature was acting to address particular problems and manifested no intention to impose standards of traditional rate-making upon a non-franchised competitive telecommunications service. In the Matter of the Regulation of Operator Service Providers, 778 A.2d 546 (2001).

14:10-6.4 Access to all operator service providers

(a) Free access to all operator service providers, including the LEC operator serving that geographical area, shall be made available from all instruments connected to operator service providers, with the exception of government controlled correctional facilities. Each aggregator, which includes every pay telephone in service, shall ensure that each of its telephones presubscribed to a provider of operator services allows the consumer free use of "10XXX" or 101XXXX, if applicable, and "800" and "950" access code numbers to obtain access to the provider of operator services desired by the consumer. This subsection does not apply to the use of equal access code dialing sequences that result in billing to the originating telephone such as 10XXX-1 + or 101XXXX-1 +, if applicable.

(b) Each provider of operator services shall:

1. Ensure, by contract, that each aggregator for which such provider is the presubscribed provider of operator services is in compliance with the requirements of (a) above; and

2. Withhold payment, on a location-by-location basis, of any compensation, including commissions, to aggregators if such provider reasonably believes that the aggregator is blocking access to other operator service providers in violation of (a) above.

(c) No operator service provider shall transfer a call to another OSP unless that transfer is accomplished at, and billed from, the point of origination of the call. To do otherwise results in splashing, as defined in N.J.A.C. 14:10-6.2, which is hereby prohibited. If such a transfer is not technically possible, the OSP shall inform the caller that the call cannot be transferred as requested and that the caller should hang up and attempt to reach another operator service provider through the means provided by that other OSP.

14:10-6.5 "0-" and emergency call handling

(a) All "0-" calls, which are calls originated by dialing "0" and no other digits within four seconds, shall be sent promptly and directly to the incumbent LEC operator serving the geographic area where the instrument is located, unless the presubscribed operator service provider has been granted approval by the Board, as described in (b) through (e) below, to provide such service.

(b) An operator service provider may petition the Board to provide "0-" and emergency call completion. If an individual OSP can certify that it is capable of meeting the technical parameters required by the Board in (c) through (e) below and following a petition to the Board detailing how the service will be provided, it may be granted permission to do so. Operator service providers who have been previously authorized to complete "0-" and emergency calls shall not be required to seek authority as described in this subsection.

(c) Operator service providers shall be permitted to offer "0-" services only if both free public access to the incumbent LEC operator serving that geographical area and emergency call handling are also provided. Incumbent LEC access must be available and be accomplished by either a direct dialing sequence which must be prominently displayed directly on the telephone instrument or by direct connection to the incumbent LEC operator upon request.

(d) All operator service providers required to petition the Board for "0-" and emergency call completion under (b) above must meet the following technical standards. All operator service providers shall:

1. Operate on a full time basis 24 hours a day, seven days a week;

2. Require by contract that all connecting users provide free access to all other operator service providers upon request, in accordance with N.J.A.C. 14:10-6.4, including the incumbent LEC operator service and, in addition, that all connecting users:

i. Are capable of receiving the provider's multifrequency tone for the re-origination of calls to the incumbent LEC operator service; and

ii. Instruments be capable of transferring "0-" calls directly to the incumbent LEC at the calling party's request;

3. Ensure that in the event of a network outage or malfunction that all "0-" call traffic is directed to the incumbent LEC for completion;

4. Direct all of its New Jersey customers to program their equipment to route all "0-" traffic to the incumbent LEC in the event of a malfunction;

5. Ensure that all components of its network meet or exceed industry standards for a P.01 grade of service, which is no more than one busy signal in 100 call attempts in the average busiest hour;

6. Assure that 90 percent of calls will be answered in 10 seconds during the average busiest hour and that all calls will be answered within 20 seconds;

7. Make traffic studies and maintain records as required to ensure that sufficient equipment and an adequate operating force are provided at all times to ensure compliance with the performance requirements set forth herein. These studies and records shall be made available to the Board's staff annually for review purposes. Further, the OSP shall submit certified reports annually to the Board's staff showing that grade of service and response time are within the performance limits described in this subchapter;

8. Transfer emergency calls in an average of 20 seconds or less to the appropriate emergency service agency. This time includes initial screening by the operator and a maximum ringdown time of 10 seconds except:

i. When the emergency service agency takes longer than the time allotted to answer its phone;

ii. If the caller is incoherent and the operator is, as a result, required to spend additional time with the caller in order to ascertain the nature of the emergency; and

iii. When the nature of the emergency is such (for example, a suicide attempt) that the operator becomes an integral part of the process, bridges the emergency service agency on the line and assists the agency in its efforts, rather than simply transferring the call.

9. Record all emergency calls in detail immediately after the call is transferred or terminated, as appropriate. Call detail will include but not be limited to originating telephone number and location, the emergency service agency requested or to which the operator transferred the call, the date of the call, the time the call was received, the time the call was connected to the emergency service agency, a brief description, and if known, where an injury is involved and the severity of that injury;

10. Submit a list of its New Jersey customers to the Board's staff on an annual basis. This list shall include, but not be limited to, customer locations and customer phone numbers. The customer list shall be afforded confidential treatment; and

11. Submit reports to the Board's staff annually regarding its emergency call completion as detailed above.

14:10-6.6 Penalty for violations

Any AOS provider which violates the provisions of this subchapter shall be subject to the schedule of fines as described below. The amount of the fine identified shall be assessed for each infraction. Each call completed in violation of these rules, or each day a violation exists, is considered a separate infraction.

Exceed maximum permissible rates N.J.A.C. 14:10-6.3(h), 6.3(i)	\$5,000
Violate emergency call procedures N.J.A.C. 14:10-6.5	\$5,000
Slamming N.J.A.C. 14:10-6.3(l)	\$3,000
Deny free access to all OSPs N.J.A.C. 14:10-6.4(a)	\$2,500
Branding, rate quote and reporting requirements N.J.A.C. 14:10-6.3(e), 6.3(g) and 6.7	\$2,000
Splashing or billing for uncompleted calls N.J.A.C. 14:10-6.4(c) and 6.3(m)	\$2,000
Any other violation	\$1,000

Amended by R.1998 d.529, effective November 2, 1998.
See: 30 N.J.R. 331(a), 30 N.J.R. 3967(a).

Updated N.J.A.C. references in "Exceed maximum permissible rates".

14:10-6.7 Alternate operator service informational tariffs

(a) AOS providers, as defined in N.J.A.C. 14:10-6.2, shall file informational tariffs with the Board. These tariffs shall contain:

1. The name, address and telephone number of the party responsible for the resolution of customer complaints;

2. A complete list of all terms and conditions of service applicable to intrastate operator-assisted calls;

3. The total charge for each category of service, including but not limited to collect calls, credit or calling card calls and person-to-person calls, as well as the individual rate elements that comprise the total charge, such as operator surcharges, premises imposed fees, mileage and time of day charges, and every other surcharge or fee; and

4. An acknowledgment that penalties for violations of the conditions of operator service may result in the imposition of fines, as set forth in N.J.A.C. 14:10-6.6, or disconnection of intrastate service, as set forth in N.J.A.C. 14:10-6.3(c).

(b) In addition to the requirements contained in (a) above, the following information shall be submitted with the initial informational tariff filing, and annually thereafter:

1. A comparative balance sheet for the most recent two year period on either a calendar or fiscal year basis;

2. A comparative income statement for the most recent two year period on either a calendar year or fiscal year basis;

3. A balance sheet as of the most recent date available;

4. A statement of the amount of revenue, expenses, number of calls completed, and number of complaints filed against the company with any regulatory agency, in the last preceding calendar year;

5. A list of all principals of the firm, with the following information:

i. The name, address and telephone number of each principal; and

ii. The percent ownership interest of the principals owning more than five percent; and

6. The qualifications and the business or technical experience of the officers, directors or other principal management and operating personnel with particular respect to their ability to carry out the AOS provider's obligation to render safe, adequate and proper service.

14:10-6.8 Customer billing

(a) LECs that provide billing and collection services to other operator service providers shall include a statement on the other operator service provider's portion of each customer's bill advising the customer that the other OSP is not affiliated with the LEC.

(b) LECs that provide billing and collection services to a billing agent, as defined in N.J.A.C. 14:10-6.2, shall, in

addition to the requirements in (a) above, include and clearly identify the name, address and telephone number of the OSP who furnished operator service to the consumer.

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 "address and telephone number" preceding "of the OSP".

SUBCHAPTER 7. ACCESS TO ADULT-ORIENTED INFORMATION-ACCESS TELEPHONE SERVICE

14:10-7.1 Scope

(a) This subchapter applies only to telephone companies electing to provide a subscriber access to adult-oriented information-access telephone service in the State.

(b) For purposes of this subchapter, telephone companies include local exchange telephone companies (LEC) and interexchange carrier telephone companies (IXC) operating in the State. IXC includes both facilities based carriers and resellers.

(c) The provisions of this subchapter shall apply to both "976" services accessed by a seven digit telephone number of the form NXX-XXXX and "900" or "700" services accessed by a 10 digit telephone number of the form 900-NXX-XXXX or 700-NXX-XXXX as well as any future access arrangement.

14:10-7.2 Definitions

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

"Adult-oriented information-access telephone service" means a class of telephone service where for a charge, in addition to the basic exchange charge, sexually explicit messages are furnished.

"IXC" means interexchange carrier telephone companies or other such providers, both facilities based and resellers.

"Information providers" means those entities who utilize LEC or IXC adult-oriented information-access telephone services to provide sexually explicit messages.

"LEC" means local exchange telephone companies, including competitive access providers or other providers of local or toll services.

"Subscriber" means a telephone customer of an LEC or IXC.

14:10-7.3 Restrictions on access

(a) No telephone company operating in the State shall provide a subscriber access to adult-oriented information-access telephone service in the State without written authorization from the subscriber.

(b) LECs offering seven digit adult-oriented information-access telephone service shall assign all lines providing such service to a specific Central Office code, or codes (NXX), and arrange all lines in the code or codes, to be normally blocked. Unblocked access shall be pursuant to N.J.A.C. 14:10-7.4(a).

(c) LECs and IXCs offering 10 digit adult-oriented information-access telephone service shall assign all lines accessing such service to a specific 900-NXX or 700-NXX code or codes and arrange all lines in the code to be normally blocked. Unblocked access shall be pursuant to N.J.A.C. 14:10-7.4(a).

(d) Alternatively, LECs and IXCs may:

1. Require as a condition of service that information providers utilizing the LEC or IXC intrastate adult-oriented information-access telephone service restrict access to the service as indicated in N.J.A.C. 14:10-7.4(a). Such LECs or IXCs shall be responsible for assurance that information providers restrict access in accordance with this rule; or

2. Require as a condition of service that the information provider offering intrastate adult-oriented information-access service scramble its transmissions and supply audio descramblers to ensure that inadvertent or unauthorized access will not result in intelligent transmission. Descrambler provision shall be pursuant to N.J.A.C. 14:10-7.4(a).

(e) No telephone company operating in the State and offering adult-oriented information-access telephone service originating in the State shall permit access of such service from telephone operators or pay telephones.

(f) Subscribers to local telephone service in the State shall be advised of these rules through inclusion in the informational consumer guide pages in the front of local telephone directories.

14:10-7.4 Subscriber requests for service; charges

(a) Telephone companies or information providers offering intrastate adult-oriented information-access telephone service shall permit access to the service only upon receipt of a written and signed subscriber request.

1. The subscriber request shall include an appropriate means of proof (such as a photocopy of a birth certificate or a valid State driver's license), in the same name as the telephone account of record, that the requesting subscriber is over 18 years of age.

2. The telephone company or information provider offering the adult-oriented information-access telephone service shall maintain the hard copy signed subscriber request with proof of age for the duration that access to the service is unblocked.

(b) The initial subscriber request to unblock access at a given location shall be free of charge to the subscriber.

(c) If an LEC elects to charge for subsequent requests to reblock or unblock, the subscriber shall be charged the then prevailing service order charge for adding service to an existing line and the central office work charge for an existing line.

(d) If an IXC elects to charge for subsequent requests to reblock or unblock, the subscriber shall be charged the then prevailing service order charge for adding service to an existing line and the central office work charge for an existing line charged by the LEC providing the subscriber basic telephone service.

(e) In the event that the serving LEC does not have a tariffed service order charge for adding service to an existing line and for central office work for an existing line, the tariffed charge from the LEC serving the largest number of

telephone lines in the State having such a tariffed charge shall be used.

SUBCHAPTER 8. (RESERVED)

SUBCHAPTER 9. PUBLIC PAY TELEPHONE SERVICE

14:10-9.1 Scope

The rules contained in this subchapter shall apply to the provision of public pay telephone service ("PPTS") as defined in N.J.A.C. 14:10-9.2, for any PPTS provider in New Jersey, with the exception of inmate pay telephone service providers in government controlled correctional facilities as set out in N.J.A.C. 14:10-9.7.

14:10-9.2 Definitions

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

"Board" means the Board of Public Utilities.

"Correctional facility" means an institution, including prisons, jails and detention centers, operated by a governmental entity, which is dedicated to the treatment, rehabilitation or confinement of criminal offenders.

"Customer provided pay telephone service" or "CPPTS" means pay telephone service furnished through the resale of a local exchange carrier's tariffed CPPTS line.

"Customer provided pay telephone service provider" or "CPPTS provider" means the person or entity which is the customer of record which purchases a CPPTS line and is responsible for the pay telephone instrument which offers CPPTS.

"Incumbent local exchange carrier" or "incumbent LEC" means a telecommunications carrier with a Board authorized tariff in effect prior to February 8, 1996 to provide switched local exchange services in the State of New Jersey.

"Local call" means a call within local service areas as identified in incumbent LEC tariffs approved by the Board.

"Operator service provider" or "OSP" means any telecommunications carrier that provides operator-assisted services, including alternate operator service providers.

"Public pay telephone service" or "PPTS" means telephone service provided for the use of the transient public, which includes CPPTS.

"Public pay telephone service provider" or "PPTS provider" means a person or entity who provides PPTS.

"Rate" means the total charge to a consumer for the completion of a call utilizing PPTS service including all surcharges, premises imposed fees and other charges collected from the consumer.

14:10-9.3 Public pay telephone service requirements

(a) PPTS shall provide dial-tone first.

(b) Each PPTS instrument shall allow consumers free access to the following calls, without use of coin or credit cards to originate such calls:

1. Operator calls ("0");
2. Access to toll-free service, including all 800 numbers and 950 carrier access code numbers;
3. Use of equal access codes, specifically 10XXX or 101XXXX, if applicable, to obtain access to the consumer's desired provider of operator services;
4. Completion of collect, third party billed, and carrier calling card calls; and
5. Telecommunications Relay Service calls for the hearing disabled.

(c) As 9-1-1 emergency service is available throughout the State, all public telephones, including coin and credit card telephones, both public and private, shall, in addition to the requirements set out in (b) above, be configured to allow a caller to dial and complete a 9-1-1 call without inserting a coin or any other form of payment.

(d) PPTS providers shall prominently display the following information directly on each telephone instrument, in plain view of consumers:

1. The name, address, and toll-free number of the provider of operator services;
2. The name, address and toll-free telephone number of the PPTS provider, including refund information;
3. A clear and precise description of the geographic area served by the LEC and the geographic area served by the presubscribed OSP. That is, that local operator-assisted calls are carried by the LEC, that intrastate operator assisted toll calls within the area code are carried by one OSP, and that intrastate operator-assisted calls outside the area code are carried by a second OSP;
4. Written disclosure that the rates for all operator-assisted calls are available on request, and 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;
5. Dialing instructions that detail the presubscribed operator service provider's dialing procedures;
6. Dialing instructions for access to the incumbent LEC operator;
7. The Board's toll-free customer complaint telephone number;
8. The rate for a direct-dialed, coin-generated local call;
9. Notice of the inability to accept incoming calls where PPTS providers prevent such call completion;
10. The telephone number of the PPTS instrument unless the notice requirement contained in (d)9 above is present;
11. Notice of the inability to complete international calls where PPTS providers block such calls; and
12. Instructions on how to access the emergency enhanced 9-1-1 system.

(e) Caller requested rate quotes and alternative carrier access information shall be available to users upon request and free of charge.

(f) PPTS shall have the ability to complete local and intrastate toll calling.

(g) (Reserved)

(h) PPTS providers shall make every reasonable effort to repair instruments within 48 hours of notification of a service outage.

(i) Where PPTS providers prevent incoming call completion, said providers shall make arrangements to ensure non-publication of its number in directory listing services offered by the incumbent LEC for each service location.

(j) PPTS providers shall designate and file with the Board, a party within the State of New Jersey responsible for processing refunds to consumers. All refunds shall be in the form of cash or check or a credit on the customer's telephone bill.

(k) The Board or its staff shall investigate the conduct of any PPTS provider following receipt of a customer complaint. The Board shall, after notice and 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 appropriate action against a PPTS provider, including disconnection of intrastate service to individual PPTS locations experiencing persistent violations, as is necessary to rectify any non-conformance with these rules or to protect the general public interest.

(l) PPTS providers shall not charge for calls that are not completed.

(m) The keypad of each PPTS instrument shall feature both numbers and letters in the standard arrangement typically provided on telephone sets.

Amended by R.1998 d.402, effective August 3, 1998.
See: 30 N.J.R. 1370(a), 30 N.J.R. 2929(b).
Repealed (g).

14:10-9.4 Additional regulation of customer provided pay telephone service

(a) In addition to the provisions set forth in N.J.A.C. 14:10-9.3, CPPTS providers, as defined in N.J.A.C. 14:10-9.2, are subject to the following:

1. CPPTS providers are permitted to charge end users for directory assistance calls up to a maximum rate equivalent to that rate which the LEC charges the CPPTS provider for directory assistance service;
2. More than one CPPTS instrument may be connected per CPPTS exchange access line, such as behind a PBX or other types of call concentration equipment, provided that such arrangements, ensure user privacy and do not result in inordinate levels of blocking;
3. Extensions of CPPTS exchange access lines are permitted. However, such extensions shall either be technically unable to monitor the CPPTS instrument or the CPPTS provider shall prominently display notice to end users that the CPPTS is subject to monitoring by an extension;
4. A CPPTS Acknowledgment Form shall be filed with the Board. This form shall indicate that CPPTS providers are subject to the rules contained in this subchapter;

5. CPPTS providers shall provide to the Board the address and telephone number of each CPPTS instrument, by location, separated by municipality. Such information shall be submitted to the Board at the time of installation of CPPTS service as part of the CPPTS Acknowledgment Form and as additional instruments are installed. This information will be granted confidential treatment;

6. CPPTS providers shall notify the Board upon disconnection of each CPPTS instrument, on a quarterly basis at the beginning of each calendar quarter, including the location and date of disconnection; and

7. CPPTS providers shall provide a list of all principals of the firm, with the following information:

- i. The name, address and telephone number of each principal; and
- ii. The percent ownership interest of the principals owning more than five percent.

14:10-9.5 Additional regulation of incumbent local exchange carriers

(a) In addition to the provisions of N.J.A.C. 14:10-9.3, incumbent LECs, as defined in N.J.A.C. 14:10-9.2, are subject to the following:

1. The incumbent LEC shall permit customer retention of telephone numbers that are associated with a customer's incumbent LEC public telephone for use with CPPTS.
2. Each incumbent LEC shall submit quarterly reports of CPPTS installation in their service territories to Board staff. Such report shall include the number of installations and disconnections as well as a list containing the name and address of each CPPTS provider by location. Such list shall indicate CPPTS connections separated by municipality. This information will be afforded confidential treatment.

14:10-9.6 Placement of PPTS

Installation of all PPTS instruments shall be in accordance with any applicable local, municipal, county and State requirements. Upon receipt of a complaint from any authorized local, municipal, county or State official, that a PPTS instrument is in violation of any applicable installation requirement, including, but not limited to, municipal ordinances or State legislation, Board staff shall direct the PPTS provider to comply with such requirements or remove the PPTS instrument within 48 hours. Such removal shall ensure that all necessary repairs are performed so that the street, sidewalk, building, or any other structure where the PPTS may be located, is restored to its exact condition prior to the PPTS installation. The Board shall take action against a PPTS provider to rectify non-conformance with this requirement, as provided in N.J.A.C. 14:10-9.3(k). This section in no way precludes the ability of the affected local government entity or the PPTS provider from seeking available judicial remedies prior to removal.

14:10-9.7 Exemption for inmate pay telephone service

(a) Providers of inmate telephone service in government controlled correctional facilities are exempt from the requirements set out in the following subsections:

1. N.J.A.C. 14:10-9.3(a) through (g) and (i); and
2. N.J.A.C. 14:10-9.4(a).

(b) Installation of inmate telephone service in government controlled correctional facilities shall be in accordance with any applicable local, municipal, county and/or State requirements imposed by the appropriate governing entity.

(c) Providers of inmate telephone service in government controlled correctional facilities shall provide a letter of notification to the Board containing a complete description of the service to be provided along with the name of the correctional facility where the service will be provided.

14:10-9.8 Complaint handling procedures

(a) Each PPTS provider shall provide to the Board, the name, address and telephone number of the party responsible to resolve customer complaints.

(b) Each PPTS provider shall maintain adequate complaint handling procedures, including the acceptance, processing and the prompt investigation and resolution of a complaint in a simple manner and form.

(c) Each PPTS provider shall maintain accurate complaint records indicating:

1. The date of the complaint;
2. The name and address of the individual making the complaint;
3. The location and phone number of the telephone involved in the complaint;
4. A description of the complaint; and
5. A description of how the complaint was resolved.

(d) The complaint records described in (c) above shall be made available to Board staff upon request. All such records shall be retained by the PPTS provider for a period of two years commencing with the date of the incident giving rise to the complaint.

**SUBCHAPTER 10. INTRALATA TOLL
COMPETITION ON A PRESUBSCRIPTION
BASIS**

14:10-10.1 Scope

This subchapter applies to the completion of toll calls, as defined below, within Local Access Transport Areas, or

LATAs, located within the State of New Jersey. The Board's Order Approving Presubscription and Proposal of Rules dated December 14, 1995, issued in Docket No. TX94090388, provides that presubscription is the policy of the State of New Jersey. These rules are intended to implement that policy as fully set forth in the Order.

14:10-10.2 Definitions

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

"Access code" means a code that permits a caller to obtain a connection to the carrier associated with that code, for example, 10XXX or 101XXXX.

"Basic service element", within the context of these rules, means a local exchange carrier network component which is necessary for a competitor to configure its service offering. For example, see FCC's Memorandum Opinion and Order in CC Docket No. 88-2, Phase 1, released December 22, 1988, or as otherwise ordered by the Board.

"Board" means the Board of Public Utilities.

"Full 2-PIC" means a system which allows a consumer to presubscribe to an intraLATA toll carrier that may be different from the consumer's interLATA carrier.

"Interexchange carrier" or "IXC" means a carrier, other than a local exchange carrier, authorized by the Board to provide long-distance telecommunications services.

"InterLATA toll call" means a toll call that originates and terminates in two different LATAs.

"IntraLATA toll call" means a toll call that originates and terminates in a single LATA.

"LATA" means a geographical area which marks 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 carrier" or "LEC" means a carrier authorized by the Board to provide local telecommunications services, in accordance with N.J.A.C. 14:10-5.2.

"Message telecommunications service" or "MTS" means toll service.

"Presubscription" means the pre-selection of a carrier to complete toll calls without the requirement of dialing an access code, that is, dialing parity.

"Primary interexchange carrier" or "PIC" means the carrier chosen by a consumer to carry that consumer's presubscribed calls.

"Slamming" means an unauthorized change of a consumer's primary interexchange carrier or the failure to execute an authorized change in a consumer's primary interexchange carrier.

"Toll call" means any call outside the local calling area as defined in the LEC tariffs filed with and approved by the Board.

Amended by R.2001 d.307, effective September 4, 2001.
See: 33 N.J.R. 1500(a), 33 N.J.R. 3043(a).
Rewrote "Slamming".

14:10-10.3 Implementation of presubscription

(a) Full Statewide implementation of intraLATA presubscription shall commence on May 5, 1997, subject to (c), (d) and (e) below.

(b) LECs shall adhere to the following business office practices:

1. LECs are to process intraLATA PIC change orders within the same time frame as interLATA PIC change orders are processed; and
2. LECs are precluded from "steering" customers to their own intraLATA service and are prohibited from dissuading customers from selecting another carrier.

(c) Limited waivers to the requirement to convert all central offices to provide intraLATA presubscription may be granted on a case-by-case basis. Such waiver requests must include specific justification and information regarding when the office will be converted. Waivers will only be granted for just cause as determined by the Board.

(d) For any waiver granted by the Board, and/or if pre-subscription capability is not provided from a LEC central office in conformance with the requirements set forth in this section, a 55 percent discount on switched access charges for intraLATA (10XXX) minutes completed from the non-converted central offices shall apply to reflect the inferior access provided from such offices. LECs shall revise their tariffs on file with the Board to reflect the discounted rates by September 4, 1996. No discounts are applicable for 2BESS central offices.

(e) The implementation of intraLATA toll presubscription shall permit consumers to presubscribe to an intraLATA carrier that may be different from the consumer's interLATA PIC. Therefore, "Full 2-PIC", as described in N.J.A.C. 14:10-10.2, shall be implemented.

(f) Balloting for intraLATA presubscription shall not be required except in any LEC central office that has not yet been converted to interLATA equal access. At the time of conversion for those central offices, the interLATA ballot shall include a choice of intraLATA toll carriers as well.

Amended by R.1997 d.58, effective February 3, 1997.
See: 28 N.J.R. 3714(a), 29 N.J.R. 477(a).

Inserted (a) and (b).
Amended by R.2001 d.307, effective September 4, 2001.
See: 33 N.J.R. 1500(a), 33 N.J.R. 3043(a).
Rewrote (b).

14:10-10.4 Cost recovery

(a) The costs of implementing intraLATA toll presubscription shall be paid by all intraLATA toll providers as follows: IXC's shall be responsible for 70 percent and LECs shall be responsible for 30 percent of the total costs. These costs shall be recovered over a five year period, beginning with the commencement date of intraLATA presubscription as provided for in N.J.A.C. 14:10-10.3(a), through an equal access recovery charge (EARC) assessed on IXC's total intrastate toll minutes of use (including both interLATA and intraLATA) for their portion of the total costs and LEC's intrastate toll minutes for use for their portion of the total costs.

(b) The only costs to be included in the EARC as described in (a) above are the direct, incremental costs associated with the implementation of intraLATA toll presubscription, with no costs included that would have been incurred without its implementation. Such direct costs include, but are not limited to, switch software, translation costs, and costs to modify customer service and customer records systems and business office practices, to accommodate presubscription.

(c) Any dispute over the cost components described in (b) above shall be resolved by the Board through the use of settlement procedures, including, but not limited to, alternative dispute resolution (ADR) techniques, and/or a proceeding which shall be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

14:10-10.5 Local exchange safeguards

(a) Since LECs operate as both intraLATA toll competitors and as providers of essential access connections that competitors use to provide their services, LECs shall be subject to the imputation standard contained in N.J.A.C. 14:10-10.7, ensuring that they cannot price their services at a level that is below the access rates charged to IXC's.

(b) LECs are prohibited from engaging in any discriminatory or anti-competitive practices when processing PIC service orders.

(c) No telecommunications carrier shall submit to a LEC a primary interexchange carrier change order to change long distance carriers until the order has first been confirmed in accordance with the procedures set forth in N.J.A.C. 14:10-11. To do otherwise results in slamming, as defined in N.J.A.C. 14:10-10.2, a practice which is prohibited by this subchapter.

(d) All local exchange carriers must provide in their resale tariffs a requirement that resale customers must comply with the provisions of N.J.A.C. 14:10-10.5(c).

(e) The Board shall monitor the customer service activities of the LECs with regard to new customers and to customers making requests of the LECs to change their intraLATA carrier. LECs shall maintain customer service statistics and records regarding customer change requests and provide such information to Board staff upon request.

(f) Effective with a LEC's intraLATA toll service being classified as competitive under the Telecommunications Act of 1992 (N.J.S.A. 48:2-21.16 et seq.), the LEC shall attribute to the non-competitive, rate-regulated portion of its business, revenue equal to the imputation amount required by the imputation standard set forth in N.J.A.C. 14:10-10.7.

(g) Upon receipt of any complaint alleging a violation of the provisions in (a) through (f) above, the Board shall investigate such complaint and take whatever action it deems necessary to rectify any non-conformance with such rules.

Amended by R.2001 d.307, effective September 4, 2001.
See: 33 N.J.R. 1500(a), 33 N.J.R. 3043(a).
In (c), rewrote first sentence.

14:10-10.6 Classification of intraLATA toll service as competitive

(a) LEC intraLATA toll services shall be reclassified as competitive as defined in N.J.S.A. 48:2-21.16 et seq., coincident with the effectuation of full Statewide implementation of intraLATA presubscription, as required in N.J.A.C. 14:10-10.3(c), subject to the imputation standard and procedure for attribution of access charges as described in N.J.A.C. 14:10-10.5(a) and (f).

(b) The MTS service of any LEC with a Board approved plan for alternative regulation, as provided by N.J.S.A. 48:2-21.18, shall be included in the standards for determining and monitoring competitiveness of services which may be incorporated in the LECs' plans for alternative regulation. In addition, all LECs' MTS services are subject to the standards for monitoring the competitiveness of services provided for in N.J.S.A. 48:2-21.19 and set out in N.J.A.C. 14:10-5.10. LECs' MTS services shall be included in the quarterly and annual reports for competitive services filed by LECs, which are used by the Board to ensure that such services remain competitive.

(c) Following a review of the quarterly and annual reports, as set out in (b) above, should there be a finding that a LEC's MTS service no longer meets the statutory criteria for a competitive service, the Board may reclassify the service as non-competitive if it determines sufficient competition is no longer present, pursuant to the provisions of N.J.S.A. 48:2-21.19(d).

14:10-10.7 Imputation standard

(a) The rates charged for any LEC toll service (and interexchange private line service) shall equal or exceed the rates set forth in this section:

(b) The switched access rate elements in (b)1 through 6 below shall be multiplied by the applicable access minutes associated with toll service offered by the LEC. Access minutes shall be determined by converting the LEC billed minutes to conversation minutes and then to access minutes. Where switched access is used on only one end of a service, the LEC billed minutes shall be converted to applicable access minutes.

1. The LEC's zero-mileage band premium local transport rate element;
2. The LEC's premium local switching rate element;
3. The LEC's premium intercept rate element;
4. The LEC's premium line termination rate element;
5. The LEC's lowest message recording rate to any of its billing services customers, stated on a per-access-minute basis; and
6. The LEC's other non-access incremental costs of completing the call, stated on a per-access minute basis.

(c) Notwithstanding the provisions of (b) above and subject to the condition set forth in (c)1 below, for a customer which has entered a customer-specific pricing arrangement with the LEC, the LEC may substitute its FCC tariff rates for special access (using the term discount rate that corresponds to the term of the customer specific pricing arrangement) including applicable non-recurring special access rate elements levelized over the term of the contract, for either originating switched access for WATS and MTS services or terminating switched access for dedicated 800 services. The special access rate to be imputed shall apply to each equivalent circuit (for example, DS1). For every 2,000 hours, or portion thereof, per month of intraLATA toll calling at a location, the LEC must impute the cost of one circuit except where a particular customer's usage demonstrates that more traffic could be completed over the facility. The mileage will be rated at 10 miles. The elements listed in (b)1 through 6 above will apply to the terminating end of WATS and MTS services and the originating end of dedicated 800 services.

1. The LEC's revenues from all customers of a service being provided under a customer-specific pricing arrangement in paragraph (c) above must, in the aggregate, satisfy the requirements set forth in (b) above.

(d) The price charged for each LEC service using special access shall be greater than the sum of (d)1 through 6 below for each special access connection used; for example, twice for a typical private line circuit. For competitive access services such as Hi-Cap, however, imputation is not applicable.

1. The zero-mileage band of the LEC's special transport rate element;
2. The LEC's special access line rate element;
3. The applicable rate elements for optional features and functions;
4. Any applicable LEC special access surcharge rate element;
5. Any applicable non-recurring special access rate elements levelized over a 24-month period; and
6. The LEC's other non-access incremental costs of providing the service.

(e) If the Board orders or approves any changes in the LEC's access rate structure, the LEC shall be required to seek Board approval of appropriate changes in the imputation formulas in (b), (c) and (d) above.

(f) Where the LEC structures a package of services to include discounts and/or packaging of noncompetitive services in addition to interexchange calling, the LEC's price for the package of services must be greater than the amounts described in (b), (c) and (d) above plus: where basic service elements are used to provide the discounts or packages, an amount determined by multiplying the pricing units for the basic service elements used times the LEC's tariff price(s) for those basic service elements; and an amount determined by multiplying the LEC's per unit incremental costs for the discounts or packages, excluding those for the basic service elements, times the applicable number of units. The LEC shall, within 14 calendar days of a request from the IXC's or Board staff, provide information adequate to show compliance with the imputation requirement. The information shall reflect usage data for a one year period, or, if such data is unavailable, for the longest available time period for which the LEC has data. Pursuant to this imputation requirement, the LEC shall retain interexchange usage data for a rolling 24-month period. The LEC shall not be required to respond to any such request more frequently than once annually, except that the LEC shall be required to respond to any such request that is made in conjunction with the LEC proposing changes to an interexchange service or with the LEC proposing a customer-specific pricing arrangement. As part of any such showing, the LEC shall provide all supporting documentation including dates, data sources and calculations. The IXC's and Board staff shall have discovery rights to examine the documentation and computations underlying the LEC's data. To the extent that the LEC's showing includes information it deems proprietary, such information shall be made available subject to the following:

1. Information deemed by a party to be proprietary in nature shall be so marked by stamp or otherwise clearly identified as such. Proprietary information described in its subsection means trade secrets and other confidential, nonpublic, or privileged information, as defined by the LEC submitting the data.

2. Except when proprietary information is in the possession of the Board, exclusive custody of the proprietary information shall remain with the party submitting such information. The sole exception shall be the agreement by the submitting party to furnish each other party with a single copy of the proprietary information, which information shall be kept under seal when not under review.

3. The examination of the proprietary data provided to a party shall be solely by the counsel of record and/or any lawyer employed by or any employee of said counsel, expert consultants retained by a party, Board staff, the Ratepayer Advocate and staff, employees, and any expert consultants which the Ratepayer Advocate may retain, and any employee of a party whose review of the proprietary information is necessary, provided such persons have executed an acknowledgment of the handling of proprietary information in compliance with this subchapter and have provided the submitting party with an executed copy of the acknowledgment. No other disclosure shall be made to any person or entity except with the express written consent of counsel for the submitting party.

4. The proprietary data delivered or otherwise made available to a party pursuant to this subchapter, any photographic or other copies made thereof, as well as notes taken and other information obtained as a result of examination of the proprietary data, shall be disclosed only to persons who have executed the requisite acknowledgment, shall be kept in confidence, shall not be disclosed to anyone involved in competitive decision making for any party, and shall not be opened to public inspection. No person who may be entitled to receive, or which is afforded access to any proprietary information, shall use or disclose such information for the purposes of business or competition, or any purpose other than the preparation for and conduct of any administrative or judicial review thereof. Upon conclusion of the proceedings, all proprietary information which has been submitted pursuant to this subsection shall be returned to the submitting party. This requirement does not apply to the Board or its staff.

5. A party shall have no obligation to preserve the confidential nature of any information that it can demonstrate and document to the submitting party in advance of disclosure that the subject information:

- i. Was previously known to the party free of any restriction on use and disclosure;

- ii. Is received from a third party without restrictions on use or disclosure and without breach of any terms of this subchapter;

- iii. Is disclosed to third parties by the submitting party without restrictions on use and disclosure;

- iv. Is or becomes publicly available by authorized disclosure by the submitting party without any restrictions on use or disclosure;

- 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.

"Authorized carrier" means any telecommunications carrier that submits a change on behalf of a subscriber in the subscriber's selection of a provider of telecommunication service with the subscriber's authorization verified in accordance with the procedures specified in this subchapter.

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

"Commission" means the Federal Communications Commission.

"Customer" means any one of the following:

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 change services to the account; or

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

"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.

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".

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 or electronically signed authorization in a form that satisfies the following requirements:

i. 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;

ii. 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 (b)1v 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;

iii. 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.

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;
 - 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;
 - ix. 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);
 - x. 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.
 - xi. 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
 - xii. 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.
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.
 - i. Automated third party verification systems and three-way conference calls may be used for verification purposes so long as the requirements of (b)3ii, iii and iv below are satisfied.
 - ii. 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.
 - iii. All third party verification methods shall elicit, at a minimum, the identity of the customer; confirmation that the person on the call is authorized to make the TSP change; confirmation that the person on the call wants to make the TSP change; the names of the TSPs affected by the change; the telephone numbers to be switched; and the types of service involved. Third party verifiers shall not market the TSP's services by providing additional information, including information regarding preferred carrier freeze procedures.
 - iv. All third party verifications shall be conducted in the same language that was used in the underlying sales transaction and shall be recorded in their entirety. In accordance with N.J.A.C. 14:10-11.5(d)1i, submitting TSPs shall maintain and preserve audio records of verification of customer authorization for a minimum period of three years after obtaining such verification. Automated systems shall provide customers with an option to speak with a live person at any time during the call.

(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.

(e) TSPs shall provide customers the option of using one of the authorization and verification procedures specified in (b) above in addition to an optional electronically signed authorization and verification procedure under (b)1 above.

(f) 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 Commission rules set forth at 47 C.F.R. § 64.1120(e), as now constituted or as may hereafter be amended. Copies of letter notifications filed with the Commission pursuant to 47 C.F.R. § 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.

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 TSP's 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 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 as 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. The record retention period provides customers three years within which to file a slamming complaint.

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) Reimbursement procedures and TSP liability for slamming shall be in conformance with Commission rules at

47 C.F.R. § 64.1140, and §§ 64.1160 and 1170 as amended or supplemented, as follows:

1. Any submitting TSP that violates the procedures prescribed in this subsection shall be liable to the primary TSP in an amount equal to 150 percent of all charges paid to the submitting TSP by such customer after such violation, as well as for additional amounts as prescribed in (e)4 below. The remedies provided in this subsection are in addition to any other remedies available by law.

2. Any customer whose selection of a primary TSP is changed without authorization verified in accordance with the procedures set forth in N.J.A.C. 14:10-11.3 is absolved from liability for charges as follows:

i. If the customer has not already paid charges to the unauthorized TSP, the customer is absolved of liability for charges imposed by the unauthorized TSP for service provided during the first 30 days after the unauthorized change. Upon being informed by a customer that an unauthorized change has occurred, the recipient of the call, that is, the authorized carrier, the unauthorized TSP, or the executing TSP, shall inform the customer of this 30-day absolution period. Any charges imposed by the unauthorized TSP on the customer for service provided after this 30-day period shall be paid by the customer to the authorized TSP at the rates the customer was paying to the authorized carrier at the time of the unauthorized change in accordance with the provisions of (e)3v below.

ii. If the customer has already paid charges to the unauthorized carrier, and the authorized TSP receives payment from the unauthorized TSP as provided for in (e)1 above, the authorized carrier shall refund or credit to the customer any amounts determined in accordance with the provisions of (e)4vi below.

iii. If the customer has been absolved of liability as prescribed by this subsection, the unauthorized TSP shall also be liable to the customer for any charge required to return the customer to his or her properly authorized carrier, if applicable.

3. Absolution procedures where the customer has not paid charges are as follows:

i. This paragraph shall only apply after a customer has alleged that an unauthorized change, as defined by N.J.A.C. 14:10-11.1, has occurred and the customer has not paid charges to the allegedly unauthorized TSP for service for 30 days, or a portion thereof, after the unauthorized change is alleged to have occurred.

ii. An allegedly unauthorized TSP shall remove all charges incurred for service provided during the first 30 days after the alleged unauthorized change occurred, as defined by N.J.A.C. 14:10-11.1, from a customer's bill upon notification that such unauthorized change is alleged to have occurred.

iii. An allegedly unauthorized TSP may challenge a customer's allegation that an unauthorized change as defined by N.J.A.C. 14:10-11.1 has occurred. An allegedly unauthorized TSP choosing to challenge such allegation shall immediately notify the complaining customer that: the unauthorized TSP is required to file the challenge with the Board within 30 days of the date of removal of charges from the complaining customer's bill in accordance with (e)3ii above. The TSP, upon investigation, is required to provide the Board with the name, address, phone number of the customer, the date of the alleged slam, the name of the unauthorized TSP to which service was switched, the type of services that were switched, and any evidence to substantiate the TSP's position. The alleged unauthorized TSP may reinstate charges to a customer's bill which were removed pursuant to the provisions of (e)3ii above upon notice that an investigation was completed by the Division of Customer Assistance that determined the change was authorized.

iv. If it is determined after reasonable investigation that an unauthorized change, as defined by N.J.A.C. 14:10-11.1, has occurred, the Board or its designees will issue a notice indicating that the customer is entitled to absolution from the charges incurred during the first 30 days after the unauthorized TSP change occurred, and neither the authorized nor unauthorized TSP may pursue any collection against the customer for those charges.

v. If the customer has incurred charges for services provided for more than 30 days after the unauthorized TSP change, the unauthorized TSP shall forward the billing information for such services to the authorized TSP, which may bill the customer for such services using either of the following means:

(1) The amount of the charge may be determined by a re-rating of the services provided based on what the authorized TSP would have charged the customer for the same services had an unauthorized change, as described in N.J.A.C. 14:10-11.1, not occurred; or

(2) The amount of the charge may be determined using a 50 percent proxy rate as follows: Upon receipt of billing information from the unauthorized TSP, the authorized TSP may bill the customer for 50 percent of the rate the unauthorized TSP would have charged the customer for the services provided. However, the customer shall have the right to reject use of this 50 percent proxy method and require that the authorized carrier perform a re-rating of the services provided, as described in (e)3v(1) above.

vi. If the unauthorized TSP received payment from the customer for services provided after the first 30 days after the unauthorized change occurred, the obligations for payments and refunds provided for in this subsection shall apply to those payments.

vii. If the Board or its designee determines after reasonable investigation that the TSP change was authorized, the TSP may re-bill the customer for charges incurred.

4. Reimbursement procedures where the customer has paid charges are as follows:

i. The procedures in this paragraph shall only apply after an unauthorized change, as defined by N.J.A.C. 14:10-11.1, has occurred and the customer has paid charges to an allegedly unauthorized TSP.

ii. If the Board or its designee had determined after reasonable investigation that an unauthorized change, as defined by N.J.A.C. 14:10-11.1, has occurred, it shall issue a notice directing the unauthorized carrier to forward to the authorized TSP the following:

(1) An amount equal to 150 percent of all charges paid by the customer to the unauthorized TSP; and

(2) Copies of any telephone bills from the unauthorized carrier to the customer.

iii. A copy of the notice under (e)4ii above shall be sent to the customer, the unauthorized TSP, and the authorized TSP.

iv. Compliance with (e)4ii and iii above does not preclude the Board from seeking additional administrative remedies where deemed appropriate.

v. Within 10 days of receipt of the amount provided for in (e)4ii(1) above, the authorized TSP shall provide a refund or credit to the customer in the amount of 50 percent of all charges paid by the customer to the unauthorized TSP. The customer has the option of asking the authorized TSP to re-rate the unauthorized carrier's charges based on the rates of the authorized TSP and, on behalf of the customer, seek an additional refund from the unauthorized TSP, to the extent that the re-rated amount exceeds the 50 percent of all charges paid by the customer to the unauthorized TSP. The authorized TSP shall also send notice to the Board Secretary and the Director of Customer Assistance that it has given a refund or credit to the customer.

vi. If an authorized TSP incurs billing and collection expenses in collecting charges from the unauthorized TSP, the unauthorized TSP shall reimburse the authorized TSP for reasonable expenses.

vii. If the authorized TSP has not received payment from the unauthorized TSP as required by (e)4v above, the authorized TSP is not required to provide any refund or credit to the customer. The authorized TSP shall, within 45 days of receiving the notice or decision as described in (e)4ii and iii above, inform the customer and the Director of Customer Assistance if the unauthorized TSP has failed to forward to it the appropriate charges, and also inform the customer of his or her right to pursue a claim against the unauthorized TSP for a refund of all charges paid to the unauthorized TSP.

viii. Where possible, the properly authorized TSP shall reinstate the customer in any premium program in which that customer was enrolled prior to the unauthorized change, if the customer's participation in that program was terminated because of the unauthorized change. 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 change 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.

(f) All investigation procedures are as follows:

1. When an executing or primary TSP is informed of an unauthorized TSP change by a customer, it shall immediately notify both the authorized and allegedly unauthorized TSP of the incident. This notification shall include the identify 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 change. The TSP 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 change 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 change, as defined by N.J.A.C. 14:10-11.1, has occurred, if it has not already done so.

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 change. This proof of verification shall contain clear and convincing evidence of a valid authorized TSP change, as that term is defined in this subchapter. The Board or its designee will determine whether an unauthorized change, as defined by N.J.A.C. 14:10-11.1, 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.

(g) Each TSP authorized to provide telecommunications services in New Jersey shall submit to the Division of Customer Assistance three copies of the slamming complaint report form identified in the subchapter Appendix, incorporated herein by reference.

1. By each March 1, the report shall cover the preceding period between July 1 and December 31. Each September 1, the report shall cover the preceding January 1 through June 30. Reporting shall commence on September 1, covering September 2, 2003 through June 30 of the following year. Reports filed on March 1 shall cover the period between July 1 and December 31.

2. Each TSP authorized to provide telecommunications services in New Jersey shall, upon request, submit to the Board and the Division three copies of a report of all slamming complaints 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).

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 or electronically 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 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. 14:10-11.3(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 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.

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.

Amended by R.2003 d.355, effective September 2, 2003. See: 34 N.J.R. 3200(a), 35 N.J.R. 4126(a).

Deleted (c).

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.

APPENDIX

New Jersey Board of Public Utilities
Division of Customer Assistance
TSP Slamming Activity Report

Name of Reporting TSP _____

Reporting Period _____

Number of Verified Slamming Complaints _____

Number of Slamming Complaints Resolved with Customer _____

Total Number of Slamming Complaint Received by Reporting TSP Identified by Local, Regional or Long Distance TSP Name _____

Can attach a separate sheet of paper if necessary

Total Number of Customer's Served by Reporting TSP _____

Amended by R.2003 d.355, effective September 2, 2003.
See: 34 N.J.R. 3200(a), 35 N.J.R. 4126(a).

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 in N.J.A.C. 14:10-5.2.

“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. 14:10-5.2.

“Local exchange carrier” or “LEC” has the same meaning as is assigned to this term in N.J.A.C. 14:10-5.2.

“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. 14:10-1.18.

“Program manager” means the person responsible for coordinating a mass migration, monitoring compliance with this subchapter, and ensuring communication between the participants in the mass migration. The acquiring TSP shall designate the program manager. The program manager shall be selected from one of the TSPs involved in the migration, and may or may not be an employee of the acquiring TSP.

“Project manager” means a person assigned by each TSP involved in a mass migration:

1. To ensure that the TSP complies with this subchapter; and
2. To be the official point of contact assigned to represent each participant in the mass migration process.

“Resale migration” means a mass migration that involves the reseller’s end users in the territory that is being exited by the departing TSP.

“Reseller” means a telecommunications service provider that purchases telecommunications services from a facilities-based telecommunications provider and provides those services to its own retail end users.

“Service order discrepancy” means any discrepancy between the information which the end user has supplied to the TSP and the information that a TSP has on file for that end user.

“Telecommunications service provider” or “TSP” has the same meaning as is assigned to the term in N.J.A.C. 14:10-11.1.

“Unbundled network elements” or “UNE” means the components of an ILEC’s telecommunications network that the ILEC is required, under 47 U.S.C. §251(C)(3), to lease to CLECs on an unbundled basis.

“Unbundled network element loop” or “UNE-L” means an unbundled network element (UNE) that is a local loop serving as a transmission facility between the main distribution frame (MDF) in an ILEC central office and the point of demarcation at an end user’s premises.

“Unbundled network elements platform” or “UNE-P” means a combination of unbundled network elements which are used by a CLEC to provide local exchange service and associated switched exchange access, consisting of the local loop, transport and switching.

14:10-12.2 Purpose and scope

(a) This subchapter governs any TSP operating in New Jersey and intending to depart a service territory therein.

(b) This subchapter also governs other TSPs that may acquire the end users who will no longer be served by a departing TSP and ILECs that serve a departing TSP’s end users.

(c) This subchapter sets forth requirements to ensure the orderly migration and/or transfer of end users from a departing TSP to another TSP.

14:10-12.3 Application to depart a service territory

(a) A TSP that intends to depart a particular service territory shall comply with the requirements and procedures set forth in this subchapter.

(b) At least 90 days prior to its planned departure date, a departing TSP shall file an application with the Secretary of the Board that includes all of the following:

1. A request for permission to abandon its provision of service; and

2. An exit plan that explains the steps the TSP will take to help facilitate the transfer of its end users to a new TSP. The exit plan shall include the following:

i. A supplement to either cancel or modify its tariff. If the supplement modifies the tariff, the supplement shall contain plans for transferring end users and preventing slamming problems;

ii. A sample of an initial letter to be sent to the departing TSP’s end users in accordance with N.J.A.C. 14:10-12.5(a), informing them of the departure of the TSP and the end users’ option to choose another TSP. The departing TSP’s letter shall contain all the information set forth in the sample letter in Appendix A to this subchapter, incorporated herein by reference;

iii. A plan for a second notice to end users in accordance with N.J.A.C. 14:10-12.5(b), through a second letter;

iv. A proposed final departure date, on which the departing TSP must disconnect, or request that the underlying service provider disconnect, all end user accounts. The final departure date shall be at least one day after the deadline contained in the second notice to end users;

v. A cut-off date, determined in accordance with N.J.A.C. 14:10-12.6(i) and (j);

vi. The names, e-mail addresses, and telephone numbers of the cutover coordinator and project manager, as defined at N.J.A.C. 14:10-12.1;

vii. Any arrangements made by the departing TSP prior to submittal of the application, to switch end users to another TSP;

viii. Steps to be taken by the departing TSP with NANPA to transfer NXX or thousand number blocks (if applicable), while preserving number portability for numbers within the NXX code. These steps shall comply with the Central Office Code (NXX) Assignment Guidelines, document number INC 95-0407-008, issued by the Alliance for Telecommunications Industry Solutions (ATIS), which are incorporated herein by reference, as amended and supplemented, and can be found at www.atis.org;

ix. The departing TSP’s end user-serving arrangements in effect at the time of the application filing, and the type of underlying service provider, for example, UNE-P, resale, UNE-L or full facilities;

x. A list of end users or groups of end users for whom the departing TSP is the only provider of facilities;

xi. The number of end users who will no longer receive service from the departing TSP;

xii. A summary of the end user service records in the possession of the departing TSP, including:

(1) A statement of the data elements the end user service records contain;

(2) A statement about how the departing TSP will make the end user service records available to other TSPs; and

(3) A statement that indicates the format in which these records are kept;

xiii. An explanation of any transfer of assets or control of assets that requires Board approval, which is planned by the departing TSP;

xiv. Plans for dealing with end user deposits, credits, and/or termination liabilities or penalties; and

xv. Plans for unlocking the E-911 database, in accordance with N.J.A.C. 14:10-12.10.

(c) Upon receipt of an application, Board staff will review the application and contact the petitioner regarding any deficiencies.

(d) If the departing TSP believes that 90 days is not feasible for submittal of its application, it may request a modification of the timeline by making a request to Board staff. However, in all cases, the application shall be submitted early enough to provide sufficient time to migrate the departing TSP's end users to other TSPs.

14:10-12.4 Board notice to other TSPs

(a) The Board will maintain a TSP service list on its website. The service list will include all of the full facilities-based TSPs operating within New Jersey. Each TSP is responsible for providing the Board with up to date information for the service list.

(b) Within seven business days after receiving an application to exit a service territory complying with N.J.A.C. 14:10-12.3, the Board shall:

1. Post a notice on the Board's website; and

2. Send a notice to the TSPs on the service list, informing them of the TSP's planned date of departure from the service territory under N.J.A.C. 14:10-12.3(b)2iv and the cut-off date under N.J.A.C. 14:10-12.3(b)2v.

(c) If the Board becomes aware of any issues concerning the processing of the migration, the Board shall notify TSPs operating within the State by posting this information and providing any pertinent information concerning these issues on the Board's website at www.bpu.state.nj.us.

14:10-12.5 Notice to end users

(a) A departing TSP shall provide notice of its departure to its end users at least 60 days prior to its planned departure date, through a letter that complies with this section.

(b) If there is an acquiring TSP, the acquiring TSP shall, in accordance with FCC regulations at 47 CFR §64.1120(e)(3),

provide 30 days notice to the departing TSP's end users, and also fulfill all of the notice requirements that apply to the departing TSP under this section, regardless of whether the departing TSP fulfills their notice obligations.

(c) The departing TSP shall send a copy of the letter required under (a) above, via certified U.S. Mail, to the Board Secretary and each ILEC and network service provider that provides service in the area served by the departing TSP, at the same time as the letter is sent to the departing TSP's end-users. In addition, the copy of the letter that is sent to the Board and each ILEC and NSP shall be accompanied by an attestation by an officer of the departing TSP that such notice has been mailed to all end users.

(d) The departing TSP shall also send a second letter to its remaining end users, at least 30 days prior to its planned departure, that will notify the end users of their status and that they have the option to select an alternative TSP within 10 days.

(e) The departing TSP shall send a copy, via certified U.S. Mail, of the letter required under (d) above to the Board Secretary and each ILEC and NSP that provides service in the area served by the departing TSP at the same time as the letter is sent to the departing TSP's end-users. In addition, the copy of the letter that is sent to the Board and each ILEC and NSP shall be accompanied by an attestation by an officer of the departing TSP that such notice has been mailed to all end users.

(f) An end user notification letter used to comply with this section shall do the following, at a minimum:

1. Identify the acquiring TSP, if one exists;

2. Inform the end user of its right to choose an alternative TSP (that is, a TSP other than the acquiring TSP);

3. Provide clear instructions to the end user as to how to choose an alternative TSP;

4. If there is no acquiring TSP, inform the end user of the need to take prompt action to ensure continuation of service;

5. Provide a toll-free number for the departing TSP and, if one exists, for the acquiring TSP;

6. Clearly state the deadlines for end user action in accordance with this subchapter;

7. Provide applicable information about long distance service and whether it may be impacted by the migration; and

8. State the end user's responsibility for payment of telephone bills during the migration period.

(g) Subchapter Appendix A contains four sample end user notification letters that may be used to provide notice to end users. Letter #1 is a sample letter which includes the informa-

APPENDIX B

Mass Migration Timeline

Note: this timeline is a summary of some of the provisions of N.J.A.C. 14:10-12.1 through 12.13. It is not intended to replace those provisions. In case of any discrepancy between the rule provisions and this timeline, the rule provisions shall govern.

Note: The days listed below refer to calendar days, unless stated otherwise.

DAYS BEFORE PLANNED DEPARTURE DATE	MILESTONE
90	<ul style="list-style-type: none"> • Departing TSP files an application with the Board requesting permission to depart the service territory, in accordance with N.J.A.C. 14:10-12.3(b)1. • Departing TSP files an exit plan with the Board, in accordance with N.J.A.C. 14:10-12.3(b)2. • Within seven business days after receiving the application, the Board notifies the TSP service list in accordance with N.J.A.C. 14:10-12.4(b).
66	<ul style="list-style-type: none"> • Departing TSP transfers any NXX codes or thousand number blocks in accordance with N.J.A.C. 14:10-12.9(a).
60	<ul style="list-style-type: none"> • Departing TSP provides end user information to the Board and acquiring TSP in accordance with N.J.A.C. 14:10-12.7.
55	<ul style="list-style-type: none"> • Departing TSP notifies its end users in accordance with N.J.A.C. 14:10-12.5(a). • If the departing TSP fails to provide notice under N.J.A.C. 14:10-12.5, the acquiring TSP, if any, shall provide notice to end users and the Board in accordance with N.J.A.C. 14:10-12.5. If there is no acquiring TSP, the ILEC shall provide notice to end users and the Board in accordance with N.J.A.C. 14:10-12.5(e).
30	<ul style="list-style-type: none"> • Departing TSP provides a second notice to each end user, in accordance with N.J.A.C. 14:10-12.5(b). • If the departing TSP fails to provide a notice under N.J.A.C. 14:10-12.5(b), and there is no acquiring TSP, the ILEC shall provide notice to end users and the Board in accordance with N.J.A.C. 14:10-12; and • Departing TSP unlocks all of its telephone numbers in the E-911 database, in accordance with N.J.A.C. 14:10-12.10(a).
20	<ul style="list-style-type: none"> • Cut-off date if there is an acquiring TSP, in accordance with N.J.A.C. 14:10-12.6.
15	<ul style="list-style-type: none"> • Acquiring TSP issues valid local service request (LSR), if required, in accordance with N.J.A.C. 14:10-12.11(a).
14	<ul style="list-style-type: none"> • Departing TSP or ILEC shall provide additional notice to priority end-users in accordance with N.J.A.C. 14:10-12.7(c).
12	<ul style="list-style-type: none"> • Either the ILEC or departing TSP shall provide firm order confirmation (FOC) to acquiring TSP, in accordance with N.J.A.C. 14:10-12.11(b) or (c).
2	<ul style="list-style-type: none"> • The ILEC or departing TSP shall notify the acquiring TSP of any discrepancies in accordance with N.J.A.C. 14:10-12.12(a). • Acquiring TSP takes appropriate actions to correct discrepancies, in accordance with N.J.A.C. 14:10-12.12(b).
1	<ul style="list-style-type: none"> • Acquiring TSP reschedules unresolved service order discrepancies for evaluation, in accordance with N.J.A.C. 14:10-12.12(c).
0	<ul style="list-style-type: none"> • Planned departure date. All scheduled service orders have been completed.
Day after planned departure date	<ul style="list-style-type: none"> • Termination of service of any remaining end users in accordance with N.J.A.C. 14:10-12.6(l)3.